

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 771 of 2009

**Samir Hazari @ Bapan
-Vs-
The State of West Bengal**

For the Appellant	: Mr. Manjit Singh Mr. Biswajit Mal
For the State	: Ms. Faria Hossain Mr. Anand Keshari
Heard on	: 04.01.2024, 19.01.2024, 13.02.2024, 08.04.2024, 19.06.2024, 08.07.2024
Judgment on	: 13.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 03.12.2009 passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Baruipur, 24 Parganas (South) in Sessions Trial Case No.02(03)/08 arising out of Sessions Case No.46(09)/07 thereby convicting the appellant for having committed the offence punishable under Section 417 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for a term of one (01) year and to pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for four (04) months.
2. The prosecution case precisely stated the de facto complainant victim had fallen in love with the appellant in January, 2003 and they became so close to each other that the appellant proposed to marry her. She

accepted the proposal. However, the appellant requested her to wait for two years so that he could build a proper room and the de facto complainant agreed to wait till that period. The appellant took the advantage of the simplicity of the de facto complainant and had sexual relationship with her making her believe that they were husband and wife. As a result of the said act, the de facto complainant became pregnant and when she informed the appellant about her pregnancy and also requested him to marry her, it was alleged that the appellant refused to do so. Finding no other alternative, she informed her parents who soon thereafter came to the house of the appellant where they were abused in filthy languages. The matter was reported to the local panchayat and also the police. No steps were taken by any of the authorities. Finally, the de facto complainant filed a complaint before the Learned Additional Chief Judicial Magistrate, Baruipur with a prayer under Section 156(3) of the Code of Criminal Procedure, 1973. The said prayer was allowed and Baruipur PS Case No.188 dated 10.08.2006 was registered under Sections 493/376/420 of the Indian Penal Code.

3. Based on the aforesaid complaint, the Baruipur P.S. Case No.188 dated 10.08.06 under Sections 493/376/420 of the Indian Penal Code was initiated.
4. After completion of investigation, charges were framed against the appellant under Sections 493/376/417 of the Indian Penal Code to which the appellant pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 12 witnesses and exhibited certain documents while the defence did not adduce any witness.

6. The Learned Advocate representing the appellant submitted as follows:-

- i. The conviction of the appellant under Section 417 of the Indian Penal Code does not withstand judicial scrutiny in view of the insufficiency of evidence, warranting interference with the impugned judgment and order of sentence.
- ii. There was material inconsistency with regard to the stage of pregnancy. While the de facto complainant in her complaint dated 12.07.2006 claimed to be three months pregnant, the ultrasonography report marked under seizure indicated gestation beyond twenty weeks. The Trial Court failed to reconcile this discrepancy or examine its bearing on the veracity of the complaint.
- iii. Further, no judicial permission was obtained for termination of pregnancy though the case was already under judicial cognizance. Such procedural lapse was not taken into consideration by the Learned Trial Court.
- iv. The evidence of PW-6, Nirmal Naskar, disclosed animosity between the families. His statement that the father of the de facto complainant was arrested on 30.06.2006 for attempting to outrage the modesty of the appellant's mother, and that the present complaint was filed shortly thereafter on 12.07.2006, casts doubt upon the bona fides of the prosecution case. The Trial Court erred in observing that the said incident occurred subsequent to the complaint, which is factually incorrect.
- v. The judgment was devoid of any finding as to the date when the refusal to marry was communicated to the de facto complainant, which is pivotal to the allegation of inducement and deception.

