

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 497 of 2009

Manik Bhadra

-Vs-

The State of West Bengal

For the Appellant : Mr. Biswajit Manna

For the State : Mr. Avishek Sinha

Heard on : 25.04.2024, 21.05.2024, 03.10.2024

Judgment on : 13.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment of conviction dated 24.06.2009 and order of sentenced dated 25.06.2009 passed by the Learned Additional Sessions Judge, Fast Track Court, Tehatta, Nadia in Sessions Trial No.1(3)/2008 (Sessions Case No.23(2)/2008 thereby the Learned Judge was pleased to convict the appellant of the charges for commission of offences punishable under Sections 376/417/506(II) of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.10,000/- in default to suffer rigorous imprisonment for a further period of 6 months for the offence under Section 376 of the Indian Penal Code and also to suffer rigorous imprisonment for 1 year for the offences under Sections 417/506(II) of the Indian Penal Code and to direct that 50 percent

of the fine amount if realized, shall be made over to the victim as compensation and further directed that both the sentences shall run concurrently.

2. The prosecution case precisely stated the de-facto complainant viz., the victim was a permanent resident of Bathanpara and the appellant resided adjacently. Both the family shared cordial relationship. The appellant proposed to marry the de-facto complainant and both of them developed an intimate relation whereby the de-facto complainant became pregnant for five months. The appellant threatened the victim with dire consequences on knowledge of her pregnancy. Allegedly the elder brother of the appellant viz., Hare Krishna Chowdhury instigated the appellant on that score.
3. It was further alleged that the de-facto complainant was threatened to be killed by the appellant with a warning not to disclose the said fact to anyone, failing which her family would be burnt alive, which intimidated the victim so out of fear the de-facto complainant to disclose the incident to anybody.
4. On the basis of the aforesaid complaint Karimpur Police Station Case No.68/2007 dated 06.09.2007 under Sections 417/376/506/34 of the Indian Penal Code was registered for investigation.
5. Upon completion of the investigation the Investigation Agency submitted charge sheet being Charge Sheet No.76/2007 dated 30.10.2007 under Sections 417/376/506/34 of the Indian Penal Code against the appellant and another.
6. Charges were framed under Sections 376/417/506 of the Indian Penal Code against the appellant and his co-accused.

7. The contents of the said charges were read over and explained to the appellant and his co-accused, to which they pleaded not guilty and claimed to be tried.
8. In order to prove its case the prosecution examined as many as 9 witnesses and exhibited certain documents while the defence adduced none.
9. It was the specific case of the defence that the de-facto complainant was married to another person and having multiple objectionable relation with many persons in the locality. She was impregnated by some other person and not the appellant. Appellant and his co-accused raised protest to such activities of the de-facto complainant, consequently they earned the wrath of the de-facto complainant and thereby they had been falsely implicated in the instant case.
10. The Learned Trial Judge by judgment conviction dated 22.06.2009 found the appellant guilty for commission of offences punishable under Sections 376/417/506(II) of the Indian Penal Code however acquitted the co-accused Hare Krishna Chowdhury from the aforesaid charges.
11. Learned Advocate for the appellant submitted that –
 - i. From a perusal of the evidence on record it is apparent that the de-facto complainant being PW-1 was a major lady who was divorced by her husband on being maintaining an illicit relation with the elder brother of her previous husband and the said fact has been admitted by PW-1 in her evidence.
 - ii. The prosecution had miserably failed to establish the appellant, even if it was accepted for the sake of argument, though not admitted.

Moreover, it was not the case of the prosecution that the consent of PW-1 was obtained under fear, and in order to establish the prosecution case, the prosecution tried to insist upon the consent obtained by misconception still the prosecution has failed to fulfil the two ingredients essential for the same, firstly it must be proved that the consent was given under a misconception of fact and secondly it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. However, in the instant case the prosecutrix was a divorcee and she was well aware of the effect of such co-habitation and as such, the consent which has been alleged to be obtained fails to stand in its own legs. In such circumstances, the impugned judgment and order of conviction and sentence was bad-in-law and liable to be set aside.

