

(2010) 08 JH CK 0105
In the Jharkhand High Court
Case No : Criminal Revision No. 13 Of 2010

Bijay Lakra

APPELLANT

Vs

State Of Jharkhand and anr

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 227, 313, 376

Citation : (2011) 1 JLJR 450

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The instant criminal revision has been filed against the order dated 26-11-2009 whereby petitioner's application filed under Section 227, Cr. P.C. for discharging him from the charge of offence under Sections 376 and 313, I.P.C., has been rejected.

2. Facts of the case is that the informant/prosecutrix and the accused-petitioner had solemnized Lota-Paani ceremony on 5-6-1998 in presence of the family members of both sides and the said ceremony was also witnessed by the villagers as well as the punches of the panchayat. Thereafter, they lived as husband and wife till February, 2009 and in these 11 years they developed sexual relationship. In the F.I.R. it is alleged that within said 11 years the informant caused several miscarriages and thereafter the petitioner refused to marry her. On this allegation the informant/prosecutrix lodged F.I.R. against the petitioner under Section 376, I.P.C. on 9-5-2009. After investigation, charge-sheet was submitted under Sections 376 and 313, IPC against the present petitioner. Learned counsel for the petitioner submitted that there is long delay in lodging the F.I.R. i.e. about 11 years, which has not been explained in the FIR. The doctor, who examined the victim, has opined that the age of the victim was in between 30 to 35 years at the time of her examination and no evidence of sexual intercourse was found. Learned coun-sel has further pointed out that both

the petitioner and the informant lived like husband and wife since 1998 which itself clearly shows that the informant was always a consenting partner to the act of sexual intercourse right from the beginning and, therefore, no case under Section 376 I.P.C. can be made out against the petitioner. So far as the offence under Section 313 I.P.C. is concerned, learned counsel has submitted that admittedly the informant-prosecutrix had caused miscarriage several times at the instance of the petitioner but she never filed any complaint or any F.I.R. immediately after such miscarriage, if it was against her will. On the contrary, after lapse of 11 years, she has lodged this case against the petitioner on his refusal to marry her.

3. Learned counsel for the petitioner, in support of his contention, has cited two decisions of our High Court reported in 2009 (4) Eastern Criminal Cases - 490 (Jhr) (Rana Rajendra Kumar Singh v. State of Jharkhand) and 2010 (1) Eastern Criminal Cases - 476 (Jhr) (Arjun Toppo v. State of Jharkhand). In both the cases, it has been held that the prosecutrix having sufficient intelligence to understand the significance and the moral quality of the act to which she was consenting which established bodily relationship on the inducement and promise of marriage, it cannot come within the purview of Section 376 IPC.

4. In a decision reported in (2003) 4 SCC 46 : (AIR 2003 SC 1639) (Uday v. State of Karnataka), the Hon'ble Apex Court has held as under:-

"The prosecutrix and the appellant were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 O'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it."

5. Learned counsel for opposite party No. 2 (informant), on the other hand, has contended that there are ample materials in the case diary to show that the petitioner has committed sexual intercourse with the prosecutrix. It is further contended that whenever the informant opposed, she was threatened to be killed and in these long period miscarriages were caused for 5 times by the petitioner against the will of the prosecutrix. It has been further contended that in paragraphs-2 and 3 of the case diary, the IO has mentioned about Lota Pani ceremony and panchnama. In paragraphs-5, 10, 11, 12, 34, 35 and 38 of the

case diary, the witnesses have also supported the said ceremony of Lota Pani.

6. After considering the submissions made by both the parties, and after perusing the order impugned, I find that it is the admitted position that both the parties lived together for more than 10 years as husband and wife, and before the panchayat, Lota Pani ceremony was also held. Therefore, it cannot be said that the petitioner has established any physical relationship with the informant against her consent. Opposite party No. 2, according to the Doctor, was aged about 30 to 35 years on the date of her examination i.e. in the year 2009 and definitely she was more than 18 years at the time of alleged offence i.e. from 5-6-1998 till 9-5-2009, as appearing in the FIR. Therefore, she had sufficient intelligence to understand the significance and moral quality of the act she was consenting to the petitioner. In such circumstances, it cannot be said that the petitioner has committed any offence under Section 376 I.P.C.

7. As regards the offence under Section 313 IPC, as the informant-prosecutrix did not lodge any FIR or complaint immediately after the miscarriages and only when the petitioner refused to marry her she lodged the FIR after expiry of such long time, at this stage it cannot be said that the petitioner has committed any offence under Section 313 IPC and he is liable for miscarriage.

8. Furthermore, it has come on record that after the alleged miscarriages she had sexual intercourse with the petitioner several times and for several years. To bring home the offence under Section 313, IPC the main ingredient is that the miscarriage to the woman concerned must be made without her consent. Therefore, in the present case no offence under Section 313, IPC is made out against the petitioner.

9. In the result, this revision application is allowed and the order impugned dated 26-11-2009 passed in ST No. 635 of 2009 by Additional Judicial Commissioner, Ranchi is set aside.

10. Application allowed.