

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
(Appellate Side)

C.R.A (DB) 67 of 2025

Nikhil Kumar Chandrakala @ Nikhil Haribhau Lad
Vs
The State of West Bengal & Anr.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellant : **Ms. Monika Kalra, Adv.**
Mr. Shatadru Lahiri, Adv.
Mr. Wasim Akram, Adv.
Mr. Debarshi Das, Adv.
Mr. Shantam Gulati, Adv.
Ms. Prerna Vishwas, Adv.
Mr. Saswata Tripathi, Adv.

For the De Facto Complainant : **Mr. Moyukh Mukherjee, Adv.**
Mr. Koustav Lal Mukherjee, Adv.
Ms. Sagnika Banerjee, Adv.
Ms. Sarmistha Basak, Adv.
Mr. Koustav Bhattacharyya, Adv.

For the State : **Ms. Sreyashee Biswas, Adv.**
Ms. Rajnandini Das, Adv.

For Orders : **15.05.2026**

Arijit Banerjee, J.:-

1. In a nutshell, the prosecution case based on the written complaint of the victim lady Ankita Drolia (hereinafter referred to as "Ankita") is that the appellant (hereinafter referred to as "Nikhil") established physical relationship with Ankita by meting out a false promise to marry her and

exploited her sexually for about 3 ¹/₂ years. It all started in May/June, 2018, when Ankita was about 26 years old. Nikhil's age then was about 28 years.

2. Both Ankita and Nikhil are educated persons. Nikhil was employed in the Military in a gazetted post. Ankita had a job in Bombay.

3. The prosecution case is that Ankita and Nikhil came to know each other on a dating app called Tinder. This was sometime in May, 2018. In the App profile, Nikhil indicated his marital status as "Single". Very shortly after getting acquainted on the said app, Nikhil and Ankita met up in a Coffee shop called Chai Break on Elgin road, Kolkata.

4. Nikhil asked Ankita to get into a relationship with him and said that he will then marry Ankita. After that, on several occasions they met at different places. Nikhil repeated his promise to marry Ankita.

5. On June 2, 2018, Ankita agreed to get into physical relationship with Nikhil believing his promise to marry her. Accordingly, they met at room no. 19 at Lakeland Country Club, Kolkata. They had physical relationship there.

6. Thereafter, Nikhil visited Ankita several times in Bombay and their also they had physical relationship. Once Nikhil compelled Ankita to stay in Bangalore and had physical relationship with her.

7. In September 2018, Ankita came to know that Nikhil is a married man. By that time she had become pregnant. Nikhil cited several reasons for not being able to marry Ankita. This caused stress to Ankita who had miscarriage and lost the child.

8. Ankita introduced Nikhil to her parents. Nikhil told her parents that he will marry Ankita. During her relationship with Nikhil, Ankita showered him with different types of gifts, like Mac-Book, iPhone, Bose ear buds,

clothes, shoes, etc. She also transferred cash on several occasions from her account to Nikhil's account. Nikhil used to visit and stay with Ankita's parents even when Ankita was not in Kolkata.

9. Finally when Nikhil declined to marry Ankita, she filed a complaint with the Domjur Police Station on September 30, 2021.

10. In her examination-in-chief, Ankita reiterated what she had stated in her written complaint and what she recorded in her statement under Section 164 Cr.P.C.

11. In cross-examination Ankita said that in September, 2018, she came to know that Nikhil is married. In spite of such knowledge, she continued her relationship with Nikhil since the latter told her that there was some dispute between him and his wife and after divorcing her he will marry Ankita. During their relationship, Ankita came to know that Nikhil has been divorced from his wife. The lawyer who represented Nikhil in the divorce case was suggested by Ankita's mother.

12. Ankita also admitted that in February 2021, she went on a Himachal Pradesh trip with Nikhil. Before that, she had visited Ranthambore in Rajasthan, Statue of Unity in Gujarat, Allahabad, Varanasi and Lucknow with Nikhil. She admitted that she had physical relation with Nikhil many times before Nikhil got divorced and also after his divorce.

13. Ankita said that she became pregnant because of her physical relationship with Nikhil but had miscarriage in September, 2018. She could not recollect whether she had told Nikhil about her miscarriage. She said that she does not have any document to show that she had miscarriage.

14. In cross examination Ankita clearly said that she was in love with Nikhil. She further said that within a very short period of time they agreed to have physical relation with each other as Nikhil promised to marry her. She also said that she did not have any document to demonstrate that Nikhil had told her that he was single.

15. To a suggestion put to her she denied that she wanted to marry the son of Sunil Podwal and that is why she refused to marry Nikhil. She said that there was a huge altercation between her and Nikhil and she filed the complaint against Nikhil.

16. P.W. 2 is Ankita's father. In his evidence he more or less supported Ankita's version. He said that Nikhil had told him that Nikhil will marry Ankita but he did not have anything in writing from Nikhil to that effect. He further admitted that Ankita had told him whatever he deposed in Court.

17. P.W. 2, in cross-examination said that he came to know about the physical relationship between Ankita and Nikhil in August/September, 2018. He said that after September 2018, Ankita lived continuously with Nikhil and had physical relation with him. He said that he was aware that Ankita visited many places with Nikhil.

