

(2014) 11 TP CK 0046
In the Tripura High Court
Case No : Crl. Rev. P. 40 of 2007

Joram Hrangkhawl VsThe State of Tripura

Date of Decision : 12-11-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 415, 417

Citation : (2014) 11 TP CK 0046

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : D. Bhattacharji, Advocate for the Appellant; A. Ghosh, P.P, Advocate for the Respondent

Judgement

Deepak Gupta, C.J.—This revision petition is directed against the Judgment dated 19.02.2007 passed by the learned Additional Sessions Judge, West Tripura, Khowai in Criminal Appeal No. 01(1)/2007 whereby, he dismissed the appeal of the petitioner and upheld his conviction under Section 417 IPC.

2. The prosecution case, briefly stated, is that after the death of the mother of the complainant-prosecutrix, the accused developed intimate relation with her by taking advantage of the fact that she was without her mother. It is also alleged that the accused promised to marry the victim and on the pretext that he would get marry to her, he had sexual relations with her. Out of the sexual relations, a child was born. After the child was born, the accused refused to marry the victim and hence, the case was filed. Initially, the committing Court felt that a case under Section 376 IPC was made out and accordingly, the case was committed to the Court of Sessions. However, the learned Sessions Judge held that at best it was a case of cheating and thereafter, sent the case back to the Magistrate. The appellant has been convicted by the Trial Court and his conviction has been upheld. Hence, this revision petition.

3. Normally, this Court is very reluctant to interfere in pure findings of fact arrived at by the Courts, but in case, the findings are perverse or the findings arrived at are based on no legal evidence then this Court is duty bound to interfere.

4. Section 417 of the IPC relates to punishment in the case of cheating. Cheating has been defined in Section 415 IPC as follows:--

"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".

5. Therefore, when any person deceives any other person and fraudulently or dishonestly induces the deceived person to deliver any property or obtains the consent of such person by fraud or deception then he commits the offence of cheating. The allegation against the accused is that he by fraud and deceit induced the victim to consent to have sexual intercourse with him which she would not had done if he had not played fraud with her. Therefore, it is the statement of the victim which is of utmost importance.

6. The statement reads as follows:--

"I have filed a written ejahar in the Teliamura P.S against the accused Zoram Hrankhal. My mother expired in the year 2003 and during that time Zoram came to our house and as a result we developed love relation between us. We also had physical relation and as a result of this one male child was born on 12.1.04. Zoram later on refused to marry me and also did not took me to his house. Witness has identified the written ejahar and her signature in it and also stated that this written ejahar was read over to her. On identification the written ejahar is marked as exbt-P-1 and signature is marked as exbt-P-1/1. I have narrated the entire fact to Darogababu also and Darogababu came to our house also in c/w this matter. Zoram is present in the dock today and is identified by the witness."

7. Even if the statement of the prosecutrix is taken as the gospel truth, all that she has stated is that after the death of her mother, she and the accused developed a love affair which culminated in physical relationship between the two of them. She has not stated a word that she had sex with the accused because he promised to marry her. In her statement, there is no such allegation. Therefore, the essential ingredient of Section 415 IPC that a false promise was made or that the victim was deceived is not made out. It is more than apparent that the victim fell in love with the accused and she had sex with him.

8. The Courts below have relied upon the statements of P.W. 2, the mother and P.W. 3, P.W. 4, the village head man and P.W. 5, a resident of the village. No doubt these witnesses have stated that the accused had expressed a desire to marry the prosecutrix, but in the absence of any such statement by the prosecutrix that she had sexual intercourse with the accused because of the false promise held out to her no relevance can be placed on their statements. The

victim in her statement has not even stated that any promise was made to her by the accused. Therefore, no offence of cheating is made out.

9. Hence, the Judgments of both the Courts below are set aside and the accused is acquitted and his bail bonds stand discharged.