- iii. It was an admitted position that PW-8 during the period of investigation of the instant case had failed to comply with the provisions as laid down under Section 164A of the Code of Criminal Procedure where the Statute had provided certain provisions for dealing with the victims of rape. However, in the instant case when the prosecutrix claimed about the paternity of her child, PW-8 being the Investigating Officer had never initiated any measure for D.N.A Test relating to the paternity of the child.
- iv. It was evident from the evidence adduced by PWs 2 and 3 that PW-1 had a love affair with the appellant and they became aware of the

alleged relation in between PW-1 and the appellant only after the victim (PW-1) was pregnant for about 5 months. Such non-disclosure of facts by PW-1 to PWs - 2 and 3 cast a shadow of doubt about the veracity of the version as depicted by PW-1. Moreover, it was an impediment upon the prosecution to prove that in case there was any love affair in between the appellant and the victim as a result of which there was a co-habitation in between them out of promise to marry and the failure to keep such promise at a future uncertain date due to reason not very clear did not always amount to a misconception of fact at the inception of the act itself. In order to come within the meaning of misconception of fact the fact must have an immediate relevance. Moreover, it was not the prosecution case that the appellant had obtained the consent of the victim by creating a belief that they were already married. In such circumstances, the Learned Judge by recording an order of conviction and sentence against the appellant has committed grave error in law for which the same was liable to be set aside.

- v. Charge under Section 417 of the Indian Penal Code presupposes that the inducement given by the accused was false and false to the knowledge of the accused person at the time when he made such representations. However, from a perusal of the prosecution case and the evidence of prosecution witnesses, it would be apparent that it is the case of the prosecution that initially the appellant had the intention of materials but subsequently the view changed.

- vi. Thus, even if the prosecution case is accepted to be true for the sake of argument, it would reveal that it cannot be said that the representation of marriage given by the appellant were made by the appellant without any intention to comply with the same. Instead, the prosecution case reflects that the intention of the appellant to act in accordance with his earlier representations changed in the midway. It thus could not be said that the appellant had no intention of acting in accordance with his earlier representation of marriage and as such, failure on his part to subsequently comply with his earlier representation cannot give rise to the offence of cheating.
- vii. From the facts and circumstances of the case it could be seen that the prosecution miserably failed to bring home the charge as brought against the appellant and hence the interference of this Hon'ble Court is highly solicited.

12. The Learned Advocate representing the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses supported by the medical evidence and the appeal shall be dismissed.

13. A circumspection of the prosecution witnesses revealed as follows:-

- i. The prosecutrix, examined as PW-1, stated with considerable clarity and consistency that she had lodged a complaint with the Karimpur Police Station, accusing one Manik Bhadra of promising marriage, thereby establishing physical intimacy with her which led to her conceiving a child. She testified that even upon becoming pregnant,

she was assured that marriage would follow. However, her narrative portrayed a darker turn when she deposed that, at around five months of gestation, the accused threatened her with dire consequences, including death, should she incline to disclose the matter. She described being hospitalized following complications and alleged that the accused made an attempt to terminate her pregnancy. Notwithstanding these circumstances, she ultimately delivered the child.

Her cross-examination revealed significant detail regarding her personal and familial background. She acknowledged a prior marriage to one Chaber Sk., dissolved by talaq, though she could not confirm if any documentary evidence to that effect had been submitted to the police. She firmly denied allegations of an illicit relationship with her former husband's brother and maintained that her separation from the family was due to her father's intervention. She also recounted her stay at her maternal uncle's residence, describing the locality and daily practices such as bathing at a nearby tank, suggesting a humble socio-economic backdrop. Her testimony further clarified that the family exerted pressure on Manik to marry her and that had he done so, no complaint would have been lodged.