18. P.W. 3 is the mother of Ankita. She said that Ankita had physical relation with Nikhil in June, 2018 since Nikhil promised to marry her. At that time Ankita knew that Nikhil was single. In September, 2018, they came to know that Nikhil was married. Upon confronting Nikhil, he assured them that he will divorce his wife and marry Ankita. The relationship between Ankita and Nikhil continued and they lived as husband and wife. Ankita bought several gifts for Nikhil. In June, 2021, she got a call from

Ankita who was then with Nikhil in Bangalore, saying that Nikhil had misbehaved with her. P.W. 3 and her husband went to Bangalore and brought back Ankita to Kolkata. In July, 2021, Nikhil came to their house in Kolkata. He refused to marry Ankita. An altercation followed. Her husband (Ankita's father) as well as Ankita got hurt. Thereafter Ankita lodged complaint against Nikhil.

19. In cross examination P.W. 3 admitted that Ankita visited several places with Nikhil. She said that she knew that Nikhil got divorced from his wife in November, 2020, and after that Ankita stayed with Nikhil and visited different places with him. She admitted having suggested to Nikhil the name of an advocate for obtaining divorce from his wife. She deposed that she knew that Ankita stayed with Nikhil before his divorce and after his divorce at his house in Bangalore. To a suggestion made to her, she denied that her daughter refused to marry Nikhil since she got a better groom to marry, namely, the son of Dr. Sunil Podwal.

20. P.W. 4 is the Judicial Magistrate who recorded Ankita's statement under Section 164 Cr.P.C.. She tendered such statement in evidence and the same was marked as Exhibit 2.

21. P.W. 5 is the Investigating Officer. The relevant portion of his deposition during his cross-examination reads as follows:-

"I visited the PO on 01.10.2021 at 13.05 hrs. I visited the PO, i.e., the Lakeland Country Club. I have not visited 46/5A, Ballyganj Place. I alone went to the PO.

This is the requisition given by me to the Manager, Lakeland Country Club asking for providing information whether the

following guest boarded in his guest house on 02.06.2018 or not with the name of the guest Ankita Drolia and Nikhil Kr. Chandrakala. Copy of the requisition on the request of the defence is marked as Exbt.C.

I have not seized any article from Lakeland Country Club. By whom the payment was made and in what way was not confirmed to me by the staff of Lakeland County Club. The Exbt. 7 the tax invoice received by me from Lakeland Country Club was not seized by me. The document was handed over to me by the Manager of Lakeland Country Club.

It is a fact that it was required that the said document was needed to be seized by preparing proper seizure list.

The document was handed over to me without any covering letter.

Not a fact that Exbt. 7 is a forged document prepared by me.”

22. In his examination under Section 313 Cr.P.C., Nikhil stated, inter alia, as follows:-

(i) “There is no provision for mentioning the marital status in the App.” (Q.1)

(ii) “It is a fact that I met her in Coffee Shop several times but I disclosed to her that I am married but I am living separate from my wife as I have some issues with her.” (Q. 2)

(iii) “She stated falsely. I had not been with her to Lakeland Country Club and I had been to Mumbai I stayed in her residence and when she used to come to Bangalore she stayed in my Army

Quarter and we had sexual intercourse with each other with the mutual consent of either side.” (Q.5)

(iv) “I told her that I am married on the first date when I met her and I am not aware whether she conceived and became pregnant and under stress she misconceived and lost her child.” (Q. 6)

(v) “I have met her parents. They helped me to get my divorce and regarding the gifts she stated falsely. I purchased the articles in exchange of my old articles by giving cash to her to pay by her through her credit card to get the reward points. It is a fact that I assured her parents that I will marry her after getting the divorce”. (Q.7)

(vi) “It is a fact that I have stayed with her parents in her absence to attend my court proceeding in the Family Court relating to divorce with my wife.” (Q.8)

(vii) “He (meaning Ankita’s father) stated falsely. Nothing such happened. Rather they assaulted me and confined me in their house when I protested against the desire of the victim to marry the son of Dr. Sunil Podwal.” (Q. 9)

(viii) “I have never been aggressive to the victim and rest what has been said by the witness he stated falsely. I never stayed with the victim in Lakeland Country Club”. (Q.10)

(ix) “The parents of the victim arranged to get me divorce and I was ready to marry her.” (Q. 13)

23. In the above factual matrix, the essence of the case run by the prosecution is that Nikhil made a false promise to marry Ankita and thereby

induced Ankita to establish physical relationship with him. Without realising that Nikhil's promise was false from the very beginning and that he had no intention of marrying her, Ankita allowed Nikhil to have sex with her. The so called consent on the part of Ankita stood vitiated by fraud. There was no consent going by the provisions of Section 90 of the Indian Penal Code. Therefore, Nikhil committed rape on Ankita and is guilty of commission of offence under Section 376(1) IPC.

