

Criminal Revision

PRESENT:

THE HON'BLE MR JUSTICE KALIDAS MUKHERJEE

JUDGMENT ON: 24.8.2010

CRR NO. 1463 OF 2005

Lakshmi Narayan Das Dey

Vs.

State of West Bengal & Anr.

Points:

Quashing- Proceeding under section 376 I.P.C.- Un-controverted facts complained of do not constitute the offence alleged and it will be abuse of the process of the Court if the proceedings are continued- The victim, a married woman and consenting party- Whether the proceeding can be quashed- Code of Criminal Procedure, 1973 S.482

Facts:

The victim, a married woman, lodged complaint with the O.C., Balagarh P.S. alleging that she used to act as maid-servant in the house of the accused for about two years. Some time thereafter the accused used to allure her in different ways and proposed to transfer five bighas of land in her favour and also to construct a house for her and in lieu thereof the victim would have to live with him. The victim declined to accept such proposal. Subsequently, the accused used to allure her in different ways and the victim being in need of money due to his poverty agreed to such proposal and for about one year she used to live with the accused and cohabit with him. As a result she conceived. The victim then told the accused for the transfer of five bighas of land and for the construction of house as agreed earlier. But the accused declined and ultimately drove her out. Thereafter she gave birth to a male

child allegedly begotten by the accused. After the receipt of the complaint, the Balagarh P.S. case No. 87 of 2002 was started under Section 376 I.P.C. and after completion of investigation charge sheet was submitted. Accused filed an application under Section 482 Cr.P.C. praying for quashing of the proceeding pending before the learned S.D.J.M., Chinsurah, Hooghly arising out of said Balagarh P.S. Case No. 87 of 2002 dated 11.11.2002 under Section 376 I.P.C.

Held:

It is evident from the complaint that when the accused allegedly made proposal for living together on the promise of transfer of five bighas of land and construction of house she refused. It has further been stated in the complaint that subsequently she agreed to such proposal and started living with the accused and made co-habitation being a married lady aged about 25 years. It further appears that the complainant of the instant case filed another case being Kalna P.S. Case No. 39 of 1998 dated 24.3.1998 against Sufal Malik and Prabir Sardar under Section 376(2)(g) I.P.C. In the said case the victim was not examined and the said case ended in acquittal. In the instant case there is no mention of the date when she started co-habitation with the accused. It has also been stated in the complaint that the accused has his wife, three sons and the daughters in-law. It has been alleged in the complaint that she used to co-habit with the accused secretly. Such allegations on the face of it are very much doubtful in view of the fact that there are so many family members in the house of the accused and the accused being 75 years of age. It has been contended in the revisional application that the victim was not examined by any doctor and the DNA test was not held. The previous case lodged by the complainant against two other persons also ended in acquittal. These are the special features of the

case which can be taken into consideration in view of the decision in the case of Madhavrao Jiwaji Rao Scindia and another etc. Vs. Sambhajirao Chandrojirao Angre and others etc. (Supra). The facts of the case of Partho Pratim Phukan @ MEJA (Supra) are similar with those of the instant one. Since in the instant case it is an admitted fact that the victim being a married woman, allegedly agreed to the proposal of the accused aged about 75 years for co-habitation and having regard to the special features of the case as discussed above, Court is of the considered view that the uncontroverted facts complained of do not constitute the offence alleged and it will be abuse of the process of the Court if the proceedings are continued in the learned Court below.

Para 11 to 13

Cases cited:

1988 SC 709 (Madhavrao Jiwaji Rao Scindia and another etc. Vs. Sambhajirao Chandrojirao Angre and others etc.); 1984 Cr.L.J. 1535 (Jayanti Rani Panda Vs. State of West Bengal and another); AIR 1992 SC 604 (State of Haryana and others Vs. Ch. Bhajan Lal and others); (2007)2 C.Cr.L.R. (Cal) 756 (Shyamapada Tewari Vs. The State of West Bengal & Anr.); 1994 CWN 752 (Hari Majhi @ Hari Malik Vs. The State) and (2008)1 C.Cr.LR (Cal) 774 (Partho Pratim Phukan @ MEJA Vs. The State of West Bengal & Anr.)