- vi. The evidence of PW-2, the mother of the de facto complainant, indicated pendency of civil litigation between the families. However, the Trial Court incorrectly recorded that there was no suit pending and no enmity between the parties.
 - vii. Viewed in the totality of the circumstances, the prosecution failed to establish the essential ingredients of the offence beyond reasonable doubt.
7. The Learned Advocate representing the State 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.
8. A circumspection of the prosecution witnesses revealed as follows:-
- i. PW-1, the victim, deposed that she had developed an intimate relationship with the appellant some years ago, which culminated in physical relations in 2006. As a result, she became pregnant and informed the appellant, who thereafter accompanied her to a doctor's chamber where the pregnancy was confirmed. Following this, the appellant purchased medicines and took her to his home, assuring her that he would marry her. However, the appellant ultimately refused to marry her despite several requests from her parents. She stated that her pregnancy was later terminated at Sonarpur Das Nursing Home, and an ultrasonography was conducted at Baruipur. Upon receiving no assistance from the Baruipur P.S., she filed a petition under Section 156(3) Cr.P.C. before the Ld. A.C.J.M., Baruipur, marked as Exbt.-1 series. Subsequently, police interrogated her and seized the USG report and pregnancy test report under a seizure list marked as Exbt.-2.

In cross-examination, PW-1 stated that she submitted the abortion report to the police about one to two months after filing the case. She mentioned that her pregnancy at the time of abortion was eight months and then clarified it as six months. She denied any prior dispute between the families, though acknowledged a post-incident dispute. She further stated that the father of the appellant had filed a case under Section 144 Cr.P.C. against her father and uncles.

- ii. PW-2, the mother of the victim, deposed that she had been informed by her daughter about the love affair and subsequent pregnancy. Along with her husband, she visited the appellant's house and spoke to his mother, who denied all allegations. On meeting the appellant later, he admitted to the relationship and stated he would marry the victim. However, the appellant's family did not proceed with the marriage. PW-2 also accompanied her daughter to the police station, the clinic, and the nursing home where the pregnancy was terminated. The relevant documents were seized by the police as per the seizure list. In cross-examination, she affirmed that she had not taken her daughter to a government hospital and that the nursing home visit occurred one month prior to lodging the case.
- iii. PW-3 confirmed knowledge of the incident and the intended marriage between the parties. He was informed of the victim's pregnancy by her and had approached the appellant's father, who refused the proposal. The appellant also later declined to marry her. The pregnancy was terminated at Subhasgram. In cross-

examination, he stated that the pregnancy was terminated when it was about three months.

- iv. PW-4 deposed that he had heard about the pregnancy from the victim's mother and confirmed there was familiarity between the families. In cross-examination, he stated that he had learned of the relationship and pregnancy from his wife and denied knowledge of any long-standing enmity over a pathway.
- v. PW-5 was declared hostile by the prosecution.
- vi. PW-6 confirmed the existence of a love affair between the appellant and the victim and stated that the appellant had initially expressed willingness to marry her. He learned about the pregnancy from the victim's mother. He was aware that the pregnancy was terminated at Sonarpur Nursing Home and had been interrogated by police.
- vii. PW-7, the victim's father, affirmed that the relationship led to pregnancy and that a proposal of marriage was offered but not accepted by the appellant's parents. He stated that the appellant was thereafter sent away from his home. The pregnancy was terminated at Sonarpur Nursing Home and the family was compelled to approach the Baruipur Court after the P.S. declined to receive their complaint.
- viii. PW-8, a radiologist at New Debendra X-ray Clinic, deposed that he examined the victim on 12.07.06 and confirmed the presence of a single live fetus with gestational age of over 20 weeks, as per parameters detailed in Exbt.-3. The radiological film did not mention the patient's name and was marked as Mat. Exbt.-I. In cross-examination, he stated that the report lacked details of

examination timing, and that radiological exams were typically avoided during pregnancy.