24. As regards the tax invoice handed over to the Investigating Officer by the Manager of Lakeland Country Club pursuant to requisition made in that regard, the prosecution argued that such tax invoice, marked as Exhibit 7, would demonstrate the presence of Nikhil and Ankita at Lakeland Country Club on June 2, 2018. The requisition has been marked as Exhibit 'C'. Although the Investigating Officer did not seize the tax invoice, there is no foul play or irregularity in the manner in which the tax invoice came to be adduced as evidence.

25. The argument advanced on behalf of the de-facto complainant was substantially in line with the submission made on behalf of the State. It was submitted that the so-called "consent" of the victim in the matter of establishing physical relationship with the appellant, stood vitiated by fraud and misconception of fact as the appellant had suppressed his marital status and dishonestly continued to have physical relationship with the victim under false assurance of marrying the victim. The appellant's conduct demonstrates a calculated design to deceive and exploit the victim.

26. It was argued that the testimony of the victim in the case of a sexual offence stands on a high pedestal and does not require corroboration if it

inspires confidence. In the present case, the victim's testimony is natural, cogent and free from material contradictions. Minor inconsistencies, if any, do not go to the root of the case.

27. It was further submitted that the alleged delay in lodging the FIR has been adequately explained. The victim in the present case had reposed trust in the appellant and was under the bona fide belief that he would marry her. It is only upon realising that she has been deceived by the appellant, that she lodged the complaint.

28. Learned Counsel for Ankita submitted that there is no perversity, illegality or material infirmity in the impugned judgment and order. Learned Trial Court has meticulously and exhaustively analysed the entire body of evidence on record, both oral and documentary, and has arrived at a well-reasoned finding of guilt. The defence has failed to point out any material contradiction, inconsistency or improbability in the prosecution case which could go to the root of the matter or create any reasonable doubt. The sentence imposed by learned Trial Court is just, fair and commensurate with the nature and gravity of the offence committed by the appellant.

29. It was submitted that the offence of rape, particularly when committed by inducement, deceit or abuse of trust, constitutes a serious violation of the bodily integrity, dignity and autonomy of a women. Such offences have far-reaching psychological and social consequences on the victim and strike at the very fabric of a civilised society. The imposition of stringent punishment in such cases serves not only as a measure of justice to the victim but also as a deterrent to like-minded offenders, thereby upholding public confidence in the criminal justice system.

30. Learned Counsel for the de-facto complainant finally relied on the decision of the Hon'ble Supreme Court in the case of ***Pramod Suryabhan Pawar v. State of Maharashtra & Anr., reported at (2019) 9 SCC 608.***

31. Learned Advocate for the appellant argued as follows:-

(i) Learned Trial Court erroneously overlooked the inordinate and unexplained delay of nearly 3^{1/2} years and absence of basic ingredients of the alleged offence in the First Information Report as well as in the evidence on record.

(ii) There is no allegation of the appellant denying to marry the victim in the letter of complaint dated September 30, 2020. This shows that such allegation is an afterthought.

(iii) Learned Trial Court misconstrued the answers given by the appellant during his examination under Section 313 Cr.P.C. and reached an erroneous conclusion that the appellant never denied having gone to Lake Land Country Club with the victim. This allegation was even otherwise not proved by the prosecution by any cogent and material evidence.

(iv) Neither the tax invoice handed over to the Investigating Officer by the manager of Lake Land Country Club marked as Exhibit – 7 was seized by the Investigating Officer nor the manager was examined as a witness to prove the veracity of the said document.

(v) Mere production and marking of a document as an exhibit in court cannot be held to be due proof of its contents. It has to be proved by admissible evidence, i.e., by the evidence of those

persons who can vouchsafe for the truth of the contents of the document.

(vi) Learned Trial Judge failed to consider that the victim lady entered into a matrimonial relation with another person while the appellant obtained divorce from his wife and has not re-married.

(vii) Learned Trial Court erred in law and in fact in holding that the appellant never intended to marry the victim by totally ignoring and/or overlooking the following facts:-

(a) The appellant disclosed his marital status to the victim.

This shows that he had no *mala fide* motive.

(b) The appellant meted out assurance to marry the victim upon obtaining divorce. This would show that his assurance was not in bad faith.

(c) All efforts were made by the appellant to obtain divorce from his wife, with the aid of the victim's parents. The victim was well aware of the entire process. This would also show the bona fide intention of the appellant to marry the victim.

(d) There is no evidence on record to prove conclusively that the appellant never intended to marry the victim.

(viii) The version of the prosecutrix and that of her parents are materially contradictory and dichotomous on several issues. This would indicate the unreliability of their evidence.

(ix) Learned Trial Judge misconstrued Section 114A of Indian Evidence Act. The alleged act of the appellant does not fall within

the ambit of Section 376(2) of IPC and as such Section 114(A) of the Evidence Act has no manner of application.

(x) The finding of the trial Court that the consent of the victim was given on the basis of misconception of fact and therefore, considering Section 90 of IPC, the same was not a consent contemplated in the other sections of IPC, is erroneous.

(xi) The victim was about 29 years of age at the time of lodging complaint and about 26 years when she met the appellant first. She is a well-educated lady. She wilfully chose to subscribe to a dating app through which she came to know the appellant. She voluntarily chose to meet the appellant at various places. Despite knowing that the appellant was a married man, she introduced him to her parents to help the appellant in the matter of obtaining divorce from his wife by introducing the appellant to their advocate.

