

(2020) 01 GAU CK 0023
In the Gauhati High Court
Case No : Criminal Appeal No. 81 Of 2010

Amulya Kumar Nath

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 28-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 376, 415, 417

Citation : (2020) 01 GAU CK 0023

Hon'ble Judges : Parthivjyoti Saikia, J

Bench : Single Bench

Advocate : S Khataniar

Final Decision : Disposed Off

Judgement

1. Heard the learned counsel, Mr. P. Kataki, appearing for the appellant. Also heard Mr. D. Das, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. The challenge in this appeal is to the judgment dated 23.04.2010, passed by the learned Additional Sessions Judge (F.T.C.), Darrang, Mangaldai, in Sessions Case No. 43 (DM) 2008. By the impugned judgment, the appellant was convicted under Section 417 of the Indian Penal Code and was sentenced to pay a fine of Rs. 50,000/- (Rupees fifty thousand) only.

3. The informant, herein, is a widow having 2 (two) children. For earning her livelihood, she worked as a domestic help in the house of the appellant at a monthly salary of Rs. 300/-. She used to go to the house of the appellant in the morning and after finishing her work, she used to return home in the afternoon. One day, when the informant was about to return home, the appellant told her that he would look after her and her children for the rest of her life. Thereafter, the appellant forcibly had sexual intercourse with her. The appellant promised her that he would marry her and keep her like his wife. He, in fact, kept her in his house as his wife. As a result of which, the informant became pregnant. On

one occasion, he took her to the hospital and had her pregnancy terminated. She again became pregnant for the second time and this time also, her pregnancy was terminated at the behest of the appellant. In this way, her pregnancy was terminated for the third time also at Guwahati.

4. The appellant was staying at a place called Dhula near Mangaldai. One day, the appellant and the informant came to Dhula from Guwahati in a public Bus. But, before reaching Dhula, the appellant got down from the bus at Mangaldai asking the informant to proceed to Dhula. After that, the informant contacted the appellant and asked him to bring him some medicine for her. But this time, the appellant beat the informant and drove her out of the house. With the said facts the informant filed the complaint.

5. On conclusion of investigation, Police filed the Charge-Sheet against the appellant under Sections 376 & 417 of the Indian Penal Code. It may be stated that during the trial of the case, the informant/victim could not be traced out. However, on the basis of the evidence of 5 (five) other witnesses, the learned Trial Court could not find the appellant guilty under Section 376 of the Indian Penal Code, but found the convict guilty under Section 417 of the Indian Penal Code. Hence this appeal.

6. Section 415 of the Indian Penal Code defines the word cheating. For ready reference, Section 415 of the Indian Penal Code is extracted herein below-

"415. Cheating.-Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

7. So, whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived or intentionally induces the person so deceived to give consent to do something which he would not have done if he was not so deceived is called cheating. The said provision requires, (i) deception of any person (ii) whereby fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property or (iii) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. Deception of any person is common to the second and third requirements of the provision. The said requirements are alternative to each other and this is made significantly clear by use of disjunctive conjunction 'or'.

8. Here in this case, the victim woman was not examined. She could not be traced out by the Trial Court. The learned Trial Court has held that the appellant had deceived or induced the informant/ victim to give consent for sexual

intercourse. Even if it is accepted that the woman was in fact deceived, but, then another question arises here as to how a married woman having 2 (two) children can be deceived to give consent for sexual intercourse. That question has not been answered by the Trial Court. It appears that the learned Trial Court has totally misconstrued the provisions of law.

9. In the instant case, the evidence of the 5 (five) witnesses are absolutely irrelevant as because neither they are not conversant with the relevant facts of the case nor they are conversant with the circumstances. How they can prove that the victim was deceived.

10. This Court finds that the offence of cheating has not been proved beyond all reasonable doubt against the appellant. Thus, the impugned judgment must not sustain. Accordingly, the impugned judgment dated 23. 04.2010, passed by the learned Additional Sessions Judge (F.T.C.), Darrang, Mangaldai, in Sessions Case No. 43 (DM) 2008, is set aside. The appellant is acquitted from the case.

11. The criminal appeal is, accordingly, disposed of.

12. Send down the LCR.