

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

***C.R.A. 366 of 2015
with
CRAN 3 of 2021***

***Saddam Hussain
-Vs-
State of West Bengal***

For the Appellant :

Debarshi Brahma, Adv.
Ms. Ankita Das Chakraborty, Adv.
Mr. Sagnik Mukherjee, Adv.

For the State :

Mr. S. G. Mukherjee, learned P.P.
Ms. Amita Gour, Adv.
Mr. N. P. Agarwal, Adv.

Heard on :

03.12.2021

Judgment on:

07.12.2021

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 16.05.2015 and 18.05.2015 passed by the learned Additional District &

Sessions Judge, Fast Track First Court, Islampur, Uttar Dinajpur in Sessions Trial No. 35 of 2014 arising out of Sessions Case No. 127 of 2014 under Section 376 of the Indian Penal Code and sentenced him to suffer imprisonment for 10 years and a fine of Rs.50,000/-, in default to suffer further imprisonment for one year.

Prosecution case as alleged against the appellant is to the effect that the appellant cohabited with the victim girl, who is a minor, on the false promise of marriage. As a result, the girl became pregnant. When she asked the appellant to marry her, he evaded the issue. Appellant had last cohabited with the victim on 16.02.2010 at 8.30p.m. in a bamboo grove. The matter came to the knowledge of the family members. A salish was held. At the salish, appellant refused to marry the victim girl due to strong objection of his family members. Under such circumstances, victim girl lodged first information report with the police resulting in registration of Chakulia Police Station Case No. 61 of 2010 dated 01.03.2010 under Sections 376/493 of the Indian Penal Code. In conclusion of trial, charge-sheet was filed and charges were framed against the appellant under Sections 376/493 of the Indian Penal Code.

During trial prosecution examined eight witnesses to prove its case. Defence of the appellant was one of innocence and false implication. In conclusion of trial, learned Trial Judge by impugned

judgment and order convicted and sentenced the appellant, as aforesaid.

Learned Counsel appearing for the appellant submits that the victim was a consenting party. The appellant was a young person and there was free mixing between the parties. Marriage between the couple could not fructify due to resistance of the parents of the appellant. Hence, the appeal ought to be allowed.

Learned Counsel appearing for the State submits that the victim was a minor at the time of occurrence and the appellant had forcibly ravished the girl on the first occasion. Thereafter, he had repeatedly cohabited with the victim on the false promise of marriage. Hence, the appeal is liable to be dismissed.

P.W. 1 is the minor victim. She deposed that the appellant took her in a bamboo grove and committed rape on her. She has tried to resist him but he did not listen. The appellant promised to marry her. Thereafter, she cohabited with him on a number of times on the assurance of marriage. As a result, she conceived. When she approached the appellant he refused to marry her. A salish took place wherein the appellant agreed to marry her but his parents did not agree with the marriage. As a result, she lodged first information report. She gave birth to a child who is 4½ years of age. Evidence of P.W. 1 is corroborated by her mother, P.W. 4. P.W. 5 has proved the salish wherein the appellant had admitted the incident but his parents did not

agree with the marriage. P.W. 2 is the medical officer who examined the victim and found her 24 weeks pregnant. P.W. 6 is the headmaster of Khikirtola M.S.K. where the victim studied. He proved her Transfer Certificate (Exhibit – 2) wherein her date of birth is recorded as 18.03.1993. Hence, the victim was below 17 years at the time of the incident. P.W. 7 is the scribe and P.W. 8 is the investigating officer.

The evidence of record clearly establishes that the appellant had cohabited with her on the promise of marriage. However, I find it is difficult to accept that the initial cohabitation was forceful as such allegation is significantly absent in the first information report lodged by P.W. 1. It is argued that the appellant had agreed to marry her but the marriage could not fructify due to resistance of his parents. Hence, it cannot be said that the appellant did not intend to marry her at the time when they cohabited. I find much substance in such submission. Mere failure to keep a promise without anything more cannot lead to the irresistible conclusion that the promise had been dishonestly made from the inception. Evidence has come on record that the appellant and the victim girl wanted to marry each other and cohabited. As a result, she became pregnant but due to resistance of the parents of the appellant marriage was not held. Thus, it cannot be said that the appellant did not have intention to marry the victim at the time when they cohabited but such marriage was not possible due to obstruction from elders in the family. Moreover, it appears from “Exhibit – 2” that

the date of birth of the victim is 18.03.1993 and she was above 16 years at the time of occurrence. Thus, victim had crossed the age of consent. From the materials on record, it appears that the cohabitation was consensual. Appellant was a young person and the marriage proposal did not come to fruition due to opposition from elders. Hence, it cannot be said that the appellant did not intend to marry from the inception of the relationship. Furthermore, it would be incorrect to punish the appellant as the promise to marry did not fructify due to subsequent event, namely, opposition from family elders which is not attributable to him.

In this regard reference may be made to ***Deelip Singh @ Dilip Kumar vs. State of Bihar***¹ wherein the court held as follows:-

“30. ...whether the promise to marry, if made by the accused, was false to his knowledge and belief from the very inception and it was never intended to be acted upon by him. As pointed out by this Court in *Uday case* the burden is on the prosecution to prove that there was absence of consent. Of course, the position is different if the case is covered by Section 114-A of the Evidence Act. Consent or absence of it could be gathered from the attendant circumstances. The previous or contemporaneous acts or the subsequent conduct can be legitimate guides.”

In light of the aforesaid discussion, I am inclined to set aside the conviction and sentence and acquit the appellant of the charges levelled against him.

¹ (2005) 1 SCC 88

Appellant Saddam Hussain shall be forthwith released from custody, if not wanted in any other case, upon executing a bond to the satisfaction of the trial court for a period of six months in terms of section 437A of the Code of Criminal Procedure.

The appeal is, accordingly, allowed.

All connected applications, if any pending, be disposed of.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)