(xii) The appellant and the victim stayed together at the appellant's place in Bangalore and at the victim's place in Mumbai. They also travelled extensively to various parts of India.

(xiii) The victim, in her absence in Kolkata, allowed the appellant to stay with her parents in their residence in Kolkata.

32. Learned Counsel submitted that the victim consciously and voluntarily entered into physical relationship with the appellant and continued such relationship even after coming to know that the appellant was married. The fact that she had physical relationship with the appellant before and after the latter's divorce would show that she had voluntarily

consented to the physical relationship and such consent was not in consequence of any misconception of fact. The consent given by a lady to have physical relationship with a person whom she loves, on a promise to marry her on a later date, cannot be said to be consent given under misconception of fact. The misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of nearly 3 ^{1/2} years. The consent of the victim in the present case was a considered and informed choice made by her after due deliberation, it being spread over a long period of time coupled with conscious positive action not to protest.

33. Learned Counsel for the appellant relied on the following judgments:-

(i) Uday v. State of Karnataka reported at (2003) 4 SCC 46.

(ii) Nitin B. Nikhare v. The State of Maharashtra & Anr. [SLP (Crl.) No. 1889/2024].

(iii) Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra & Ors, reported at (2019) 18 SCC 191.

(iv) Pramod Suryabhan Pawar v. State of Maharashtra & Anr., reported at (2019) 9 SCC 608.

(v) The State of Himachal Pradesh v. Rajesh Kumar @ Munnu [Criminal Appeal No. 2097/2014: 2025 INSC 331].

(vi) Naim Ahamed v. State (NCT of Delhi), reported at 2023 SCC OnLine SC 89.

(vii) Maheshwar Tigga v. State of Jharkhand reported at (2020) 10 SCC 108.

(viii) Deepak Gulati v. State of Haryana reported at (2013) 7 SCC 675.

(ix) Shivashankar @ Shiva v. State of Karnataka & Anr., reported at (2019) 18 SCC 204.

(x) Alamelu and Anr. v. State represented by Inspector of Police, reported at (2011) 2 SCC 385.

Court's view

34. Learned Trial Judge convicted Nikhil under Section 376(1) of the IPC. Charge sheet had been issued under Sections 376/417, IPC. However, since Nikhil has not been found to be guilty of offence under Section 417 IPC (cheating), we need not dilate on that issue.

35. Section 376(1) of the IPC reads as follows:-

“376(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.”

36. Rape is defined in Section 375 of the IPC as follows:-

“A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First— Against her will.

Secondly — Without her consent.

Thirdly— With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly — With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly— With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly — With or without her consent, when she is under eighteen years of age.

Seventhly — When she is unable to communicate consent.

Explanation 1.— For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.— Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.— A medical procedure or intervention shall not constitute rape.

Exception 2.— Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

37. What is clear from the said Section is that absence of consent of the victim is an essential ingredient of the offence of rape in a majority of factual matrixes including the present one. In other words, if there is consensual sexual intercourse between a man and a woman, both having attained the age of majority, the man cannot be held to be guilty of commission of the offence of rape.

38. In the present case, it is not the prosecution's contention that the physical relationship between Nikhil and Ankita was not consensual or that Nikhil forcibly established physical relationship with Ankita against her will. That Nikhil and Ankita indulged in sexual relationship voluntarily is not in dispute. The case of the prosecution is that Nikhil obtained Ankita's consent

fraudulently which vitiated such consent. In other words, by meting out a false promise to marry Ankita, Nikhil induced Ankita to get into physical relationship with him. The prosecution argued that in view of Section 90 of the IPC, Ankita's consent did not amount to consent as understood within the scope of Section 375 of the IPC.

39. Section 90 of the IPC read as follows:-

“90. Consent known to be given under fear or misconception.—

A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.— if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child.— unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.”

40. The prosecution case is that Ankita consented to having physical relationship with Nikhil under a misconception of fact that Nikhil will marry her. In fact, Nikhil had no intention to marry her from the very beginning. It was only to persuade Ankita to have sexual relationship with him that Nikhil made a false promise to marry her. Had Ankita known that Nikhil never

really planned to marry her, Ankita would not have got into physical relationship with Nikhil.

41. On this aspect, we propose to note a few Supreme Court decisions which have dilated on the point as to when, in the context of Section 375 of the IPC, it can be said that a woman's consent to have physical relationship has been procured by a man by making a false promise to marry.

