

SUPREME COURT OF INDIA

Tilak Raj

Vs.

The State of Himachal Pradesh

CrI.A.No.13 of 2016

(T.S.Thakur,CJI., and V.Gopala Gowda,J.)

06.01.2016

JUDGMENT

V.Gopala Gowda, J.

(Arising out of SLP(CrI.) No.4896 of 2015)

1. Leave granted.

2. This criminal appeal is directed against the impugned judgment and order dated 06.01.2015 passed by the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 369 of 2012 whereby it has partly allowed the said Criminal Appeal filed by the respondent-State and has upheld the acquittal order passed by the trial court in favour of the appellant herein for the offence punishable under Section 376 of Indian Penal Code (for short "IPC"). However, it has convicted the appellant for offences punishable under Sections 417 and 506 part I of IPC but instead of imposing sentence on the appellant for the aforesaid offences, vide order dated 17.03.2015 the High Court has released him under Section 4 of the Probation of Offenders Act, 1958 on his entering into a personal bond in the sum of Rs. 25, 000/- with two sureties in the like amount.

3. Brief facts of the case are stated hereunder to appreciate the rival legal contentions urged on behalf of the parties: On 06.01.2010, the Assistant Sub-inspector of Police (ASI), Chamba (H.P.) received a complaint from prosecutrix through the office of Deputy Superintendent of Police (DSP), Shri. K.D. Sharma, Chamba (H.P). In the said complaint, it was alleged by her that on 01.01.2010 she was raped and physically assaulted by the appellant. It was also alleged by her that when she went to the police station to register her complaint regarding the offence of rape she was threatened with dire consequences by the appellant on phone. Allegation of sexual exploitation on the pretext of marriage was also made by her in the said complaint.

4. On the basis of said written complaint FIR No. 6 of 2010 was registered by the ASI under Sections 376, 417 and 506 of IPC and investigation was conducted by the investigation

officer. After investigation a report under Section 173 of Code of Criminal Procedure, 1973 was filed.

5. The case of the prosecution is that the appellant developed intimacy with the prosecutrix (PW 2) about two years prior to the incident. He allured her on the pretext of marriage. On 01.01.2010 the appellant sexually violated the person of prosecutrix in her residential accommodation in Karian, Chamba. At the same time, he not only ravished her but also physically assaulted her by slapping her and twisting her arm.

6. On the next day i.e., on 02.01.2010, the prosecutrix decided to approach the Police Station, Chamba to get FIR registered against the appellant for the offence of rape. However, at about 6 AM when she reached near Police Station the appellant threatened her against making any complaint or report about him to the police officials otherwise he would kill the prosecutrix. Thereafter, she did not make any complaint.

7. On the same day, the appellant met prosecutrix near the Regional Hospital, Chamba and offered to take her to his home. He persuaded her not to lodge FIR against him and even promised in writing to marry her. He assured her that both of them would stay as husband and wife. However, instead of taking her to his house he dropped her at her residence with a promise that he would return soon. The appellant did not return thereafter. Feeling cheated thereby, on the same day, she reported the matter to Sh. K.D. Sharma, DSP, Chamba.

8. On 05.01.2010, both the appellant and the prosecutrix were called in the office of DSP, wherein the appellant agreed in presence of DSP, Chamba and one Yoginder Mohan (PW 3) to marry the prosecutrix the next day i.e., on 06.01.2010. On 06.01.2010, when the prosecutrix along with her family came forward for solemnization of marriage, the appellant did not turn up. The same day FIR No. 06 of 2010 was registered against the appellant. He was booked for the offences punishable under Sections 376, 417 and 506 of IPC.

9. The Court of Sessions, Chamba in sessions trial no. 40 of 2010, after examination of the evidence on record, vide its judgment and order dated 30.04.2012 acquitted the appellant-accused of all the charges levelled against him by giving him a benefit of doubt.

10. Aggrieved by the decision of the trial court, the respondent-State preferred Criminal Appeal No. 369 of 2012 before the High Court of Himachal Pradesh, at Shimla urging various grounds and prayed for setting aside the judgment and order of acquittal passed by the trial court and prayed to convict and sentence the accused-appellant for the charges leveled against him.

