

Akhaya Kumar Vs. State of Orissa

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Court : Orissa

Decided On : Feb-10-1998

Reported in : 1998CriLJ1757

Judge : S.C. Datta, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 161, 164 and 482; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 323, 324, 366, 376, 493, 495 and 506

Appeal No. : Cri. Misc. C. No. 2182 of 1998

Appellant : Akhaya Kumar

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : V. Mohanty, Adv.

Judgement :

ORDER

S.C. Datta, J.

1. In this petition under Section 482 Criminal Procedure Code (for short the 'Cr. P.C'), the petitioner seeks to quash the order dated 1-6-1996 passed by learned assistant Sessions Judge, Kendrapara framing charge under Sections 376 and

493 Indian Penal Code (for short the 'I.P.C) against him on the ground that there was no evidence to satisfy any of the ingredients constituting the offence under any of the aforesaid sections.

2. The case was instituted on the basis of the complaint lodged on 2-4-1993 by one Sudarsan Sutar who is a neighbour of the petitioner. It has been alleged that the petitioner took away his daughter Sasmita Sutar on 2-4-1993 by a scooter towards Kendrapara. In the evening while he was going to Sarpanch and others to report about the incident, he heard his daughter shouting from the Bari of the petitioner and found that the family members of the petitioner were assaulting her. However, on his intervention and on the intervention of the local people, his daughter was rescued. On the basis of the F.I.R. a case was started against the petitioner and his family members under Sections 366, 323, 506/34 I.P.C. The police submitted charge-sheet under Sections 376/366/493/506/324/323/34 I.P.C. against the petitioner, his father and two brothers. On commitment the Asst. Sessions Judge framed charges under Sections 366, 324, 376, 493/34 I.P.C. against the petitioner by order dated 1-6-1996. The petitioner assails the order of the learned Asst. Session Judge framing charges under Sections 376/493 I.P.C, against him.

3. During investigation the police recorded the statement of the victim girl, Sasmita Sutar under Section 161 Cr. P.C. on 2-4-1993 and her statement under Section 164 Cr. P.C. was recorded on 7-4-1993. The allegations against the petitioner are that the victim girl Sasmita was in love with the petitioner for the past many years and they cohabitated for the last six years on the assurance of the petitioner to the effect that he would marry her. In the mean time the petitioner married one Anusuya in the year 1991 and started living with her. After marriage the victim girl did not keep any relationship with the petitioner. But the petitioner persuaded her and assured to marry her. So the victim girl again submitted herself to sexual intercourse with the petitioner with false assurance of the petitioner to marry her till she became pregnant. The petitioner took the victim girl to Kandrapara hospital for abortion on 1-4-1993 and on the same day the petitioner went through some sort of marriage by putting vermilion on the forehead of the victim girl before 'Pathakankarii Thakurani Temple' and that took her to his house when the family

members of the petitioner did not accept her and drove her away after assaulting her.

4. According to the petitioner there is no material to show that he practised deception and such deceit was to induce the victim Susmita to believe that she was lawfully married to him and there was cohabitation or sexual intercourse, as a result of such deception. Accordingly, it is submitted that the charges under Sections 376 and 495 IPC. are unsustainable and are liable to be quashed. The petitioner contends that the materials on record show that the victim Sasmita was conscious of the fact that the petitioner was married and living with his wife and the victim was never led to believe that she was lawfully married, to him while sexual intercourse was done. Therefore, it is submitted that resultantly Sections 493 and 376 I.P.C. are not attracted in this case.

5. The learned counsel appearing for the petitioner submits that there was practically no material to prove deception by the petitioner on the victim woman which can establish that the petitioner dishonestly or fraudulently concealed any fact or made a false statement knowing to be false, so as to attract the provisions of Sections 493 and 376 I.P.C. He submits that there has been no application of mind by the learned Asst. Sessions Judge, who mechanically framed charges against the petitioner without looking to the material on record. He submits further that the petitioner would face trial before the Asst. Sessions Judge on other counts of charges.