42. In *Uday v. State of Karnataka reported at (2003) 4 SCC 46, paragraph 21*, the Hon'ble Supreme Court observed as follows:-

"21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in

view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.” (Emphasis is ours)

43. In *Nitin B. Nikhare v. The State of Maharashtra & Anr. [SLP (Crl.) No. 1889/2024]*, paragraphs 6 and 7, the Hon’ble Supreme Court observed as follows:-

“6. This Court in a catena of judgments has held that the mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. In order for the offence of rape to be made out, two conditions need to be satisfied i.e. that the promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intention of fulfilling said promise from the very beginning, and that the false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. [See: Pramod Suryabhan Pawar v. The State of Maharashtra and Ors. (2019) 9 SCC 608; Mahesh Damu Khare v. The State of Maharashtra and Ors. 2024 SCC OnLine SC 347]

7. From a perusal of the record, it is clear that this was a case of a consensual relationship from the beginning. Even if the case of the prosecutrix is accepted, it does not appear that the initial promise to marry was in bad faith. It was only the subsequent circumstances that prevented fulfilment of alleged false promise to marry. Resultantly, the relationship turned sour which has given rise to the present FIR. Further, in view of the material on record,

we do not see this as a case where provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be attracted.” (Emphasis is ours)

44. In *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra & Ors.*, reported at (2019) 18 SCC 191, paragraphs 21, 23, 24, the Hon’ble Supreme Court observed as follows: -

“21. In *Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675: (2013) 3 SCC (Cri) 660, the Court has drawn a distinction between rape and consensual sex. This is a case of a prosecutrix aged 19 years at the time of the incident. She had an inclination towards the accused. The accused had been giving her assurances of the fact that he would get married to her. The prosecutrix, therefore, left her home voluntarily and of her own free will to go with the accused to get married to him. She called the accused on a phone number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived, she went with him to a place called Karna Lake where they indulged in sexual intercourse. She did not raise any objection at that stage and made no complaints to anyone. Thereafter, she went to Kurukshetra with the accused, where she lived with his relatives. Here too, the prosecutrix voluntarily became intimate with the accused. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the accused at Birla Mandir there. Thereafter, she even

proceeded with the accused to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married at the court in Ambala. At the bus station, the accused was arrested by the police. The Court held that the physical relationship between the parties had clearly developed with the consent of the prosecutrix as there was neither a case of any resistance nor had she raised any complaint anywhere at any time, despite the fact that she had been living with the accused for several days and had travelled with him from one place to another. The Court further held that it is not possible to apprehend the circumstances in which a charge of deceit/rape can be levelled against the accused.

23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant (sic. Accused) had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or

which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.

24. In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas sometimes at his home". Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When

she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since the complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained.

25. Further, the FIR nowhere spells out any wrong committed by the appellant under Section 420 IPC or under Section 3(1)(x) of the SC/ST Act. Therefore, the High Court was not justified in rejecting the petition filed by the appellant under Section 482 Cr.P.C.”

(Emphasis supplied)

45. In ***Maheshwar Tigga v. State of Jharkhand reported at (2020) 10 SCC 108, at paragraph 14***, the Hon’ble Supreme Court observed as follows:-

“14. Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eye of the law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration

that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her.” (Emphasis supplied)

46. In *Deepak Gulati v. State of Haryana reported at (2013) 7 SCC 675, at paragraphs 17-19, 21, 24-26*, the Hon’ble Supreme Court observed as follows:-

“17. The undisputed facts of the case are as under:

17.1. The prosecutrix was 19 years of age at the time of the said incident.

17.2. She had inclination towards the appellant, and had willingly gone with him to Kurukshetra to get married.

17.3. The appellant had been giving her assurance of the fact that he would get married to her.

17.4. The physical relationship between the parties had clearly developed with the consent of the prosecutrix, as there was neither a case of any resistance, nor had she raised any complaint anywhere at any time despite the fact that she had been living with the appellant for several days, and had travelled with him from one place to another.

17.5. Even after leaving the hostel of Kurukshetra University, she agreed and proceeded to go with the appellant to Ambala, to get married to him there.

18. Section 114-A of the Evidence Act, 1872 (hereinafter referred to as “the 1872 Act”) provides, that if the prosecutrix deposes that she did not give her consent, then *the court shall presume that she did not in fact, give such consent*. The facts of the instant case do not warrant that the provisions of Section 114-A of the 1872 Act be pressed into service. Hence, the sole question involved herein is whether her consent had been obtained on the false promise of marriage. Thus, the provisions of Sections 417, 375 and 376 IPC have to be taken into consideration, along with the provisions of Section 90 IPC. Section 90 IPC provides that any consent given under a misconception of fact, would not be considered as valid consent, so far as the provisions of Section 375 IPC are concerned, and thus, such a physical relationship would tantamount to committing rape.

19. This Court considered the issue involved herein at length in *Uday v. State of Karnataka* [*Uday v. State of Karnataka*, (2003) 4 SCC 46 : 2003 SCC (Cri) 775 : AIR 2003 SC 1639] , *Deelip Singh v. State of Bihar* [*Deelip Singh v. State of Bihar*, (2005) 1 SCC 88 : 2005 SCC (Cri) 253 : AIR 2005 SC 203] , *Yedla Srinivasa Rao v. State of A.P.* [(2006) 11 SCC 615 : (2007) 1 SCC (Cri) 557] and *Pradeep Kumar v. State of Bihar* [*Pradeep Kumar v. State of Bihar*, (2007) 7 SCC 413 : (2007) 3 SCC (Cri) 407 : AIR 2007 SC

3059] and came to the conclusion that in the event that the accused's promise is not false and has not been made with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act(s) would not amount to rape. Thus, the same would only hold that where the prosecutrix, under a misconception of fact to the extent that the accused is likely to marry her, submits to the lust of the accused, such a fraudulent act cannot be said to be consensual, so far as the offence of the accused is concerned.

