

(2019) 03 GAU CK 0025

In the Gauhati High Court

Case No : Criminal Revision Petition No. 349 Of 2010

Kalpana Bhuiyan Das

APPELLANT

Vs

Gautam Das And Anr

RESPONDENT

Date of Decision : 08-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 376, 415, 417, 420, 506
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 03 GAU CK 0025

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : S C Biswas, J C Deka

Final Decision : Dismissed

Judgement

1. By this present appeal, the victim/informant of the Sessions Case No.01/2006 has challenged the order of acquittal so passed by the Court of Sessions vide order dated 06.12.2006.

2. On 07.04.2005, the present appellant/informant lodged an FIR at Tezpur Police Station with the allegation that the respondent Gautam Das after having long love affair with her cohabited with her convincing that she has been married to him, left her despite her request to continue their conjugal life. In her FIR, it is also stated that she was impregnated by the accused petitioner and her pregnancy was terminated by giving tablets. On the basis of such FIR, Tezpur Police Station Case No.281/2005 under Sections Section 376/420/506 IPC was registered and after due completion of investigation, submitted charge-sheet against the accused persons under Section 376/417/506 IPC. The accused/petitioner faced trial and denied the charge framed under the said sections of law.

3. The prosecution examined 6(six) witnesses in support of their case and defence examined none. The plea of defence is of total denial. The statement of the accused person was also recorded under Section 313 Cr.PC. At the conclusion

of trial, the accused person was acquitted by order dated 01.06.2006 from the above charges. Being aggrieved, the informant has preferred the present revision petition on the ground that the learned trial Court has failed to appreciate the evidence on record on proper perspective and has not also assigned any cogent reason for disbelieving the witnesses that was produced by the informant. According to the appellant, there was sufficient corroboration of the witnesses in support of the charge but the learned trial Court has failed to take note of all the aspects in proper perspective of law and facts.

4. Record reveals that the case was initially registered as appeal but subsequently it was converted to revision by an order of this Court.

5. I have heard the submission of learned counsel for the petitioner as well as the learned State counsel and the private respondent. I have also perused the impugned judgment & order and the evidence on record.

6. So far as the evidence of informant is concerned, she is a woman of 27 years of age at the time of occurrence and she has also physical relationship with the accused. According to her, the accused also took her to the Shiv Mandir and put vermilion and thereafter, she cohabitated with him in her own house and not in the house of the accused person. Although she asked him to take her in his house but she was not taken. Her pregnancy was also terminated by giving tablets. Her evidence reveals that she voluntarily entered into physical relationship with the accused and continued such relation for eight years. It is not her case that she entered into such relationship for deception on the part of the accused. Actually she filed the FIR as the accused has not taken her to his own house. She, however, could not furnish any document regarding her marriage in the Shiv Mandir as there was no priest in the Mandir.

7. Her other witnesses PW-2 Khiroda Bhuyan (sister) and PW-3, Dipali Bhuyan (mother), PW-4, Gajendra Bhuyan (brother), all of them have stated about the same thing that there was a love affair between the parties for which they have maintained physical relationship but none of the witnesses were stated about any sort of marriage that was stated by PW-1. It is to be noted that despite their family members, these PW-2, PW-3, PW-4 have failed to prove the factum of marriage between the parties but they stated about cohabitation between the parties in their house. None of them present or accompanied PW-1 to the Shiv Mandir to perform the marriage. They also have not stated that accused deceitfully maintained the relation with the informant which is the very essence of cheating. Moreover, she being the major women consented to such relation, the same cannot amount to rape.

8. The evidence of PW-5 is of no help as he has no knowledge about the occurrence. PW-6 is the Investigating Officer, who has stated about the incident and also the investigation made by him. The Investigating Officer, in his evidence, has contradicted with the testimony of PW-1/informant that she did not stated before him about their marriage in Shiv Mandir and about the cohabitation

between them and also did not reveal about pregnancy and termination thereof by the accused. He has also contradicted the evidence of PW-2 that he has not stated about the marriage between the parties and the cohabitation in their house. No any document regarding marriage was seized by the Investigating Officer.

9. According to the private respondent, as the victim appellant has not stated about any sort of deception on the part of the accused, there cannot be any matter of cheating in the parlance of law, nor such consensus sexual relation of a major women amounts to rape.

10. Learned Additional Public Prosecutor has fairly conceded to the submission made by the private respondent.

11. On a scrutiny of the entire evidence on record, it is found that the victim/informant continued such relationship with the accused/petitioner out of love and affection and she has nowhere stated that the accused by deceiving her, used to enter into such physical relationship. She being a major woman, having sufficient maturity, was aware of consequence of such relationship. Mere denial of the accused to take her to his house, as stated by her, will not amount to cheating, in the parlance of law. Her witnesses, who are all family members including her guardian, and the informant herself nowhere stated that because of false assurance by the accused, the petitioner allowed to maintain such relationship with the accused person. There is nothing to substantiate that there was marriage between the parties, as stated by PW-1.

12. The offence of Section 415 IPC reads 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'."

The ingredients required to constitute an offence of cheating are

1. There should be fraudulent or dishonest inducement of a person by deceiving him,

2. (a) The person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property;

(b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived, and

To hold a person guilty of the offence of cheating it has to be shown that his intention was dishonest at the time of making the promise. For the purpose of holding the accused guilty of an offence under section 415 IPC, the prosecution

must adduce evidence establishing mens rea on his part.

13. It is discernable that the prosecution has not been able to prove any of the ingredients of cheating, as has been discussed above and the learned trial Court has rightly appreciated the entire evidence and materials on record, which I have gone through. Similarly, as has been stated above, the prosecution has not been able to prove the offence of rape as against the respondent. Nothing remains to interfere with the findings of the learned trial Court. Accordingly, the present criminal revision petition stands dismissed.

14. Registry is directed to send back the LCR.