- ii. PW-2, the attending Medical Officer at Karimpur Rural Hospital, examined the prosecutrix and prepared a medical report. He observed that she was approximately 24 weeks pregnant, though he noted no external injuries and found the hymen ruptured. He emphasized that

- accurate dating of the pregnancy would require a sonographic report, which he had advised. His testimony lends medical credence to the claim of pregnancy but does not independently corroborate any allegation of forced intercourse or assault. He confirmed in his cross-examination that he did not receive formal requisition from the police, nor was any injury noted on the prosecutrix to establish physical violence.
- iii. PW-3, the father of the prosecutrix, affirmed that there existed cordial relations between both families. He deposed that his daughter informed him of her pregnancy and the assurance of marriage made by Manik. He recounted that upon visiting the accused's residence to verify the matter, he was met with hostility and denial. He lodged a complaint thereafter and accompanied his daughter to the hospital. He confirmed that the child was born at Karimpur hospital and marked the discharge certificate accordingly. In cross-examination, however, he admitted to minimal interaction with the police and that several details presented before the Court were stated for the first time.
- iv. PW-4, the mother of the prosecutrix, corroborated her husband's version, stating that their daughter disclosed her relationship with Manik only upon being five to six months pregnant. She confirmed that Manik had assured her daughter of marriage and that cohabitation had occurred based on that promise. She also mentioned threats made by the accused. However, in cross-examination, she

candidly admitted that she had not previously stated these facts to the police.

- v. PW-5, the paternal uncle of the prosecutrix, confirmed the proximity of the households and that the accused and the prosecutrix were neighbours. He stated that he learned of the relationship and pregnancy from the prosecutrix herself, and he, along with others, confronted the accused who denied the allegations. He subsequently accompanied the prosecutrix and her father to the police station. He acknowledged in cross-examination that while he relayed the matter to the police, he could not confirm whether the police recorded all aspects of his statement.
- vi. PW-6, another relative, deposed that he learned of the incident initially from the prosecutrix's father and later from the prosecutrix herself. He reiterated that the accused had assured the prosecutrix of marriage and physical relations had followed, culminating in pregnancy. He too confirmed that the issue was brought before the police. In cross-examination, he stated that while he was interrogated by the police, some of the facts deposed in court were not part of his original statement.
- vii. PW-7, a Sub-Inspector of Police, formally registered the case upon receiving the written complaint and deposed as to the procedural steps undertaken, such as registration of FIR and marking of the written complaint and endorsements. However, he admitted in cross-

examination that he had no personal knowledge of the facts and was only concerned with the formal registration.

- viii. PW-8, the Investigating Officer, deposed at length regarding the steps taken by him, including the forwarding of the prosecutrix for medical examination, preparation of the sketch map, collection of medical documents, and recording of statements under Section 164 Cr.P.C. He confirmed arrest of the accused and filing of charge-sheet under Sections 417, 376, 506, and 34 of the IPC. He admitted to have not sought for judicial permission prior to medical examination, not referring the victim or the child for DNA analysis, and not recording any statement regarding the alleged attempt of abortion or the actual delivery of the child. He did not investigate into the prosecutrix's previous marital status or the socio-residential conditions of the parties involved.
- ix. PW-9, the medical officer on duty at the time of the prosecutrix's delivery, affirmed that one Jaitun Khatun was admitted at the Karimpur Rural Hospital on 7th October 2007 and delivered a male child during his shift. He produced the relevant hospital registers and the bed head ticket. He admitted in cross-examination that no statement of the patient was recorded in the medical records, and no abnormalities or exceptions were noted regarding the gestation or delivery.

14. The victim, PW-1 deposed of cohabiting with the appellant on assurance of marriage resulting in her pregnancy. On her disclosure of being

impregnated by the appellant severe consequences followed as she had been objected to spread of rumors, label slur against appellant and further continuation of the same would eventually result in her death. During her hospitalization to give birth to her child, the appellant attempted to abort her child. During her cross-examination PW-1 admitted to have been married earlier and such marriage have dissolved by way of 'Talaq' as there were imputations involving her illicit relationship with the elder brother of her previous husband, which was untrue. She further admitted the appellant's family to be financially solvent. The inmates/family members of the house of her maternal uncle pressurized the appellant to marry which if accepted would not account for the institution of this case.

