
(2010) 07 GAU CK 0050
In the Gauhati High Court
Case No : Criminal Appeal No. 311 of 2002

Md. Fazlul Karim	Vs	APPELLANT
State of Assam and Another		RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 411, 417

Citation : (2011) 2 Crimes 551 : (2010) 6 GLR 641

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : J. Ahmed, S. Das and A.S. Akand, for the Appellant; B.B. Gogoi, Addl. P.P., for the Respondent

Judgement

P.K. Musahary, J.—Heard Mr. J. Ahmed, learned Counsel for the accused/Appellant. Heard also Mr. B.B. Gogoi learned Addl. P.P., Assam.

2. This criminal appeal is directed against the impugned judgment dated 14.8.2002 rendered by learned Addl. Sessions Judge, Nagaon, in Sessions case No. 139(N)/2000 convicting the Appellant and sentencing him to undergo RI for one year u/s 417, IPC, and acquitting him for the charge u/s 376, IPC.

3. Briefly stated the facts of the prosecution case are that the Appellant proposed to marry the victim girl Meera (real name withheld) and by force committed sexual intercourse with her, as a result of which she became pregnant. Later on when she requested the Appellant to marry her, he refused to marry her. She did not disclose this fact to anybody and got herself married to one Julhaz. This marriage did not last long.

Having come to know about the past relation with the Appellant, Julhaz divorced her and sent to her parent's house. Thereafter, she again requested the Appellant Fazlul Karim to marry her but he refused to do so saying that he had no relation with her. The Appellant even tried to assault the victim girl. Having no other alternative the victim girl filed a complaint case in the court of the learned

CJM, Tezpur, who took cognizance and proceeded against the Appellant. The case was committed to the Court of Sessions, as the offence alleged is exclusively triable by the Court of Sessions. The learned trial court, on consideration of the materials available on record, framed charge against the Appellant u/s 376/411/417, IPC. He pleaded not guilty and stood trial.

4. The prosecution examined six witnesses including the victim girl. The victim girl is examined as PW5. It was deposed by her, inter alia, that about three years ago one Sofia Khatun, sister of the accused/Appellant called her to her house at about 11.00/1.00 p.m. in the noontime. Accordingly, she went to Sofia's house. Sofia kept her in her house alone and went to cast vote. When she was alone in Sofia's house the accused Appellant quietly came to Sofia's house and asked for some fire to light his cigarette, which she brought, from the kitchen. The accused Appellant told her that he would marry her and then committed sexual intercourse with her by force. The accused Appellant did not marry her although such promise was made. She became pregnant and so she had to get married to Julhaz but when Julhaz came to know about the pre-marriage pregnancy, he dropped her away from his house and sent to her parent's house. After being divorced by Julhaz she again met the accused Appellant and asked him to marry her. She was rebuked and threatened by the Appellant by showing dagger. She reported the matter to the villagers and then the accused Appellant tried to assault the villagers including her father. This led her to lodge a complaint before the Magistrate.

5. The medical officer Mrs. (Dr.) Rekha Bhuyan was examined as PW6. She confirmed that she examined the victim girl when she was produced before her at Dagaon PHC on 27.12.1999. On examining the victim girl, she found her carrying 20 weeks pregnancy at that time and the victim girl, according to her opinion, was aged 20 years.

6. PW1 Sri Khairul Anam and PW4 Aktor Ali were neighbours of the victim while PW2, Mubarak Ali is a distant relative. All of them corroboratedly deposed that about 21/2 years ago when they were returning home after casting vote in the last Lok Sabha election, they heard hue and cry in the house of the victim girl as the victim was being beaten up by her mother. They came to know about the incident of rape and false promise by the accused Appellant. A village Bichar (meeting) was convened in the house of Meera. PW2 even deposed that the accused Appellant Fazlul offered Rs. 5,000 to compromise the case but it was not accepted by the villagers. Meera's father Maksedui Islam was also examined as PW3 who deposed in the same manner.

7. To rebut the evidence adduced by the prosecution, the defence did not examine any witness. He even did not examine Sofia Khatun, who allegedly brought Meera to her house to facilitate meeting of the accused Appellant and Meera in her house and also committing the alleged offence on false promise.

8. Mr. Ahmed learned Counsel for the Appellant submits that Sofia was not

examined in defence of the Appellant as because the prosecution could not prove the charges against him beyond reasonable doubt and, therefore, it was not necessary to examine any witness in his defence.

9. Having gone through the evidence of victim girl PW5, it is found that the defence did not put any suggestion while cross-examining her on the fact that Sofia did not bring her to her house and she left the victim alone providing opportunity to the accused Appellant to meet her and commit the offence. It has, therefore, to be accepted that the charge that the aforesaid Sofia Khatun brought the victim girl to her house and she gave the opportunity to the accused Appellant to commit the offence while she was alone in the house of Sofia stood proved. Moreover, the corroborated evidence of other witnesses namely P Ws 1, 2, 3 and 4 cannot be discarded in absence of any cogent and valid reason, more particularly when the defence made no attempt to demolish their evidence by adducing reliable evidence.

10. There is no evidence on record that the victim girl was below 16 years of age and that she was minor at the time of occurrence. Moreover, it is apparent that she was a consenting party to the physical relation with the accused Appellant as she did not disclose the same to anybody until she was refused to be accepted and married by the Appellant. In that view of the matter the accused Appellant cannot be convicted u/s 376, IPC. However, the other charge u/s 417, IPC, i.e., cheating by way of giving false promise of marriage and making her believe the same and committing the offence stood proved by sufficient evidence and the same cannot be disturbed/interfered with. In view of the above, the order of conviction vide judgment dated 14.8.2002 as handed down on the present accused Appellant is liable to be confirmed.

11. It has been stated at the bar by Mr. Ahmed learned Counsel for the Appellant that as per order dated 10.2.2010 passed by this Court he has obtained necessary instructions. According to his instructions the victim girl has been married again to one Makedul Islam of village Kolonijala, P.S. Juria and she is leading a peaceful life with her husband and family members. In this regard he has produced a certificate in original dated 1.3.2010 issued by Government village headman of Rupohi circle, in Nagaon district which is marked "x" and kept as a part the record.

12. In my considered view the end of justice would be made if the sentence as awarded by the learned trial court of RI for 1 year is converted to imposition of fine of Rs. 5,000 only on the accused Appellant making it to be paid to the father of the victim girl. Accordingly, it is directed that instead of serving RI for 1 year, the accused Appellant shall pay an amount of Rs. 5,000 as (SIC)ne to be deposited with the learned CJM, Nagaon, within a period of 3 months from today and on deposition of such fine amount the learned CJM concerned shall disburse the same to the father of the victim girl.

13. The appeal stands disposed of with aforesaid modification in sentence.

14. LCR be returned immediately.