

(2012) 09 GAU CK 0035

In the Gauhati High Court

Case No : Criminal Rev. Petition No. 364 of 2004

Padumi Deuri

APPELLANT

Vs

Manoj Deuri and Another

RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 406, 415, 417, 420, 493

Citation : (2013) 1 DMC 695 : (2013) 1 GLD 445 : (2012) 5 GLT 408

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : Z. Alam, for the Appellant;

Final Decision : Dismissed

Judgement

U.B. Saha, J.—The instant revision petition is directed against the judgment and order dated 26-06-2003 passed by the learned Chief Judicial Magistrate, Jorhat in GR. Case No. 661 of 2000 whereby and whereunder the accused-respondent no. 1 was acquitted from the Charge leveled against him u/s 420 of the Indian Penal Code (for short, IPC). Heard Mr. Z. Alam, learned counsel appearing for the petitioner as well as Mr. K. Munir, learned Addl. Public Prosecutor appearing for the State-respondent. None appears on behalf of the accused-respondent.

2. The prosecution case, in brief, is that since 1993 the accused-respondent Manoj Deuri had love affairs with her. He assured her that he would marry her. On assurance of marriage, the accused-respondent had sexual intercourse with her. As a result, she became pregnant. Later on, the accused-respondent by playing tricks persuaded her to undergo abortion. On 03.08.2000, the accused-respondent took her from her house on assurance that he would perform marriage with her. Ultimately, she was kept in the house of one Sri Jiten Kakoti of Chiratia Gaon for that purpose. But subsequently, the accused abandoned her in the house of said Jiten Kakoti and remained untraceable. Being felt cheated by the conduct of the accused, the petitioner on 09.08.2000 lodged a complaint

against the accused-respondent before the learned Chief Judicial Magistrate, Jorhat.

3. The learned Chief Judicial Magistrate upon receipt of the said complaint forwarded the same to the Officer-in-Charge, Pulibor Police Station for registering the case and also for investigation. Accordingly, a police case was registered being Pulibor PS Case No. 69 of 2000 under sections 493 /420 /406 of the IPC against the accused-respondent. The Investigating Authority examined the witnesses and recorded their statements u/s 161 Cr.P.C. and ultimately, on completion of the investigation laid the charge-sheet against the accused-respondent for commission of offence under the aforesaid sections of the IPC before the Court of learned Chief Judicial Magistrate.

4. The accused-respondent appeared before the trial Court and on his appearance, copies of necessary documents relied by the prosecution were served upon him and ultimately, the trial Court framed the charge u/s 420 of IPC and dropped the charges regarding the other sections. The accused-respondent pleaded not guilty and claimed to be tried.

5. In order to substantiate its case, prosecution examined 7 (seven) witnesses including the official witnesses. After recording the prosecution evidence, the accused-respondent was examined u/s 313 of the Cr.P.C.

6. Defence case before the learned trial Court was of totally denial and innocence. The accused-respondent did not adduce any evidence in his defence.

7. Learned trial Court considering the evidence adduced by the prosecution witnesses ultimately acquitted the accused-respondent. Hence, the revision petition.

8. Mr. Alam, learned counsel for the petitioner submits that the accused-respondent with a dishonest intention had fallen on love with the complainant-informant and induced her to have sexual intercourse with him on a promise to marry her and as a result she became pregnant, not only that the accused-respondent playing tricks persuaded her for abortion and finally denied to marry her. Thus, by way of false promise accused-respondent cheated her, which is established from the evidence of witnesses. He has mainly relied upon the evidence of P W-1, PW-5 and PW-6 i.e. the complainant-informant, Sri Jiten Kakoti and Smt Reshmi Kakoti respectively. He also urges that the learned trial Court committed an error acquitting the accused-respondent who made a false promise to marry the complainant-informant and went on sexual intercourse and ultimately, deceived the complainant-informant by way of denying to marry her. He has finally contended that as the accused-respondent so induced the complainant-informant by making false representation to marry her and went on sexual intercourse, he is liable for punishment even if not u/s 420, but u/s 417 and for such punishment u/s 417 IPC, framing of fresh Charge is not required as the same is a lesser offence.

9. Mr. Munir, in his usual fairness, submits that the State did not prefer any appeal against the impugned order of acquittal, as according to State, no case for conviction is made out.

10. This Court has gone through the evidence of the witnesses. As Mr. Alam has mainly placed reliance on the evidence of P W-1, PW-5 and PW-6, it would be proper for this court to discuss about the evidence of those witnesses.

11. PW-1 in her evidence stated that since 1993 she was having love affairs with the accused-respondent Manoj Deuri and he assured her that he would marry her. Acting on such assurance, she succumbed to the carnal desire of the accused and became pregnant. But later on, she underwent abortion. She further stated that on 3.8.2000, the accused took her from her house on assurance that he would marry her and kept her in the house of PW-5, Jiten Kakoti of Chiratia Gaon. But on that day, the accused abandoned her in the house of the said Jiten Kakoti and remained untraceable. She also stated that the accused used to treat her as his married wife and her name was also given in the LIC policy as nominee of the accused. Later on, she came to realize that the accused cheated her by inducing her to undergo sexual intercourse with him on false promise of marriage. Thus, she lodged the complaint which was marked as Exhibit-1 and proved by her.