21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or

where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, *unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.*

25. The instant case is factually very similar to *Uday* [*Uday v. State of Karnataka*, (2003) 4 SCC 46: 2003 SCC (Cri) 775 : AIR 2003 SC 1639], wherein the following facts were found to exist:

25.1. The prosecutrix was 19 years of age and had adequate intelligence and maturity to understand the significance and morality associated with the act she was consenting to.

25.2. She was conscious of the fact that her marriage may not take place owing to various considerations, including the caste factor.

25.3. It was difficult to impute to the accused, knowledge of the fact that the prosecutrix had consented as a consequence of a misconception of fact, that had arisen from his promise to marry her.

25.4. There was no evidence to prove conclusively, that the appellant had never intended to marry the prosecutrix.

26. To conclude, the prosecutrix had left her home voluntarily, of her own free will to get married to the appellant. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant. According to the version of events provided by her, the prosecutrix had called the appellant on a number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived she went with him to Karna Lake where they indulged in sexual intercourse. She did not raise any objection at this stage and made no complaints to anyone. Thereafter, she also went to Kurukshetra with the appellant, where she lived with his relatives. Here too, the

prosecutrix voluntarily became intimate with the appellant. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the appellant at Birla Mandir. Thereafter, she even proceeded with the appellant to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married in the court at Ambala. However, here they were apprehended by the police.” (Emphasis added)

47. In *Shivashankar @ Shiva v. State of Karnataka & Anr.*, reported at (2019) 18 SCC 204, at paragraph 4, the Hon’ble Supreme Court held as follows:-

“4. In the facts and circumstances of the present case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant. It is, however, difficult to hold sexual intercourse in the course of a relationship which has continued for eight years, as “rape” especially in the face of the complainant's own allegation that they lived together as man and wife.” (Emphasis added)

48. In *Pramod Suryabhan Pawar v. State of Maharashtra & Anr.*, reported at (2019) 9 SCC 608 at paragraphs 14, 18, 19, 20 and 21, the Hon’ble Supreme Court observed as follows: -

“14. In the present case, the “misconception of fact” alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the

understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In Anurag Soni v. State of Chhattisgarh [Anurag Soni v. State of Chhattisgarh, (2019) 13 SCC 1: 2019 SCC OnLine SC 509], this Court held: (SCC para 12)

“12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC.”

Similar observations were made by this Court in Deepak Gulati v. State of Haryana [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] (Deepak Gulati) : (SCC p. 682, para 21).

“21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused;”

18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

19. The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose. They are as follows:

19.1. The complainant and the appellant knew each other since 1998 and were intimate since 2004.

19.2. The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant.

19.3. The appellant expressed his reservations about marrying the complainant on 31-1-2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015.

20. The appellant is a Deputy Commandant in the CRPF while the complainant is an Assistant Commissioner of Sales Tax.

21. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 IPC has occurred.” (Emphasis added)

49. In the present case, we find that Ankita and Nikhil came to know each other on a dating app called 'Tinder'. This was sometime in May, 2018.

50. Their friendship and intimacy developed rapidly. According to Ankita, she and Nikhil first had physical relationship on June 2, 2018, in a room at Lakeland Country Club. Nikhil however denies having gone to Lakeland Country Club with Ankita on June 2, 2018, or at all.

51. Although Nikhil says that at the very beginning he informed Ankita that he was married but that his relationship with his wife was strained and he was contemplating separation, Ankita says that Nikhil initially represented himself to be a single person. It was only in September 2018, that Ankita came to know about the true marital status of Nikhil.

52. It is not in dispute that Nikhil and Ankita together visited many places in India. They were in continuous physical relationship. Nikhil has stayed in Ankita's accommodation in Bombay, Ankita has stayed in Nikhil's flat in Bangalore. Nikhil used to stay with Ankita's parents in Kolkata whenever he visited this city, even if Ankita was in Bombay or elsewhere. Ankita's parents fixed up a lawyer for Nikhil to file divorce proceedings. At least once, Ankita accompanied Nikhil to the lawyer's chamber.

53. It is also not in dispute that Nikhil obtained a decree of divorce against his wife in November, 2020. It is also not in issue that Ankita and Nikhil had regular physical relationship, travelled widely together and cohabited both prior to and after Nikhil got divorced.

54. We, therefore, see that two adult persons, both seemingly matured and definitely educated and cultured, both having a certain social standing, struck up a friendship on a social app which rapidly matured into an

amorous relationship. Ankita has in no uncertain terms stated in her deposition that she was in love with Nikhil. Nikhil has also clearly stated in his examination under Section 313 Cr.P.C. that he had every intention of marrying Ankita after obtaining a divorce from his wife with whom he had serious issues. He never denied that he had conveyed to Ankita and her parents his intention to marry Ankita. In the aforesaid factual matrix, can it be said that Ankita consented to indulging in physical relationship with Nikhil under a misconception of fact that Nikhil will marry her? Keeping in mind the age, educational qualification, social background and standing and the fact that their relationship spread over a period of three and half years, it is difficult for us to accept the prosecution version that Ankita agreed to establish physical relationship with Nikhil under a misconception of fact, only on the basis of Nikhil's promise to marry her.

