
(1991) 03 BOM CK 0065
In the Bombay High Court
Case No : Criminal Appeal No. 529 of 1983

Ashok Pandurang Bhatkar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 22-03-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 417

Citation : (1991) 2 BomCR 562 : (1991) 1 MhLj 1030 : (1991) MhLj 1030

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : P.B. Shah, for the Appellant; R.F. Lambay, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—The appellant-original accused in this case stands convicted for an offence u/s 417 of the Indian Penal Code and has been sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 500/- in default to suffer rigorous imprisonment for three months. Originally, there was additional charge u/s 376 of the Indian Penal Code, but the learned Sessions Judge, Ratnagiri, has acquitted the appellant of that offence.

2. This is virtually a sad case of a young village boy and girl, both of whom were employed at the relevant time and who apparently came to know each other because they were distantly related. The admitted position is that the appellant and the complainant Savita were very much in love with each other. The incident in question had taken place at the beginning of the year 1983. It appears that in order to get over the parental resistance to a possible alliance that the two of them mutually agreed to a rather devious plan which was to the effect that the girl should get pregnant so that her parents would, as of necessity, get her immediately married to the appellant. It appears that in furtherance of this understanding the appellant used to take the girl Savita to the secluded place and that he used to have sexual intercourse with her at an unused cattle-shed on

a number of occasions. Ultimately when the girl realised that she was, in fact, pregnant, she went to the house of the appellant - accused because he was not responding to her letters and messages. It is her case that when she informed him prior to this visit about her pregnancy that instead of acting as per the original plan and informing the respective parents that the appellant Ashok is alleged to have become scarce and Savita was under the impression that she would be put into serious difficulty. She alleges that when she went to the house of the appellant-accused and informed him about her condition, he denied his responsibility for her pregnancy; that he is alleged to have also assaulted her and that his parents sided with him. Thereupon out of desperation Savita went to a creek and attempted to commit suicide. It appears that she was rescued from the water and taken to the General Hospital at Ratnagiri, after which the Police not only charge-sheeted her for attempting to commit suicide but they also recorded her complaint against the appellant-accused on the basis of which the appellant-accused came to be charge-sheeted subsequently. In the meanwhile, a miscarriage had occurred as a result of which the pregnancy came to an end.

3. At the trial, Savita gave evidence and she has very clearly said in the course of her evidence that she and the appellant-accused were both very much in love with each other. She has tried to say that she agreed to the act of sexual intercourse only because of the assurance from the appellant-accused that he would marry her and that it is on this basis that the learned Sessions Judge has framed the charge for an offence u/s 417 of the Indian Penal Code. Certain witnesses have been examined, such as the friend of Savita, Usha Shivram Bhatkar (P.W. 3), and a few others for the purpose of establishing that the appellant-accused and Savita were friendly for a longtime. There is no dispute with regard to this part of the prosecution evidence.

4. Mr. Shah, learned Counsel appearing on behalf of the appellant- accused, has submitted very strenuously that in the first instance it is a very unfortunate that a case of this type had to come before a Court of law. Apparently, the girl Savita not only panicky but was driven to a point of desperation when the appellant-accused, Ashok, disclaimed his responsibility for her pregnancy. It is quite obvious that Ashok had given Savita certain pills to take in the hope that she would be able to get over the pregnancy because it appears that by that point of time his parents had got him engaged to some other girl and Ashok found himself in a serious difficulty. Undoubtedly, this conduct on Ashok's part was improper and unethical in so far as at that stage he was fully aware of the condition of Savita and therefore, he was duty bound to have stood by his original assurance to her. In not having done that, however, even though his conduct deserves to be deprecated, the serious question before this Court is as to whether he can be convicted of a criminal offence in the light of the rest of the circumstances on record. Mr. Shah has, therefore, submitted that as far as the offence u/s 417 of the Indian Penal Code was concerned that the Court will have to carefully scrutinize the evidence because section 417 of the Indian Penal Code presupposes that deception was practised on the complainant. Where

