

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 733 of 2016

Manjay Das @ Sonjay Das

Vs.

State of West Bengal & Anr.

For the Appellant : Mr. Milon Mukherjee, Sr. Adv.
Ms. Sujata Das.

For the State : Mr. Pravas Bhattacharyya,
Mr. MFA Begg.

For the Opposite Party no. 2 : None.

Heard on : 14.07.2023

Judgment on : 03.08.2023

Shampa Dutt (Paul), J.:

1. The Appeal:-

The present appeal arises from the judgment of conviction and order of sentence dated 29.11.2016 passed by the Learned Additional District & Sessions Judge, 2nd Court, Raiganj, Uttar Dinajpur in Sessions Trial No. 01/2013 Sessions Case No. 164 of 2010 convicting the appellant for commission of offence punishable under Section 417 of the

Indian Penal Code and sentencing him to pay fine of Rs.20,000/- (Rupees Twenty Thousand) only in default to suffer simple imprisonment for term of three months for the offence under Section 417 of the Indian Penal Code.

2. The Prosecution:-

Mr. Pravas Bhattacharyya, learned counsel for the State has submitted that the prosecution case in brief is that the complainant being the victim lodged a complaint on 21.10.2008 alleging that the appellant committed rape upon her on 15.04.2008 at 10:30 p.m. and also on Dashami (Durgapuja of the year 2008) at 11:00 p.m. inducing her to believe that she was already married with him at Shibmandir (Shib Bari) on 14.04.2008. At the time of solemnization of marriage at Shibmandir accused Parimal Das had given her one ring made of Gold with purchase receipt and accused Bishaka Das and accused Late Gita @ Sita had agreed to accept her as 'Grihabodhu' (daughter-in-law). But the appellant later, not only refused to marry but also disputed the marriage at Shibmandir. A Panchayat was convened but the dispute could not be solved and as such the filing of the case was delayed.

On the basis of the said complaint, Raiganj Police Station Case No. 503/2008 dated 21.10.2008 was registered under Sections 376/493/109 of the Indian Penal Code against the present appellant along with three other persons namely (1) Bishakha Das (2) Parimal Das and (3) Late Gita @ Sita Das. Gita @ Sita (expired during trial) and case has abated against her vide order dated 17.08.2016.

After completion of investigation the concerned Police Station submitted charge sheet being no. 19 of 2009 dated 28.01.2009 against the present appellant along with three other persons for committing offence punishable under Sections 376/493/109 of the Indian Penal Code.

Charge was framed against the appellant under Sections 376/417 of the Indian Penal Code in presence of the appellant to which he pleaded not guilty and claimed to be tried.

The prosecution has examined as many as 9 witnesses and has proved exhibit 1 to 8, while none had been examined on behalf of the defence and there is total denial of allegation on behalf of the appellant.

3. The Sentence:-

On completion of the trial the Learned Trial Court by his judgment and order dated 29.11.2016 was pleased to convict the appellant for the offence punishable under Section 417 of the Indian Penal Code and sentenced him to pay a fine of Rs.20,000/- in default to suffer simple imprisonment for three months for the offence under Section 417 of the Indian Penal Code. The fine recovered is to be paid to the victim. The Learned Trial Court was further pleased to acquit the other accused persons, namely, (1) Bishaka Das (2) Parimal Das from all charges.

4. The Defence:-

Mr. Milon Mukherjee, learned Senior Counsel appearing for the appellant has submitted that the learned Court below has erred in the fact that the offence committed under Section 415 of the Indian Penal

Code by the appellant is deception, mis-representation and fraud by backing out from his promise to marry the victim girl.

That the Learned Trial Court ought to have taken into consideration that the prosecution witnesses have made significant and material improvement and/or embellishments at the time of trial from their earlier statements.

The Learned Trial Court failed to appreciate the evidence of the prosecution witnesses properly and the finding of the Learned Judge is unwarranted with the evidence on record and as such the impugned judgment and order is liable to be set aside.

5. The evidence:-

P.W. 3 is the de facto complainant. The learned Trial Court has held that she has admitted that she was in love with the appellant and used to visit his house, on a misconception that she was married to the appellant as an alleged marriage took place at a Shib Mandir.

Exhibit 4 ossification report dated 24.11.2008 shows that as per observation "*the bony age of the victim seems to be more than 18 years but less than 20 years*". The FIR is dated 21.10.2008.

6. Analysis of Evidence:-

The trial Court, relying upon several judgments came to the findings that the case was not that of rape but consensual cohabitation. The Court then proceeded to find the appellant guilty of the charge under Section 417 of the Indian Penal Code and convicted him accordingly.

7. Conclusion:-

The prosecution has not challenged the acquittal of the appellant of the other charges.

From the materials on record and the evidence before the trial court, it appears that the victim (PW 3) has admitted in her cross examination that she used to visit the house of the accused and the accused also visited her several times and they had sexual relation on many occasions. The trial court has thus held that there was consensual cohabitation between the parties as the victim believed herself to be lawfully married to the appellant. The alleged marriage at Shib Mandir was not proved by producing/tendering the relevant witness, being the priest of the temple, which is vital in this case to constitute the offence alleged under Section 493 IPC, nor was charge framed under Section 493 IPC.

The trial judge relying on several judgments and their applicability to the facts of the present case convicted the accused under Section 417 IPC.

As such, the findings of the Trial Judge being in accordance with the evidence on record and law, does not require the interference of this Court.

The appeal is dismissed.

The judgment of conviction and order of sentence dated 29.11.2016 passed by the Learned Additional District & Sessions Judge, 2nd Court, Raiganj, Uttar Dinajpur in Sessions Trial No. 01/2013 Sessions Case No. 164 of 2010 convicting thereby the appellant for

commission of offence punishable under Section 417 of the Indian Penal Code and sentencing him to pay fine of Rs.20,000/- (Rupees Twenty Thousand) only in default to suffer simple imprisonment for term of three months for the offence under Section 417 of the Indian Penal Code, and fine recovered is to paid to the victim is hereby affirmed.

The appellant/convict shall appear before the trial court to carry out the sentence of payment of fine, within a month from the date of this order, failing which the appellant shall undergo the imprisonment in default of fine.

As Mr. Mukherjee has submitted that the victim is not traceable, the appellant/convict shall pray for necessary directions before the trial court.

All connected applications, if any, stands disposed of.

Interim order/orders/Bail order, if any, stands vacated.

Copy of this judgment be sent to the learned Trial Court for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)