

AzimuddIn Shekh Vs. State of Jharkhand

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SooperKanoon Citation : sooperkanoon.com/523005

Court : Jharkhand

Decided On : Aug-24-2006

Reported in : [2007(1)JCR421(Jhr)]

Judge : Amareshwar Sahay, J.

Appellant : AzimuddIn Shekh

Respondent : State of Jharkhand

Advocate for Pet/Ap. : Ms. Mahua Palit

Disposition : Appeal allowed

Judgement :

Amareshwar Sahay, J.

1. This appeal arises against the judgment of conviction and order of sentence dated 17.1.2004, in Sessions Case No. 124 of 2001, whereby the learned trial Court convicted the appellant for the offence under Section 36 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period 10 (ten) years and also to pay a fine of Rs. 1,000/- (one thousand) and in default of payment of fine to undergo rigorous imprisonment for a period of 6 (six) months.

2. The prosecution case in short is that on 19.3.2000 at about 9.00 p.m., the accused/appellant came to the house of the informant, namely, Sayda Khatoon

and asked her to accompany him, so that they can marry each other. The informant, Sayda Khatoon and the accused/appellant were having love affair since before and in that course the appellant had promised to her that he would marry her. On being asked by the accused/appellant, the informant, Sayda Khatoon, went out of her house and went to Kela Bagan, there she hide herself and kept waiting for the accused. It is said that the accused/appellant came there and requested her for having sexual intercourse, to which she did not agree and then it is said that the accused/appellant forcibly committed rape on her, at the point of knife (chura). After rape, the accused/appellant left the place¹ and the informant came back to her house and narrated the story to her mother. Thereafter at the instance of the informant a panchayaii held but the accused/appellant refused to marry the informant. Thereafter the first information report was lodged.

3. In order to establish the charges, altogether five witnesses were examined on behalf of the prosecution. PW 1. Sayda Khatoon is the informant herself. PW 2, Abdul Karim is the Grand Father PW 3, Rabeka Bewa is the Mother of the informant PW 4, Kair Sheikh is the co-villager and PW 5, Afsar Sheikh is the maternal uncle of the victim girl. The doctor and the Investigating Officer were not examined on behalf of the prosecution.

4. Ms. Mahua Palit, learned Counsel for the appellant challenged the conviction and sentence passed by trial Court and submitted that from the evidence of the victim girl itself, it would appear that she was a major and she had lover affair with the appellant and the sexual intercourse if any was committed by the appellant with her consent and, therefore, it was not a case of rape. Learned Counsel for the appellant referred to the evidence of the informant, particularly para-9, where she has stated that when she asked the accused/appellant to marry her and on his refusal, she filed this case. She further stated that after the case was lodged, accused/appellant performed marriage with her and then from their wedlock one child was also born but, subsequently, the accused/appellant did not take her to his place and he had paid Rs. 2000/- (two thousand) to the informant for his treatment.

5. From the first information report, it appears that she had admitted her love affair with the appellant, but in Court, she denied to have any connection with the accused/appellant. The statement of the victim girl made in Court was contradictory to her subsequent statement made in para 9, which has already been discussed above. From the allegation made in the first information, it appears that the informant, who was major, she on being asked by the accused/appellant voluntarily left her house and went to Kela Bagan and there she had sexual intercourse with the accused/appellant. The conduct of the informant that she left her house to go with the appellant at an odd hours of night that also in lonely place is sufficient to indicate that the act of sexual intercourse by the appellant with the informant was with her consent and not against her 'will.

6. It is only, when the appellant refused to marry her, the present case under Section 36, IPC for the commission of rape was filed by the informant.

7. In such a situation, in my view, the act of sexual intercourse committed by the appellant with the informant, who was a major, cannot come under the purview of rape.

8. In view of the above discussions and findings, I find that the conviction and sentence for the offence under Section 376 of the Indian Penal Code, passed by the trial Court against the appellant cannot be sustained. Accordingly, this appeal is allowed. The conviction and sentence passed by the trial Court against the appellant, Azimuddin Shekh, is hereby, set aside. The appellant, who is on bail, is discharged from the liability of the bail bonds.