
(2012) 02 PAT CK 0119

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 288 of 1999

Goutam Pal @ Shyamal Pal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 493

Citation : (2012) 2 PLJR 764

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Advocate : Rakesh Kumar Sinha, for the Appellant; Ajay Mishra, for the Respondent

Final Decision : Allowed

Judgement

Mandhata Singh, J.—Prosecution case initiated on a written application of Meena Devi Samanto addressed to the S.P., Katihar, in brief, is that two years" earlier she had proposed marriage of her daughter Nanda Samanto with appellant Goutam Pal @ Shyamal Pal. Proposal was accepted and marriage was settled in presence of Hena Rani Pal, Jyotindra Pal, Ajit Pal and Dilip Pal. After settlement of marriage intimacy in between the bride and bridegroom developed, leading to their frequent meeting. An amount of Rs. 2,000/- advanced to the bridegroom party but for want of more money, marriage could not be solemnized rather marriage was refused. In the meantime, it is said that due to intimacy both the bridegroom and bride entered into sexual indulgence. After concluding the trial, the case is ended in conviction and sentence to the appellant for the offence under Sections 376 and 493 of the Indian Penal Code.

2. In all ten witnesses are examined in the case and they are P.W. 1-Sandhaya Samanto, P.W. 2-Anup Kumar Das, P.W. 3-Pallav Biswas, P.W. 4-Swapan Kumar Munshi, P.W. 5-Rabindra Nath Samanto, P.W. 6-Gopal Mukherjee, P.W. 7-Dr. Kanak Ranjan, P.W. 8-Meena Devi informant of the case, P.W. 9-Nanda Samanto victim of the case and P.W. 10-Shyam Narayan Pandey I.O. of the case.

3. Of witnesses, P.Ws. 2, 3, 4 and 6 state to know nothing about the incident though all have been declared hostile, cross-examined by the prosecution but in the same also nothing has appeared to corroborate the prosecution case. P.W. 7 is doctor and P.W. 10 is I.O. of the case. Rest of the witnesses namely P.Ws. 1, 5, 8 and 9 are witnesses to state the averment made in the written application.

4. According to learned defence counsel, averment made in the written application corroborated by the witnesses namely P.Ws. 1, 5, 8 and 9 if is accepted then also no case either u/s 376 of the Indian Penal Code or Section 493 of the Indian Penal Code is made out. Of the above four witnesses, P.W. 9 is victim of the case, her statement is to be believed for happening of anything may be said conclusive also for the prosecution case. In paragraph-1 she states that she was knowing this appellant from before, therefore, she fell in love of him (appellant). On allurements of marriage she indulged with him in sexual relation. In paragraph-7 more elaborately she states that they were meeting not openly but was known to Mohalla people, in course of sexual intercourse there was no pregnancy, no preventive measure was being taken on her behalf but that was taken on behalf of appellant. This relation came in knowledge of parents of the victim only after 4-5 months and after knowing the same they went to appellant's guardian.

5. It is admitted fact in the case that victim was major at the time of sexual relation, so the act to have sexual intercourse by the appellant is rape only if it is committed against the will of the victim P.W. 9 (daughter of informant), without her consent, with her consent, when her consent was obtained by putting her or any person in whom she was interested in fear of death or of hurt, with her consent, when the appellant knew that he was not her husband, and that her consent was given because she believed that he was another man to whom she was or believed herself to be lawfully married, 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 was unable to understand the nature and consequences of that to which she gave consent. It is not a case that sexual relation of informant's daughter with this appellant was against her will or without her consent or consent was obtained by putting her or any person in whom she was interested in fear of death or of hurt nor anything was suppressed or hidden or existing that she believed the appellant to be lawfully married or under the influence of any intoxication rather it is a clear case of their love affair, as averred, they indulged in sexual intercourse then only appellant's guardian was approached for their marriage so no case u/s 376 of the Indian Penal Code is made out.

6. Another offence for which appellant is convicted is the offence u/s 493 of the Indian Penal Code, it runs as follows:-

493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.--Every man who by deceit causes any woman who is not lawfully

married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

7. According to learned counsel, everything was open to both the parties, nothing was suppressed or hidden. There was no deceit causing informant's daughter to believe that she was lawfully married to the appellant rather it was their love only and act of parties only fixes liability for constituting any offence which is lacking in the case. Without considering the same, conviction and sentence reached by the trial court is not liable to be sustained. One thing more is submitted on behalf of learned counsel for the defence though there is no material on record that now parties (daughter of the informant and appellant) have married also. Marriage certificate was there in personal record of the lawyer shown to this Court.

8. After having considered the evidence on record and the material recorded by the trial court, the appeal is allowed. The judgment and order dated 7.10.1999 and 8.10.1999 for conviction and sentence passed in Sessions Case No. 334 of 1996 by Sessions Judge, Katihar is set aside. Accordingly, appellant is acquitted of the charges, discharged from the liability of bail bond and set at liberty. Copy of judgment alongwith lower court records be sent back to the trial court forthwith.