55. There is nothing on record to show that Nikhil, from the very inception of his relationship with Ankita, had no intention of marrying her.

56. Secondly, being a mature adult, Ankita must have realised that Nikhil could only marry her provided he was successful in getting his marriage with his wife dissolved. In other words, the circumstance was such that there was no certainty that Nikhil would be in a position to legally marry Ankita. The basic hurdle in front of Nikhil was his subsisting marriage and nobody could guarantee that he would definitely be able to obtain a decree of divorce dissolving his marriage.

57. Thirdly, admittedly, Ankita was in love with Nikhil. Hence, it is quite possible that out of such love, passion and craving for Nikhil's company, Ankita established regular physical relationship with Nikhil which continued

for about 3^{1/2} years. They cohabited as husband and wife. They went on holidays together. At times, they resided in each other's accommodation.

58. Given the nature of relationship between the two and their respective standings in life, it is not possible for us to accept the prosecution case that Ankita was duped into consenting to having a sexual relationship with Nikhil. To our mind, Ankita, being in love with Nikhil, voluntarily established physical relationship with Nikhil without being induced to do so by Nikhil by meting out a false promise to marry. In our considered view, Ankita's consent to have physical relationship with Nikhil was not accorded under any misconception of fact. Section 90 of the IPC has no manner of application to the facts of this case.

59. We also note that Nikhil has denied going to Lakeland Country Club with Ankita on June 2, 2018. The prosecution tried to establish by producing and tendering in evidence tax invoice issued by the said Club, that such a visit indeed took place. The Manager of the Club who had apparently handed over the tax invoice to the Investigating Officer, was not examined as a witness. It is settled law that mere marking of a document as an exhibit by a court cannot be held to be due proof of its contents. Its execution has to be proved by admissible evidence, i.e. by the evidence of those persons who can vouchsafe for the truth of the contents of the document. The best person to prove the contents of a document is its author. (Please see ***Alamelu & Anr. v. State represented by Inspector of Police, reported at (2011) 2 SCC 385, paragraph 43.***)

However, this point loses much of its significance when we see that it is an admitted position that Nikhil and Ankita had physical relationship over a fairly long period of about 3 ¹/₂ years.

60. It is also not wholly without significance that a suggestion was put to P.W. 1 (Ankita), in her cross examination by the defence that she refused to marry Nikhil since she wanted to marry the son of Sunil Podwal. Of course, Ankita denied such suggestion.

61. A suggestion was also put to P.W. 3 (Ankita's mother) that her daughter refused to marry Nikhil since she found a better person to marry, namely, the son of Dr. Sunil Podwal. She also denied the suggestion.

62. In his examination under Section 313 Cr.P.C., Nikhil stated that he was assaulted by Ankita's family, and confined in their house when he protested against the desire of the victim to marry the son of Dr. Sunil Podwal.

63. A question may arise as to the relevance of the statements made by an accused in his examination under Section 313 Cr.P.C. As was observed by the Hon'ble Supreme Court in the case of **Sanatan Naskar and Anr. v. State of West Bengal reported at (2010) 8 SCC 249: AIR 2010 SC 3570**, the scope of Section 313 Cr.P.C. is wide and examination of the accused under that provision of law is not a mere formality. The answers by an accused under Section 313 Cr.P.C. are of relevance for finding out the truth and examining the veracity of the prosecution case.

64. The object of recording the statement of the accused under Section 313 Cr.P.C. is to put all incriminating evidence to him so as to provide him an opportunity to explain incriminating circumstances and at the same

time, to permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. Section 313 (4) Cr.P.C. explicitly provides that the answers given by the accused may be taken into consideration in the concerned enquiry or trial and may be put in evidence for or against the accused in any other enquiry into or trial for any other offence which such answers may tend to show he has committed.

65. In *State of U.P. v. Lakhmi reported at (1998) 4 SCC 336* a three Judge bench of the Hon'ble Supreme Court observed, inter alia, that Section 313 Cr.P.C. has a salutary purpose. It enables the Court to apprise itself of what the indicted person has to say about the circumstances pitted against him by the prosecution. Answers to the questions posed to him may sometimes be flat denial or outright repudiation of those circumstances. In certain cases the accused would offer some explanations to incriminative circumstances. In very rare instances, the accused may even admit incriminating circumstances adduced against him, perhaps for the purpose of adopting legally recognised defences. In all such cases, the Court gets the advantage of knowing his version about those aspects and it helps the court to effectively appreciate and evaluate the evidence in the case.

66. In *Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan reported at (2013) 5 SCC 722: AIR 2013 SCC 3150*, a two judge bench of the Hon'ble Supreme Court held inter alia that statements of the accused are recorded under Section 313 Cr.P.C. to meet the requirement of the principles of natural justice as it requires that an accused should be given an opportunity to furnish explanation for the incriminating material which

has come up against him in the trial. His statement cannot be made a basis for his conviction. His answers to the questions put to him cannot be used to fill up the gaps left by the prosecution witnesses in their depositions. The statement of the accused is not a substantive piece of evidence and it can be used only for appreciating the evidence led by the prosecution, though it cannot be a substitute for the evidence of the prosecution.