- ix. PW-9 stated that he had examined the victim at his Radhanagar Nursing Home on 03.09.2006 and issued a prescription following the abortion. The prescription and medicines were marked as Exbt.-4.
- x. PW-10, who was posted as ACMOH (Medico Legal), South 24 Parganas, Alipore on 06.11.06, examined the appellant in connection with Baruipur P.S. Case No.188 dated 10.08.06 under Sections 493/376/420 I.P.C. The appellant had no bodily or genital injuries and was deemed physically capable. His report and the written consent were marked as Exbt.-5 and Exbt.-6 respectively. In cross-examination, he confirmed that the nature and purpose of examination were recorded in the said exhibits.
- xi. PW-11, a lady constable posted at Baruipur P.S. on 18.08.06, deposed that she escorted the victim to Court for recording her statement and identified her before the Magistrate. She also confirmed the seizure of the USG report and other documents from the victim's house as marked in Exbt.-2/2. In cross-examination, she stated that the victim's family resided in the adjacent village and was known to her.
- xii. PW-12, the Investigating Officer, stated that he was assigned the investigation on 10.08.06 after perusing the F.I.R. (Exbt.-8) and endorsement (Exbt.-8/1). He corroborated the complaint with the victim and did not re-examine her. He prepared a rough sketch map and index (Exbt.-9) and recorded statements under Section 161 Cr.P.C. He refrained from conducting a medical examination of

the victim due to her illness at the time and later seized the medical reports (Exbt.-2) following an application received through the I.C., Baruipur P.S. (Exbt.-10). The appellant was arrested on 19.09.06 and charge-sheet was submitted upon approval of the Superior Officer. In cross-examination, he admitted that the case was instituted on 10.08.06 and the medical papers were seized on 30.11.06. He also confirmed that the case diary lacked any specific note regarding the corroboration of the complaint by the victim and that he had not advised a medical test for the victim. He added that the victim was reportedly three months pregnant at the time of initiation of the case.

9. The evidence of PW-1 – victim seemed to be flawed it would have been life threatening for a woman for terminate her pregnancy in the 8th month as claimed her at the first instance which she thereafter altered to 6th months which again would have been improbable in accordance to medical procedure. Apparently, there had been an acrimonious relationship between the parties with an admission on the part of PW-1 that the father of the appellant had filed a case under Section 144 Cr.P.C. against her father and uncles.

10. It was further submitted that the reports relating to abortion of the victim was submitted after 2 months of filing of the instant case under Section 156(3) of the Criminal Procedure Code, 1973. Though, the initial charges were framed under Sections 493/376/417 of the Indian Penal Code ultimately the appellant was acquitted of the charges under Sections 493/376 of the Indian Penal Code, however, convicted for the offence punishable under Section 417 of the Indian Penal Code. If the charges under Sections 376 and 493 of the Indian Penal Code could not be

sustained against the victim, the charge under Sections 417 based on mere offence of co-habitation deceitfully inducing the victim of lawful marriage and thereafter commission of rape upon the victim on false promise of marriage are contradictory to each other.

11. The prosecution failed to mention as to how an offence under Section 417 of the Indian Penal Code had been committed without dishonest inducing of delivery of property, deception of giving a property or valuable securities, fraudulent or dishonest inducement to do or not to do something that would not have been done otherwise. The act or omission to cause or likely to cause damage or harm to the person, body, mind, reputation or property. The commission of offence under Section 493 of the Indian Penal Code as well as Section 376 of the Indian Penal Code could not have been proved by the prosecution before the Trial Court.
12. If there was no harm to the body and mind of the victim in any manner under Section 415 IPC as well as Section 420 of the IPC and a deception to the extent of lawful marriage there was no legal possibility or sanctity on the part of the victim to have been subjected to an offence under Section 417 of the Indian Penal Code.
13. The prosecution failed to prove that denial to marry the victim had caused injury or damage to her body, mind or property in any manner whatsoever or that she had been induced to any kind of lawful activity upon deception or misconception to be subjected to cohabitation deceitfully inducing her belief of lawful marriage. The prosecution eventually failed to prove the charges under Section 417 of the Indian Penal Code and accordingly the appellant is acquitted.

14. 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 771 of 2009 is allowed.
15. Under such facts and circumstances, the judgment and order dated 03.12.2009 passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Baruipur, 24 Parganas (South) in Sessions Trial Case No.02(03)/08 arising out of Sessions Case No.46(09)/07 is set aside.
16. Accordingly, the instant criminal appeal being CRA 771 of 2009 stands disposed of.
17. There is no order as to costs.
18. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
19. 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.)