In her cross-examination, she stated that the accused used to live with her in her own house as husband and wife and there was also a written agreement between the accused and herself to the effect that the accused would marry her.

12. From the evidence of the PW-1, it appears that she did not state specifically that making of such assurance or promise regarding marriage was false to the knowledge of the accused at the time it was made and that was made in order to deceive her. She also did not disclose in her statement before the trial Court where and on which date she underwent for abortion and who was the Medical Officer. Though she stated that the accused entered into an agreement with her to marry her, but the said document was also not produced before the trial Court to confirm such version.

13. PW-5, Jiten Kakoti in his evidence stated that both the accused-respondent and the complainant-informant are known to him since long back and on 03.06.2000 at about 7 p.m. the complainant-informant came to his residence and told him that the accused took her to his house with a view to perform marriage with her on the next day in the Court. She also told him that the accused had love affairs with her and she stayed in his house for the said night. But next day the accused did not turn up to perform the marriage, as assured to her.

14. PW-6, the wife of PW-5, Smt Reshmi Kakoti also stated on the same line like PW-5.

15. PW-5 and PW-6 nowhere stated in their evidence either regarding the false

representation of the accused-respondent or that the accused had sexual intercourse with the complainant-informant far to, the fact regarding abortion.

16. When a charge of cheating, mainly raised upon an assurance regarding the future event, then the prosecution is to prove that the assurance was false to the knowledge of the accused while it was made. To bring the case within the meaning of cheating, it is not sufficient to prove that either a false assurance or a promise has been made. But it is further necessary to prove that such assurance or promise was false to the knowledge of the accused and was made in order to deceive the complainant/ the victim.

17. There is no quarrel that in a criminal trial, the burden of proving everything essential to establish a charge against an accused is always rests on the prosecution and the accused should be presumed as innocence like anything until a charge leveled against him is proved as criminality is not to be presumed, subject, of course, to some statutory exception is there. In the present case, no statutory exception is pleaded by the prosecution.

18. "Cheating" is defined in Section 415 of IPC, which is as under:

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 to omit to do anything which he would not do or omit if he were not so, deceived, and which act of omission causes is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation: A dishonest concealment of facts is a deception within the meaning of this Section.

The first part of the definition relates to property. The second part need not necessarily relate to property. The second part speaks of intentional deception which is not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. It has been held by the Supreme Court in G.V. Rao Vs. L.H.V. Prasad and Others, that intentional and deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have laid the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not deceived. The further requirement is that such act or omission should have caused damage or harm to body, mind, reputation or property. As mentioned above Section 415 of IPC has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property and the second part need not necessarily relate to property. In the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. The Supreme Court in Jaswantraai Manilal

Akhaney Vs. The State of Bombay, held that a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person must be established. It was also observed by the Supreme Court in Mahadeo Prasad Vs. State of West Bengal, that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered.

19. The case against the accused-respondent is that he had induced the PW-1, complainant-informant who is the victim to consent for sexual intercourse with a promise to marry her.

20. Admittedly, prosecution case is that the complainant-informant had fallen on love with the accused-respondent and lived together as husband and wife. In the instant case, though the prosecution examined 7 (seven) witnesses, but except the complainant-informant, none of the witnesses stated anything either regarding the assurance given by the accused-respondent regarding future event of marriage and on such assurance, the accused had also committed sexual intercourse. Even if it was assumed that the complainant-informant agreed to sexual intercourse with the accused on the alleged promise of marriage by the accused, then also the Charge u/s 417 IPC could not be substantiated in absence of evidence to show that such assurance or promise made by the accused was false to his knowledge at the time it was made. Moreover, none of the witnesses except the complainant-informant herself stated anything regarding her pregnancy and to corroborate her statement relating to pregnancy neither any Medical Officer was examined nor any medical certificate on that aspect was produced before the trial Court and not only that her statement regarding entering into an agreement for marriage was also not substantiated. In view of that, it is very difficult to rely upon the evidence of the complainant-informant, even though Mr. Alam made a forceful argument in support of the case of prosecution.

21. By this time, it is settled that if two equal inferences from the fact of a case are possible, then the Court should accept that inference which favours the accused. [See: Ram Das Vs. State of Maharashtra,]. Moreover, when a revision or appeal is preferred against the order of acquittal, then the order of acquittal normally should not be interfered with, unless there are compelling and substantial reasons for doing so. [See : & S. Rama Krishna Vs. S. Rami Reddy (D) by his LRs. and Others,].

On perusal of a judgment, if it is found that the judgment is clearly unreasonable and convincing evidence/materials have been unjustifiably eliminated in the process of trial, then only there is a need for an interference.

22. As the instant revision petition is preferred against the order of acquittal and this Court has given an anxious thought to the impugned judgment and satisfied with the reasons given by the learned trial Court, it would not be proper to

disturb the order of acquittal and convict the accused-respondent even when there is no materials. Accordingly, the impugned judgment is maintained. In the result, the instant revision petition is dismissed being devoid of merit. Send down the lower court records.