67. In *Premchand v. State of Maharashtra reported at (2023) 5 SCC 522*, the Hon'ble Supreme Court reiterated that Section 313 Cr.P.C. is a valuable safeguard in the trial process for the accused to establish his innocence. The said section is intended to ensure a direct dialogue between the Court and the accused. It casts a mandatory duty on the Court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstance appearing in evidence against him. Statements of the accused in course of examination under Section 313, since not on oath, do not constitute evidence under Section 3 of the Evidence Act, yet the answers are relevant for finding the truth and examining the veracity of the prosecution case.

68. It is therefore clear that although the statement of the accused recorded under Section 313 Cr.P.C. is not a substantive piece of evidence within the meaning of Section 3 of the evidence Act, such statement is not at all irrelevant. On the contrary, such statement has to be considered by the Court in assessing the evidence brought on record by the prosecution.

69. In the present case, both P.W. 1 (Victim) and P.W. 3 (Victim's mother) were confronted in their cross examinations by defence counsel with a suggestion that the victim declined to marry the accused as she found a

better groom in the son of Dr. Sunil Podwal. The accused in his statement recorded under Section 313 Cr.P.C. also said that the victim wanted to marry Dr. Sunil Podwal's son and hence refused to marry him. Nikhil also stated in his Section 313 examination that he was prepared to marry Ankita. These aspects were not considered or appreciated at all by the learned Trial Judge.

70. It may also be noted that the written complaint was lodged by Ankita after she had been in relationship with Nikhil for about 3 ^{1/2} years. According to Ankita, Nikhil started exploiting her sexually on June 2, 2018. The written complaint was lodged on September 30, 2021. No attempt has been made by Ankita to explain the huge delay in lodging the complaint. This would indubitably indicate that Ankita was in voluntary physical relationship with Nikhil for about 3 ^{1/2} years. The belated complaint was lodged when the relationship between her and Nikhil turned acrimonious.

71. In the written complaint, Ankita alleged that due to her sexual relationship with Nikhil, she got pregnant and Nikhil forced her to have an abortion. However, in her deposition she has stated that after she conceived and then came to know that Nikhil was a married person and after Nikhil refused to marry her, she was so stressed that she suffered a miscarriage and lost the child. There is a world of difference between suffering miscarriage due to stress and being forced to undergo abortion. This is not a minor inconsistency.

72. In her cross-examination Ankita said that she does not have any document to show that she had miscarriage.

Even if Ankita suffered miscarriage, it is very unlikely she did not seek medical aid or undergo medical treatment. There would definitely be documents in that connection. In case of abortion also there would very probably be documentation. The alleged pregnancy and miscarriage/abortion is not substantiated by anything in black and white. This surely makes the victim's version improbable which in turn makes a dent into her credibility and reliability of the evidence that she recorded before the Trial Court.

73. Abortion is an active medical procedure. Miscarriage is wholly different. A pregnant lady may suffer miscarriage by reason of an accident or some medical condition that she may be having. There is no scope for mistaking one for the other.

74. According to Ankita, after she conceived because of her physical relationship with Nikhil, when in September, 2018, Nikhil declined to marry her, she suffered miscarriage because of stress. However, P.W. 3 (Ankita's mother) deposed that Nikhil refused to marry Ankita in July, 2021. This inconsistency also detracts from the reliability of the prosecution evidence.

75. If Nikhil declined to marry Ankita in 2018, as deposed by Ankita, the admitted fact that even thereafter the relationship continued and they cohabited, travelled and enjoyed each other's company for the next 3 years, surely burns a big hole in the prosecution case.

76. In view of the aforesaid, we are unable to agree with the finding of the learned Trial Judge that Ankita was a victim of false promise to marry. We are unable to accept that Ankita agreed to establish physical relationship with Nikhil only because she believed in Nikhil's promise to marry her. We

have elaborately discussed hereinabove the relevant decisions of the Hon'ble Supreme Court. It is not possible for us to hold that Nikhil is guilty of an offence under Section 375, IPC and therefore is liable to be convicted under Section 376 (1) of the Code, given the long consensual physical relationship between Ankita and Nikhil spanning a period of 3 ½ years.

77. For all the above reasons we are of the view that the learned Trial Court fundamentally erred in appreciating the facts and circumstances of the case from the correct perspective and in assimilating the evidence on record applying correct principles of law. There was also no scope for applying Section 114A of the evidence Act (presumption as to absence of consent in certain prosecutions for rape) since the conviction was not under Section 376(2) but under Section 376(1) of the IPC. Hence, on that score also the learned Trial Court fell in error.

78. In the result, this appeal succeeds. The judgment and order of conviction impugned in this appeal are set aside. The appellant is on bail by virtue of our order dated November 11, 2025. The bail bond shall stand discharged. Let the Trial Court records along with a copy of this judgment and order be forthwith sent to learned Trial Court for information and necessary action.

79. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

I agree.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)