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Item No.133

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Siddhartha Roy Chowdhury

CRA 80 of 2019
Pervez Ahemed @ Kochi & Ors.
Vs.
The State of West Bengal

For the Appellants	:	Mr. Milon Mukherjee, Sr. Adv. Mr. Rahul Ganguly Mr. S. Sarkar
For the State	:	Mr. Joydeep Roy Ms. Sujata Das
Heard on	:	24th April, 2023.
Judgment on	:	26th April, 2023.

Siddhartha Roy Chowdhury, J. :-

1. This criminal appeal challenges the judgement and order of conviction passed on 15th January, 2019 by learned Additional Sessions Judge, Fast Track Court-I, Kandi, Murshidabad in Sessions Trial No. 2(1) 10 corresponding to Sessions Serial No.112 of 2009.
2. By the impugned judgement learned Trial Court recorded an order of conviction against three accused persons, who are appellants before this Court.

3. Briefly stated, on 20th November, 2004 Siddika Bibi filed petition before the learned Sub-Divisional Judicial Magistrate, Kandi (as then was) stating, inter alia, that she was a divorcee and she filed an application seeking maintenance against her erstwhile husband. Abdul Aziz, a retired high school teacher used to help her in pursuing the case. Abdul Aziz is a widower. Three sons of Abdul Aziz for no reason whatsoever, became apprehensive of the fact that their father could marry the lady. All the three of them on 12th February, 2002 being armed with deadly weapons invaded the house of the complainant at the witching hour of night, abducted her and took her to Saspara village. The matter was brought to the notice of jurisdictional police station by her father and GDE No.470 dated 15th February, 2002 was recorded. However, the accused persons kept her confined in a house at Gopinathpur, where accused no.1 with the promise of marriage induced her to engage in physical relation with him. After two months the accused no.1 along with his two other brothers assaulted the complainant and drove her out. Police was informed but did not take any action. Subsequently, the accused no.1 again approached the complainant and promised to marry her. Ultimately, on 26th October, 2004 he expressed his mind not to marry the informant. Learned jurisdictional Magistrate forwarded the petition of complaint to the Officer-in-Charge of Khargram Police Station under section 156(3) of the Code of Criminal Procedure

and Khargram Police Station Case No. 163 of 2004 was registered on 8th December, 2004.

4. Police took up investigation which culminated into submission of charge-sheet against the accused persons. On 6th January, 2010 trial commenced and the accused persons stood the trial pleading their innocence to the charge under sections 366/376/34 of the Indian Penal Code.
5. In order to crown success prosecution examined as many as nine witnesses during the trial.
6. Learned trial Court after considering the evidence both oral and documentary, was pleased to record an order of conviction under sections 366/34 of the Indian Penal Code and thereby directed the accused persons to undergo rigorous imprisonment for a term of seven years and to pay fine of RS. 50,000/- (Rupees fifty thousand only) with default clause, subject to the provision of section 428 of the Code of Criminal Procedure.
7. Impeaching the judgement of learned trial Court, Mr. Milon Mukherjee, learned senior counsel submits that when learned trial Court after considering the evidence of prosecution witnesses recorded an order of acquittal against accused persons and thereby absolved them of the charge under section 376 of the Indian Penal Code, by necessary implication a part of the provision of section 366 of the Indian Penal Code, that speaks of inducing or compelling or seducing any woman to indulge in illicit intercourse is bound to cave in.

8. It is further submitted that the germane of the dispute lies elsewhere. The widower, father of the accused persons, introduced the de facto complainant as his wife in the pension paper and thereby earned displeasure of his sons. The de facto complainant filed the petition of complaint to tame those sons, which is smeared with malafide intention.
9. The attention of the Court is drawn to the oral testimony of Sk. Abdul Aziz, P.W. 9, father of the accused persons, who during cross-examination admitted that he nominated the de facto complainant by introducing her in the pension document as his wife and thereby nominated her for family pension.
10. Drawing the Court's attention to the evidence of the de facto complainant P.W.1, Mr. Mukherjee submits that on 12th February, 2002 allegedly the de facto complainant was brought to Gopinathpur and after three days the matter was brought to the notice of police by her father. The father, P.W. 2, however, refused to lend support to such claim of his daughter. According to Mr. Mukherjee there are discrepancies galore in the prosecution case and learned trial Court recorded the impugned judgement absolutely upon misreading the evidence on record. The petition of the complainant which was made a part of the FIR disclosed that on 12th February, 2002 the lady was allegedly abducted by three brothers and then she was made to believe that Pervej Ahmed would marry her. After two months she was driven out and again after two years the accused person

approached her with a promise of registered marriage. Ultimately, on 22nd October he retreated from their alleged promise or undertaking. Therefore, according to Mr. Mukherjee it cannot be said that the de facto complainant was ever seduced or induced or compelled to marry any person against her will.

11. On the contrary, if the allegation disclosed in the petition of complaint is taken on its face value it would indicate that the victim was rather interested in marriage which is why she again allowed the accused no.1, Pervej Ahmed to approach her with a promise of registered marriage. There was a renewal on such promise which takes the sting out of the prosecution case. There is no ingredient of offence within the meaning of section 366 of the Indian Penal Code.
12. Ms. Sujata Das, learned counsel representing the State submits that the mother of the victim was present when the alleged incident of abduction took place on 12th February, 2002. The lady, P.W. 3, is the mother of the victim who stated that the accused persons forcibly took her daughter with them by a motor vehicle placing a firearm on the throat of P.W.3. P.W.4, Abdul Kasem, supported the allegation of P.W.3 and according to P.W. 4 the victim was forcibly taken away from her house with a promise of marriage and she came back home after 20/25 days.
13. When the testimony of P.Ws.3 and 4 are re-appreciated in contradistinction with the testimony of P.W.1, it appears that both the witnesses made embellishment and prosecution case

appears to have been suffering from unsurmountable discrepancies. P.W.1 being the victim never said that she was taken away by a motor vehicle on the gun point. Section 366 of the Indian Penal Code reads as follows:

"366. Kidnapping or abducting with intent secretly and wrongfully to confine person.- Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; (and whoever, by means or criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.)"

14. Upon plain reading of the provision it appears that there are two parts, a woman may be kidnapped or abducted with an object - either to compel her to marry any person against her will or forcing or seducing her to have illicit intercourse with another person. It is rightly averted by Mr. Mukherjee that when prosecution failed to prove the offence under section 376 of the Indian Penal Code, one of the two limbs of section 366 of the Indian Penal Code which speaks of inducement or force to have illicit intercourse, withers away. So far as the second limb is concerned, the written information indicates that the victim only recorded her grievance once accused no.1 retreated from his alleged promise of marriage. Therefore, it can safely be said that

the victim was neither forced nor compelled to marry any one against her will.

15. Under such circumstances, this Court is of the considered opinion that the impugned judgement suffers from infirmity and it should not be allowed to remain in force and accordingly it is set aside.
16. Consequently, the appeal is allowed.
17. Appellants/accused persons are found not guilty to the charge under sections 366/34 of the Indian Penal Code. They be set at liberty and be discharged from bail bonds.
18. Copy of the judgement along with LCRS be sent down to learned trial Court.

(Siddhartha Roy Chowdhury, J.)