11. The High Court partly allowed the said Criminal Appeal. It upheld the acquittal order passed by the trial court in favour of the appellant for the offence punishable under Section 376 of IPC. However, it convicted him for the offences punishable under Sections 417 and 506 part I of IPC. The High Court instead of imposing sentence on the appellant for the aforesaid offences released him under Section 4 of the Probation of Offenders Act, 1958 on

his entering into a personal bond in the sum of Rs. 25, 000/- with two local sureties in the like amount. Hence, this appeal.

12. Mr. Aditya Dhawan, the learned counsel for the appellant contended that the High Court has failed to appreciate the facts of the case in actual and correct perspective and its judgment is based on surmises and conjectures. Therefore, the order of conviction and sentence is liable to be set aside by this Court in exercise of its appellate jurisdiction.

13. He further contended that the High Court has partly set aside a reasoned judgment passed by the trial court without proper re-appreciation of evidence on record and facts and circumstances of the case in hand. It was further submitted by him that in an appeal against acquittal, the interference by the Appellate Court is not warranted in the absence of perversity of the finding of fact in the judgment of the trial court. Furthermore, it is well settled position of law that if two plausible views are possible on the basis of evidence on record, the appellate court shall not exercise its appellate jurisdiction to set aside the order of acquittal unless the findings of the trial court on the charge of offences under Sections 417 and 506 Part I of IPC are found erroneous.

14. It was further contended by him that the High Court has failed to take note of important fact that there is a considerable and unexplained delay of five days in lodging the FIR against the appellant. Further, the non-examination of crucial witness namely Sh. K.D.Sharma, DSP, Chamba to whom the alleged incidence was first reported by the prosecutrix certainly rendered the prosecution case doubtful. In view of the above, he submitted that the prosecution ought to have examined Sh. K.D.Sharma, DSP, Chamba who was a material witness. He further contended that the High Court has failed to appreciate that the trial court was right in drawing an adverse inference from non-examination of a crucial witness in the case.

15. He further vehemently contended that the High Court has failed to appreciate certain facts, namely, the age of the prosecutrix at the time of incident was about 40 years i.e., approximately 10 years more than that of the appellant. Further, she was a government servant at the time of incident and in number of cases she was appointed as protection officer under the Protection of Women from Domestic Violence Act, 2005. Further, the prosecutrix was in relationship with the appellant for about two years prior to the alleged incident. All the aforesaid facts render the prosecution version completely unbelievable that the appellant established physical intimacy with the prosecutrix on the false pretext of marriage. Therefore, the impugned judgment and order is liable to be set aside by this Court.

16. It was further contended by him that the evidence of the prosecutrix is not clear and specific and the same is suffering from material inconsistencies and contradictions with other evidence on record. He further submitted that the discrepancies in the evidence of the prosecutrix is incompatible with the credibility of his version is liable to be outrightly rejected by this Court.

17. While concluding his submissions the learned counsel submitted that there is no evidence on record to suggest that the appellant on the false pretext of marriage with the prosecutrix and in furtherance of his intention from the very beginning induced her to surrender to him for sexual intercourse. Further, the conviction of the appellant is based only on the testimony of the prosecutrix (PW 2), which in itself could not have been relied upon by the High Court in absence of any corroboration. Thus, the impugned judgment and order of the High Court is vitiated in law and is required to be set aside by this Court.

18. Per contra, Mr. Suryanarayana Singh, the learned Additional Advocate General on behalf of the respondent-State sought to justify the impugned judgment and order passed by the High Court on the ground that the same is well founded and is not vitiated in law. Therefore, no interference with the impugned Judgement and Order of this Court is required in exercise of its appellate jurisdiction.

19. We have carefully heard both the parties at length and have also given our conscious thought to the material on record and relevant provisions of The Indian Penal Code (in short "the IPC"). In the instant case, the prosecutrix was an adult and mature lady of around 40 years at the time of incident. It is admitted by the prosecutrix in her testimony before the trial court that she was in relationship with the appellant for the last two years prior to the incident and the appellant used to stay overnight at her residence. After a perusal of copy of FIR and evidence on record the case set up by the prosecutrix seems to be highly unrealistic and unbelievable.

