

(2003) 06 JH CK 0004
In the Jharkhand High Court
Case No : Criminal Revision No. 678 of 2002

Pinki Kumari

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 16-06-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 376, 417, 493

Citation : (2003) CriLJ 4019 : (2003) AIR Jhar HCR 1126 : (2003) 3 JCR 220 :
(2006) 3 JLJR 166

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : Prabhat Kumar and T. Kabiraj, for the Appellant; APP, for the Respondent

Judgement

Hari Shankar Prasad, J.—This revision application under Sections 397 and 401 of the Code of Criminal Procedure, 1973 is directed against the order dated 29.8.2002 passed in Sessions Trial No. 111 of 2002.

2. Facts giving rise to filing of this application are that Pinki Kumari who is informant in this case lodged an FIR with the Ichak Police Station, Hazaribagh stating inter alia that one Amit Kumar O.P. No. 2 always kept bad eye upon her. On 5.2.2001 there was a marriage ceremony in her village in the house of Ishwari Sao and she had gone there to wash utensils; in the midnight when she was sleeping In the house somewhere, O.P. No. 2 taking advantage of complete silence came near her and started playing with her body whereupon she woke up and she raised hulla but in the meantime, Amit pressed her mouth and warned that if she raised hulla, then he would kill her along with her family members. She prayed not to do anything but he did ,not listen and committed rape upon her for the whole night, as a result of which she became pregnant. O.P. No. 2 Amit Kumar always assured her that he would marry her. Ultimately he refused to marry her, then she was filed this case. On the basis of this written report, a case u/s 376, IPC, was registered and I.O. after investigation submitted charge

sheet against the O.P. No. 2 u/s 376, IPC, and cognizance in the case was taken and the case was committed to the Court of sessions. In the Court of sessions charge u/s 376, IPC, was framed against him but when trial was continuing, in the midst a petition was filed that no case u/s 376, IPC is made out. In support of the contention, some rulings were also cited and on the basis of perusal of those case laws, learned Court below came to conclusion that no case u/s 376, IPC is made out because sexual intercourse continued for a long time with the consent of the petitioner and therefore, no case u/s 376, IPC is made out in the facts and circumstances of the case, but came to a finding that case is made out under Sections 493/417, IPC. Learned Court below considered in Sahdeo Pandit and Ors. v. State of Jharkhand and Anr. 2002 (1) JCR 259 : 2002 (1) JLJR 431 and Sri Kanta Das v. State of Jharkhand and Anr 2002 (2) JLJR 152 which were cited on behalf of the accused. Learned Court below further considered Vijay Kumar v. State of Jharkhand and Anr. 2002 (2) CCC 129 and further Anwar Mian v. State of Bihar 1996 (2) E C C 737 and accordingly passed the order that case is made out under Sections 493/417, IPC. But cases which were cited on behalf of the accused, are related to such matters where prosecutrix had given consent from the very beginning and with her consent and on false pretext of marriage, sex relationship was established. The very FIR discloses that consent was not given during the first time when the sex relationship was established with the petitioner by O.P. No. 2, at that time sex relationship was established against her will and without her consent on the threat of committing her murder and consent of the women should have been obtained prior to the act. It is no defence that woman consented after the act and consent of woman to sexual intercourse obtained by putting her in fear of death is no defence to an accused person for an offence under this section. In the instant case, for the first time, when the sex relationship was established, there was no consent but subsequently on the false pretext of marriage that consent was given and, therefore, this cannot be treated to be a consent from the very beginning and that the sex relationship established on the very first day, the case u/s 376, IPC will definitely be made out.

3. In that view of the matter, since consent has been there only after occurrence and not prior to that at the time of establishing sex relationship, the case is made out u/s 376, IPC, and in that view of the matter, the order dated 29.8.2002 is set aside and learned Court below is directed to proceed in the matter in accordance with law.