6. Heard learned counsel for the petitioner as well as learned counsel for the State.

It appears that the case was started on the complaint of the father of the victim girl, Sudarsan Sutar. The name of the victim girl is Sasmita Sutar. It is accepted that the victim girl was 22 years of age at the relevant time. It is not disputed that the victim girl was in love with the petitioner for the past many years. The allegations against the petitioner is that the petitioner held out promise to Sasmita to marry and thus induced her to cohabit with him. The petitioner married in the year 1991 and continued to live with his wife Anusaya. Even there after the relationship between the parties continued and Sasmita submitted herself to sexual intercourse

on the assurance of the petitioner to marry her till she become pregnant. The victim girl was taken to Kandrapara hospital for abortion and there some sort of ceremony was performed to legalise the marriage of the victim girl with the petitioner. It appears that during investigation the statement of the victim girl under Section 164 Cr. P.C. was recorded. In her statement 164 Cr.P.C. the victim girl categorically stated that the petitioner, Akhaya Parida Kumar has not raped her, but he cohabitated with her under the false pretext of marrying her. The learned counsel appearing for the petitioner submits that in view of the categorical statement of the victim girl to the effect that she was never ravished by the petitioner, the trial Court was entirely wrong in framing a charge under Section 376 I.P.C. against the petitioner. The learned counsel for the State fairly concedes that in view of the categorical statement of the victim girl the trial Court ought not be have framed charge under Section 376 I.P.C. against the petitioner. It appears that learned Asst. Sessions Judge did not consider the statement of the victim girl and framed charge under Section 376 I.P.C. as well against the petitioner. In view of the clear statement of the victim girl to the effect that she was never ravished by the petitioner, the order of the trial Court framing charge under Section 376 I.P.C. cannot be sustained and it deserves quashing.

7. The next question for consideration is whether the trial Court was justified in framing charges under Section 493 I.P.C. against the petitioner. That section reads as follows :

493. Every man who by deceit causes any woman who is not lawfully married to him, to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extent to ten years and shall also be liable to fine.

8. It will be noticed that the essence of the offence under Section 493 I.P.C. consists in the practice of deception by a man on a woman, in consequence of which she is led to believe that he is lawfully married to him even though, in fact, they are not lawfully married, The crucial question for consideration is whether there are materials on record to hold that the petitioner practised such deception on the victim girl, Sasmita. To prove deception it must be conclusively established

that the petitioner either dishonestly or fraudulantly concealed certain facts or made a false statement knowing it to be false.

9. A Full Bench decision of the Kerala High Court reported in AIR 1987 Kerala 184 : 1987 Cri LJ 1106 Moideenkutty Haji v. Kunhikaya) considering the law on the subject held :

The section does not penalise mere cohabitation or sexual intercourse with a woman who is not lawfully married to him. The section is attracted only when certain other ingredients are also associated therewith. The section envisages the case when a man deceitfully induces a woman to have sexual intercourse with him causing her to believe that she is lawfully married to him. The essence of the section is therefore the deception caused by a man on a woman, in consequence of which she is led to believe that she is lawfully married. In order to establish deception there must first be allegations that the accused falsely induced her to believe that she is legally wedded to him. In the complaint in this case there is no allegation of any such deception or inducement. In a case where both the man and woman fully know that they are not husband and wife and no ceremony of marriage took place between them there is no question of one of them believing otherwise. Even if the entire allegations in the complaint are taken as true the section is not being attracted. The allegation is that though they are not husband and wife they had sexual union during late hours in the night for a pretty long time. That is alleged in the complaint is only a promise to marry in future. The strange part of it is, there is the further allegation that one day they went for registering the marriage, but the petitioner ran away from there and even after she was submitting herself to him regularly for liaison. The facts cannot at any rate attract Section 493, I.P.C.

10. Now coming to the facts of the present case, it is noticed that the parties were in love with each other for the past many years. The petitioner promise to marry the victim girl, Susmita. But in 1991, he married another girl named Anusaya and started living with her. Even thereafter the parties continued cohabitation. The victim girl has stated that she was lured by the petitioner to cohabit on the assurance to marry her. It appears that the victim girl was conscious of the facts of

marriage of the petitioner with Anusaya and the fact that he was residing with his wife Anusaya. There is no material on record to show that the petitioner practised deception on the victim girl or that by such deception she was induced to believe to have become his lawfully wedded wife. Therefore, having regard to the background of law and materials on record, it cannot be held that, whatever may be the responsibility of the petitioner otherwise, the charge under Section 493 I.P.C. can be sustained against him. It appears that there has been non-application of the mind of the trial Judge and he should not have framed charge under Section 493 I.P.C. against the petitioner. The learned counsel for the petitioner concedes that the petitioner will face trial before the learned Asst. Sessions Judge in respect of other charges.

11. Therefore, considering all the aspects of the matter, I think that the charge under Sections 376 and 493 I.P.C. ought not to have been framed against the petitioner and as such the charge under Sections 376 and 493 I.P.C. are quashed and the order framing charge on other counts could remain. The petitioner would face trial before the learned Assistant Sessions Judge with regard to these charges.

With this observation, the Criminal Misc. Case is disposed of.