For the Petitioner : Mr. Sekhar Kumar Basu

Mr. Ranjit Ghosal

Mr. Debasish Roy

For the O.P. No. 2 None appeared

For the State : Ms. Minoti Gomes.

KALIDAS MUKHERJEE, J.:

1. This is an application under Section 482 Cr.P.C. praying for quashing of the proceedings of G.R. Case No. 911 of 2002 pending before the learned S.D.J.M., Chinsurah, Hooghly arising out of Balagarh P.S. Case No. 87 of 2002 dated 11.11.2002 under Section 376 I.P.C.

2. The prosecution case, in short, is that the victim, a married lady aged 25 years lodged complaint with the O.C., Balagarh P.S. alleging that she used to act as maid-servant in the house of the accused for about two years. Some time thereafter the accused used to allure her in different ways and proposed to transfer five bighas of land in her favour and also to construct a house for her and in lieu thereof the victim would have to live with him. The victim declined to accept such proposal. Subsequently, the accused used to allure her in different ways and the victim being in need of money due to his poverty agreed to such proposal and for about one year she used to live with the accused and cohabit with him. As a result she conceived. The victim then told the accused for the transfer of five bighas of land and for the construction of house as agreed earlier. But the accused declined and ultimately drove her out. Thereafter on 13th Kartick, 1409 B.S. she gave birth to a male child allegedly begotten by the accused. After the receipt of the complaint, the Balagarh P.S. case No. 87 of 2002 was started under Section 376 I.P.C. and after completion of investigation charge sheet was submitted.

3. It is contended by the learned Counsel appearing for the petitioner that the petitioner is a retired school teacher aged about 75 years and is a cancer patient. It is contended that the victim earlier filed a case against two persons bearing Sessions Case No. 58 of 2002 under Section 376(2)(g) which ended in acquittal and in that case this victim lady was not examined by the

prosecution. It is submitted that the victim lady was a consenting party as per the allegations raised in the complaint. It is contended that with the malafide intention the instant case was lodged falsely against the accused/petitioner. It is submitted that the ultimate chance of conviction in this case is bleak. The learned Counsel appearing for the petitioner further submits that in view of the special feature of this case, the proceedings in the learned Court below should be quashed. The learned Counsel for the petitioner has referred to and cited the decisions reported in **1988 SC 709 (Madhavrao Jiwaji Rao Scindia and another etc. Vs. Sambhajirao Chandrojirao Angre and others etc.); 1984 Cr.L.J. 1535 (Jayanti Rani Panda Vs. State of West Bengal and another); AIR 1992 SC 604 (State of Haryana and others Vs. Ch. Bhajan Lal and others); (2007)2 C.Cr.L.R. (Cal) 756 (Shyamapada Tewari Vs. The State of West Bengal & Anr.); 1994 CWN 752 (Hari Majhi @ Hari Malik Vs. The State) and (2008)1 C.Cr.LR (Cal) 774 (Partho Pratim Phukan @ MEJA Vs. The State of West Bengal & Anr.)**.

4. The learned Counsel for the State submits that the victim lady is adult and as per the allegation raised in the F.I.R. the accused cohabited with her on consent. It is contended that she being a consenting party, the offence alleged does not come within the purview of Section 376 I.P.C. it is contended that there is no falsehood of the alleged promise.

5. In the case of **Madhavrao Jiwaji Rao Scindia and another etc. Vs. Sambhajirao Chandrojirao Angre and others etc. (Supra)** it was held by the Apex Court in paragraph 7 as follows:-

“7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the

offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

6. In the case of *Jayanti Rani Panda Vs. State of West Bengal (Supra)* the failure to keep the promise at a future uncertain date due to reasons not very clear on the evidence does not always amount to a misconception of fact at the inception of the act itself. It has further been held that if a full grown girl consents to the act of sexual intercourse on a promise of marriage and continues to indulge in such activity until she becomes pregnant it is an act of promiscuity on her part and not an act induced by misconception of fact.

