

Bijoy Sing Deka Vs. the State of Assam

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Court : Guwahati

Decided On : Jan-30-2013

Judge : B.K. Sharma

Appeal No. : Crl. A. No. 163 of 2009

Appellant : Bijoy Sing Deka

Respondent : The State of Assam

Advocate for Pet/Ap. : Mr. Barman

Judgement :

Oral Order: (Sharma, J)

1. Heard Mr. J.C. Barman, learned counsel for the appellant. Also heard Mr. B.B. Gogoi, learned APP, Assam. I have also perused the entire materials on record.

2. This appeal is directed against the judgement of conviction dated 22.9.2009 passed by the learned Additional Sessions Judge, FTC No.3, Kamrup, Guwahati in Sessions Case No. 276(K)/2007, by which the appellant has been convicted under Section 376 IPC with the sentence of 7 years RI with a fine of Rs. 10,000/- and in default to undergo RI for another one year. The compensation amount is to be paid to the victim girl as per the provision of Section 357(c) Cr.P.C.

3. Mr. Barman, learned counsel for the appellant submits that the impugned judgment is not sustainable, inasmuch as, the alleged victim girl was a consenting party. He submitted that the purported promise to marry her is not based on any evidence.

4. Mr. Gogoi, learned APP, Assam on the other hand submits that the petitioner having allured the victim girl with the promise to marry her but on the other hand having committed the offence which resulted in pregnancy, the impugned judgment of conviction is required to be sustained.

5. The case emanated from the FIR which was received by the Khetri Police Station on 26.11.2004 (Ext.1), on the basis of which Khetri Police Station Case No. 191/2004 Under Section 376/493 IPC was registered. The FIR was lodged by the victim girl declaring therein her age as 28 years. The allegation made in the FIR was that about 2/3 years back, love affairs developed between her and the accused-appellant. He had promised her that he would marry. However, taking advantage of her visit to his place, he committed the offence under Section 376 IPC but refused to marry her.

6. On the basis of the said FIR, the Police registered the case and carried out the investigation and in due course submitted the charge sheet. The offence being exclusively triable by the Court of Session, it was committed to the said Court and upon framing of charge, the trial started. The prosecution examined 6(six) witnesses including the IO and the Doctor who had examined the victim. On perusal of the evidence, there is absolutely no manner of doubt, the victim was a consenting party but her only plea is that such consent was obtained with the promise of marriage by the accused appellant.

7. PW-1 i.e. the victim girl in her evidence stated about her affairs with the accused appellant and as to how he refused to marry her. PW-2 is her sister-in-law, before whom she had narrated the story. The PW-1 in her deposition also stated about the promise made out to her by the accused-appellant. PW-3 is the husband of PW-2, who also deposed about his knowledge that the victim girl being pregnant through the accused-appellant. He in his deposition stated that on 23.4.2008, the accused-appellant had gone to the victim girl and offered Rs.

50,000/- and 1 (one) bigha of land for withdrawal of the case against him. PW-4 has also stated in the same line as to how the accused-appellant had promised to marry the victim girl. PW-5 is the Doctor who in his deposition stated about 6(six) weeks pregnancy of the victim on the date of her examination on 29.11.2004. PW-6 is the IO who conducted the investigation and filed charge sheet under Section 376/493 IPC.

8. The moot question which falls for consideration is as to whether the story made out by the victim girl about the offence under Section 376 IPC is believable under the facts and circumstances of the case. From the evidence on record, there is absolutely no manner of doubt that she was a consenting party and she declared her pregnancy after two months. Initially, she did not disclose her pregnancy on the ground of promise being made by the accused-appellant to marry her. Thus, it is not a case of committing the offence under Section 376 IPC by the accused-appellant. None of the ingredients to constitute the offence under Section 376 IPC is present in the instant case. However, the Apex Court in the case of (Deelip Singh Vs. State of Bihar) reported in AIR 2005 SC 203, in a similar case awarded compensation of Rs. 50,000/- to the victim.

9. As in the instant case, in the said case also, the allegation of rape was made but it was found that the victim girl was a consenting party and as in the instant case, promise to marry her was made out. It has been held in the said case that the consent of the victim girl cannot be said to be given on misconception under Section 90 Cr.P.C. In such circumstances, the Apex Court, although had acquitted the accused-appellant but having regard to the fact that there was breach of promise to marry the victim girl, awarded the amount of Rs. 50,000/- as compensation to the victim girl.

10. The victim girl is now living alone with her daughter. In such circumstances, I am of the considered opinion that the ends of justice would be met if the accused-appellant is directed to pay an amount of Rs. 1 lakh (Rupees one lakh) only to the victim girl as compensation. The amount shall be deposited by the accused-appellant on or before 28.2.2013 with this Registry. On such deposit being made, the amount shall be allowed to be withdrawn by the victim girl upon proper

identification.

11. Subject to the above condition, the impugned judgment of conviction stands interfered with. The bail bonds would stand discharged on depositing the amount with the Registry as aforesaid. As submitted, the accused appellant is already on bail vide order dated 23.12.2009 upon furnishing fresh bail of Rs. 15,000/- with one surety of like amount to the satisfaction of the CJM, Kamrup, Guwahati.

12. Subject to the above stipulation, the Criminal Appeal is allowed. The Registry is directed to send down the case record to the learned Court below along with copies of this judgment and order. Registry shall realize the amount of compensation from the accused/appellant in accordance with the High Court Rules.

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