20. The evidence as a whole including FIR, testimony of prosecutrix and MLC report prepared by medical practitioner clearly indicate that the story of prosecutrix regarding sexual intercourse on false pretext of marrying her is concocted and not believable. In fact, the said act of the Appellant seems to be consensual in nature. The trial court has rightly held thus:

"23. If the story set up by the prosecutrix herself in the court is to be believed, it does come to the fore that the two were in a relationship and she well knew that the accused was duping her throughout. Per the prosecutrix, she had not succumbed to the proposal of the accused. Having allowed access to the accused to her residential quarter, so much so, even having allowed him to stay overnight, she knew the likely outcome of her reaction. Seeing the age of the prosecutrix which is around 40 years, it can be easily inferred that she knew what could be the consequences of allowing a male friend into her bed room at night.

24. The entire circumstances discussed above and which have come to the fore from the testimony of none else but the prosecutrix, it cannot be said that the sexual intercourse was without her consent. The act seems to be consensual in nature.

25. It is also not the case that the consent had been given by the prosecutrix believing the accused's promise to marry her. For, her testimony itself shows that the entire story of marriage has unfolded after 05.01.2010 when the accused was stated to

have been summoned to the office of the Dy. S.P. Prior to 05.01.2010, there is nothing on record to show that the accused had been pestering the prosecutrix for any alliance. The prosecutrix has said a line in her examination-in-chief, but her cross-examination shows that no doubt the two were in relationship, but the question of marriage apparently had not been deliberated upon by any of the two. After the sexual contact, come talk about marriage had cropped up between the two. Thus, it also cannot be said that the consent for sexual intercourse had been given by the prosecutrix under some misconception of marriage."

21. As far as conviction of the appellant under Sections 417 and 506 part I of IPC is concerned, a close scrutiny of evidence of the prosecutrix (PW 2) along with other prosecution witnesses is done by this Court. Section 417 of IPC prescribes punishment for the offence of Cheating as defined under Section 415 of IPC. Section 415 of IPC reads thus:

"415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation.— A dishonest concealment of facts is a deception within the meaning of this section."

The ingredients required to constitute the offence of Cheating have been discussed by this Court in the case of *Ram Jas v.State of U.P.*¹ as under:

- "(i) there should be fraudulent or dishonest inducement of a person by deceiving him;
- (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or
- (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and
- (iii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

A careful reading of evidence on record clearly shows that there is no evidence against the appellant from which it can be conclusively inferred by this Court that there was any fraudulent or dishonest inducement of the prosecutrix by the appellant to constitute an offence under Section 415 of IPC. For conviction of the Appellant for above said offence, it is important that all the necessary ingredients constituting an offence under the said Section must be proved beyond reasonable doubt. In the instant case, the appellant cannot be convicted for the offence of cheating punishable under Section 417 of IPC as the prosecution has failed to prove all ingredients of the said offence beyond reasonable doubt.

22. Further, Section 506 of IPC prescribes punishment for the offence of criminal intimidation as defined under Section 503 of IPC. Section 503 of IPC reads thus:

"503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

A reading of evidence on record in the light of aforesaid legal provision shows the insufficiency of evidence to hold the conviction of the appellant for the offence of criminal intimidation punishable under Section 506 part I of IPC.

23. From the aforesaid, it is clear that the evidence of the prosecution is neither believable nor reliable to bring home the charges leveled against the appellant. We are of the view that the impugned judgment and order passed by the High Court is not based on a careful re-appraisal of the evidence on record by the High Court and there is no material evidence on record to show that the appellant is guilty of the charged offences i.e., offence of cheating punishable under Section 417 of IPC and offence of criminal intimidation punishable under Section 506 part I of IPC.

24. For the reasons stated supra, this appeal is allowed and we set aside the impugned judgment and order of conviction and sentence passed by the High Court against the appellant for the offences punishable under Sections 417 and 506 part I of IPC. The appellant is acquitted of all the charges levelled against him.

Judgment Referred.

¹(1970) 2 SCC 740