7. In the case of *Hari Majhi @ Haro Malick Vs. The State (Supra)* it has been held in paragraph 5 as follows:-

“5. It would be evident from the said evidence that the accused had sexual intercourse with the girl with her consent which she, being above the age of 16 years, was competent to give. The prosecution case is that she agreed to sexual intercourse because the accused promised to marry her. But on this ground he cannot be held guilty of rape. The prosecution case does not cover any of the circumstances in Section 375 of the Indian Penal Code. In our view, the accused cannot be held guilty of rape for having sexual intercourse with P.W. 1 after having promised to marry her.”

8. In the case of *Partho Pratim Phukan @ MEJA Vs, The State of West Bengal & Anr. (Supra)* the defacto-complainant developed intimacy with the accused/petitioner, lived together and co-habited and there was intercourse with the consent of the defacto-complainant. It was held that no offence of rape was committed and continuation of the criminal proceedings against the accused would amount to abuse of the process of the Court. Under such circumstances the proceedings were quashed.

9. In the case of *Shyamapada Tewari Vs. The State of West Bengal & Anr. (Supra)* there was friendship between the accused and the victim woman aged about 34 years who was a consenting party to the act of sexual intercourse; there was proposal for marriage. It was held that there was no misconception of fact and the facts did not constitute the offence alleged and the proceedings were quashed.

10. In the instant case it has been stated in paragraph 11 of the revisional application that no medical examination of the complainant was made and no attempt was made by the investigating officer to establish the paternity of the child. It has further been stated in paragraph 17 that the complaint was filed after the complainant gave birth to a child and the delay has not been explained. In paragraph 18 of the application it has been stated that in the other case being Sessions Case No. 58 of 2002 arising out of the Kalna P.S. Case No. 39 of 1998 this victim lady stated her age as 28 years, but, in the instant case being Balagarh P.S. Case No. 87 of 2002 she has described her age as 25 years.

11. It is evident from the complaint that when the accused allegedly made proposal for living together on the promise of transfer of five bighas of land and construction of house she refused. It has further been stated in the complaint that subsequently she agreed to such proposal and started living

with the accused and made co-habitation being a married lady aged about 25 years.

12. It further appears that the complainant of the instant case filed another case being Kalna P.S. Case No. 39 of 1998 dated 24.3.1998 against Sufal Malik and Prabir Sardar under Section 376(2)(g) I.P.C. In the said case the victim was not examined and the said case ended in acquittal. In the instant case there is no mention of the date when she started co-habitation with the accused. It has also been stated in the complaint that the accused has his wife, three sons and the daughters in-law. It has been alleged in the complaint that she used to co-habit with the accused secretly. Such allegations on the face of it are very much doubtful in view of the fact that there are so many family members in the house of the accused and the accused being 75 years of age. It has been contended in the revisional application that the victim was not examined by any doctor and the DNA test was not held. The previous case lodged by the complainant against two other persons also ended in acquittal. These are the special features of the case which can be taken into consideration in view of the decision in the case of Madhavrao Jiwaji Rao Scindia and another etc. Vs. Sambhajirao Chandrojirao Angre and others etc. (Supra). The facts of the case of Partho Pratim Phukan @ MEJA (Supra) are similar with those of the instant one.

13. Since in the instant case it is an admitted fact that the victim being a married woman, allegedly agreed to the proposal of the accused aged about 75 years for co-habitation and having regard to the special features of the case as discussed above, I am of the considered view that the uncontroverted facts complained of do not constitute the offence alleged and it will be abuse of the process of the Court if the proceedings are continued in the learned Court below.

14. In the result the application is allowed. The proceedings of G.R. Case No. 911 of 2002 arising out of Balagarh P.S. Case No. 87 of 2002 dated 11.11.2002 under Section 376 I.P.C. and the charge sheet thereon stand quashed. The accused person is discharged from this case.

15. Let a copy of this judgment along with the L.C.R. be sent to the learned Court below immediately.

16. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.

(Kalidas Mukherjee, J.)