admittedly the complainant was a willing party in so far as even at the stage of trial long after the incident she does not dispute the fact that she was very much in love with the appellant-accused and vice-versa, it would require very strong and cogent and convincing evidence before the Court in order that a finding of deception can be recorded against the appellant-accused. In no uncertain terms the complainant admits that to her mind the plan which the two of them had mutually agreed upon was an acceptable course of action. The appellant-accused had obviously at that stage underestimated his position vis-a-vis his parents and it was quite obvious from the subsequent events that the appellant-accused could not redeem his promise to the complainant. Under these circumstances, it is the submission of Mr. Shah that at the highest one can condemn the conduct of the appellant-accused for having put a young girl, and that too one whom he loved, into a position of difficulty and to subject her to desperation which pushed her to attempt suicide, but it could not be argued that the essential ingredients in law of section 417 of the Indian Penal Code had been fulfilled.

5. As against this, Mr. Lambay, the learned Additional Public Prosecutor, advanced the submission that the Court will have to draw a conclusion from the facts on record. According to him, it is perfectly legitimate to draw the inference from the conduct of the appellant-accused that he never had any intention to marry Savita and that for the purpose of satisfying his lust, he virtually deceived her into believing that the plan suggested by him was a workable one. Mr. Lambay submits that this is a case of seriousness and that the submissions advanced on behalf of the appellant-accused must be repelled because the girl almost lost her life in the process. He states that one would have to test the honesty of the appellant-accused from his conduct at the earliest point of time when Savita informed him of her pregnancy. Instead of making an attempt to convince his parents and her parents that the couple should get married, the appellant-accused gave Savita certain pills in the hope that abortion could be induced. From this circumstance, Mr. Lambay submitted that it is very clear that the appellant-accused never had any intention to marry Savita and that the representations made by him were false. Mr. Lambay supports his argument by saying what transpired when Savita came to the accused's house when he denied all responsibility for her pregnancy. He submits that had the appellant-accused even at that stage accepted his liability that the Court could certainly have drawn an inference of honesty, but from his denials the irresistible inference is that he was acting dishonestly all through.

6. It is essential that before an accused can be convicted of an offence of cheating that it must be shown from the prosecution evidence that the accused at the time when the representation was made was acting dishonestly, and on the facts of the presents case, that the appellant-accused had no intention whatsoever to marry Savita and was only trying to take advantage of her. Unfortunately, there is virtually nothing on record to support this view. On the other hand, the evidence that has come on record is to the effect that at that point of time, the appellant-accused and the complaint Savita were jointly

working towards a situation which would facilitate their marriage. It is a legal requirement that it must be demonstrated that the representation was false ab initio, namely, that the dishonesty must be apparent from the transaction at the point of time when it took place. If two parties agree to a particular course of action and one of them thereafter changes the course, as has happened in the present case, it can never be alleged that it is a case of cheating. Under these circumstances, I am unable to uphold the reasoning of the learned Sessions Judge who has concluded that Savita was totally deceived and that the appellant-accused had acted fraudulently and dishonestly in promising marriage to her and getting her to agree to have sexual intercourse with him. It must be remembered that Savita was an adult person, that she had voluntarily consented not on one but on at least five occasions, on her own admission. In this view of the matter, however unfortunate the facts of the case may be, this Court is duty bound to ensure that there is no miscarriage of justice merely because of the emotional overtones that are involved in this case.

7. Mr. Lambay, the learned Additional Public Prosecutor, strenuously urged that this Court must take a very serious note of the fact that a young girl, the complainant Savita, almost lost her life in this incident and that she would have virtually done so except for the fact that she was rescued from the water and taken to hospital. He states that it is the callousness on the part of the appellant-accused which had given rise to this situation and that on a very strict appraisal of the evidence, the conviction is liable to be upheld. As indicated by me earlier, however unfortunate the facts of the case may be, a Criminal Court while adjudicating a proceeding of the present type cannot be swayed by such considerations because it is on the strength of unimpeachable evidence and on the basis of a strict application of law alone that the courts have to decide these cases.

8. In the result, the appeal is allowed. The conviction of the appellant-accused is set aside. The fine, if paid, is directed to be refunded to the appellant-accused. The bail bond of the appellant-accused to stand cancelled.