15. PW-2, the Medical Officer posted at Karimpur Rural Hospital did not detect any inquiry on the private parts of the victim who had conceived pregnancy of 24 weeks. The victim divulged to have enjoyed sexual relationship with the appellant. The medical report and advice of PW-2 were marked as Exhibit 1 and Exhibit 1/1.
16. PW-3, the father of the victim confirmed of good relationship between the families with reciprocal access to each other's house. On assurance of marriage the appellant violated the victim on multiple occasions on the pretext of marrying her. For conclusive understanding PW-3 went to meet the maternal uncle of the appellant and faced hostility and challenge of truthfulness regarding the relationship and subsequent pregnancy of the victim which indulged him to lodge the complaint. The victim was

subsequently admitted at the hospital and delivered a male child at Karimpur hospital.

17. PW-4 reiterated the evidence of PW-3 and the victim.
18. PW-5, the paternal uncle of the victim conceded to the evidence of the victim and her parents.
19. The evidence of PW-6 was based on hearsay.
20. PW-7 being the S.I. of Police had endorsed the written complaint for investigation without any personal knowledge of the facts of the case.
21. PW-8, the Investigating Officer prepared the rough sketch map with index forwarded the victim girl for medical examination, obtained the report of the same marked as Exhibit 6 and forwarded the victim girl to the Court for recording the statement under Section 164 of Cr.P.C and filed the charge-sheet vide C.S. No. 76/07 under Sections 417/376/506/34 of IPC.
22. The entire gamut of evidence was devoid of an independent witness apart from the evidence of the victim and her relatives. The evidence of the sole prosecutrix being the victim herself could be relied upon if the same had been concrete without an iota of inconsistency, falsehood, ill-intention, false implication and incrimination to constitute an evidence of "sterling quality". The intention on the part of the prosecutrix and her family members were to convince the appellant to marry the victim owing to his financial stability as garnered from the evidence of the victim and her father to have pressurized the appellant to marry the victim and on failure to accept the same the instant criminal case was instituted.

23. Any woman to have been wrongfully violated of her physical state causing damage to her body, her conscience, her dignity would not enter into a bargain to get married but instantly would seek penal action to punish the perpetrator. The ingredients to constitute offence under Section 376 of the IPC are heinous enough to stir the emotions and physicality of a lady which otherwise would cause an irreparable scar for the rest of her life. Such a pernicious act, cruel enough to devastate and demolish the existence of a woman not only to damage her body and soul but also to indignify and demean her cannot be resolved or even tried to be obliterated through a settlement, which in itself exhibit tacit consent, acceptance and approval on the part of the victim, though in rural ambience and parlance.
24. In the instant case, the consent of the victim if at all to have been romantically involved with the appellant being a major is beyond the purview to constitute an offence under Section 376 of IPC. The Investigating Agency had ample opportunity and scope to conduct the DNA test of the child to unravel the reality of the accusation to ascertain the paternity of the child as well as the intent and motive on the part of the appellant to have entered into a physical relationship with the victim with the intention of deception to cause harm to her body from the very inception. Moreover, in absence of independent witnesses and threat on the part of the victim and her family to accept her to be married by the appellant could not establish the veracity of the prosecution case.

25. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and as such the instant criminal appeal being CRA 419 of 2001 allowed.
26. Under such facts and circumstances, the judgment of conviction dated 24.06.2009 and order of sentenced dated 25.06.2009 passed by the Learned Additional Sessions Judge, Fast Track Court, Tehatta, Nadia in Sessions Trial No.1(3)/2008 (Sessions Case No.23(2)/2008 is set aside.
27. Accordingly, the instant criminal appeal being CRA 497 of 2009 stands disposed of.
28. There is no order as to costs.
29. The Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
30. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)