

IN THE COURT OF ADDITIONAL SESSIONS JUDGE
KHATRA, BANKURA

SESSIONS DIVISION : BANKURA

Present : **Shri Subhasis Ghosh**
Additional Sessions Judge,
Khatra, Bankura.

Sessions Trial No. 1(7)16

STATE versus Panchanan Murmu
----- Accused person.

Charge Under section 376/417 I.P.C

Ld. Advocate for the prosecution : Sri Tapas kumar Singha Mahapatra,
Ld. Advocate for the Defence : Sri Chanchal Roy.

Date of delivery of Judgment 11.08.2017.

J U D G E M E N T

The factual aspect of the prosecution case briefly stated that victim girl had lodged a written complaint before the O.C Hirbandh P.S on 16.08.14 to the effect that she was introduced with accused Panchanan Murmu 3 years ago and gradually a love affairs was established with the said accused . The aforesaid accused promised to marry her and giving such assurance the aforesaid accused made cohabitation with her i.e. raped her . Now the accused declined to marry her . Altogether 20/25 times accused made cohabitation with her.

Record demonstrates that on the basis of the same Hirbandh P.S case No. 64/14 dated 16.08.14 u/s 417/376 I.P.C came to be registered and it appears from the record that police investigated the case and after completion of investigation, Investigating officer

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submitted charge sheet against the sole accused person u/s 417/376 I.P.C.

Having the charge sheet been submitted and having all the formalities u/s 207 Cr.P.C. been complied with Ld. Committing Magistrate committed this case to this court.

The crux of the criminal law being accused oriented an accused person is presumed to be innocent until his guilt is proved. However, on perusal of the materials on record this court had framed charge u/s 417/376 I.P.C against the aforesaid accused person. The contents of the charges so framed was read over and explained before the accused person when he pleaded not guilty and claimed to be tried. After closure of the prosecution witnesses the aforesaid accused person was examined u/s 313 Cr.P.C when he again pleaded his innocence and declined to examine any witness on his behalf. The defence case is the complete denial of the prosecution case as it emerges from the trend of the cross examination of the prosecution witnesses and also from the examination of the accused person u/s 313 Cr.P.C.

The point for consideration is as to whether the prosecution has been able to bring home the charge so labelled against the accused person beyond the shadow of all reasonable doubts.

DECISION WITH REASONS

In order to prove the guilt of the accused person, prosecution has examined altogether 4 witnesses and documents have been marked as Exbt. 1 to 4/1 from the side of the prosecution.

I am not unmindful of the spirit of section 228A of the IPC

and so, I want to maintain the anonymity of the victim girl. Therefore, I prefer to maintain the word 'victim' instead of disclosing her name.

In order to bring the accused person booked u/s 417/376 I.P.C prosecution is burdened with an obligation to show with sufficient evidence that the accused person made cohabitation with the victim girl giving an assurance to marry her and subsequently retracted from his such promise and declined to marry her.

In course of argument Ld. Advocate for the accused person submitted that there is no evidence on record to bring the connectivity of the accused person with the alleged offence and as such the accused person deserves an order of acquittal.

In refutation Ld. Additional P.P submitted that the prosecution witnesses have narrated the incident and the prosecution case find support from the statement of the victim girl recorded u/s 164 Cr.P.C.

In the back drop of the submission advanced by the Ld. Advocate for both sides, now I am to consider the materials and evidence on record to have a just decision in this case.

P.W. 1. victim girl stated in her evidence that Panchanan is the resident of Dadramouli and she had love relation with him since 3 years and he promised to marry her and had established physical relation with her but later refused to marry. After going through her entire evidence it has made prominent that her evidence is not positive and overwhelming to examine the guilt of the accused person and thereby she failed to corroborate the prosecution case.

P.W. 2 Sitaram Layek only stated in his evidence that he saw Panchanan Murmu coming in front of his house and used to come

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in the house of the victim girl . Beside this , this witness did not state anything pointing the guilt of the accused person.

P.W.3 Sharmila Mandi in course of her evidence failed to throw any light over the alleged incident.

P.W.4 Manju Hansda (Murmu) stated in her evidence that she did not know anything about the incident of this case and thereby failed to corroborated the prosecution case.

It is the main allegation of the prosecution that the accused made cohabitation upon the victim girl on several dates after giving assurance to marry her but subsequently he refused to keep his such commitment. It is seen from the record that at the time of alleged incident the victim girl was aged about 22 years. So at the time of alleged incident victim girl was adult and in the said age of 22 years the victim girl had sufficient intelligence to realize what is wrong and what is right for her life. From the aforesaid facts and circumstances it is crystal clear that inspite of having sufficient intelligency and inspite of attaining majority the victim girl maintained her relationship with the accused and allowed the accused person to defile her chastity. So from the aforesaid facts and circumstances it is crystal clear that there was no forceful rape upon the victim girl by the accused rather victim girl allowed the accused person to make cohabitation with her.

On consideration of the materials and evidence on record it would appear before this court that the evidence of the prosecution witnesses are not positive and overwhelming to examine the guilt of the accused person. The evidence of the victim girl suffers from basic infirmity and improbability. On careful scrutiny of the injury report of the victim girl it appears that the same does not bear the name of the accused as the assailant and as such the prosecution

case did not find any support from the medical evidence . There is no consolidated evidence on record wherefrom it can be concluded that the accused person committed rape upon the victim girl against her will in any of the circumstances as envisaged in section 375 IPC. None of the prosecution witnesses except victim girl have come forward to say with the allegation against the accused person. There is no positive evidence on record wherefrom it can be concluded that from the very beginning the accused had the intention not to marry the victim girl and it has not been proved that accused obtained the consent of the victim girl towards the sexual union by deceitful means.

Since the evidence of the victim girl suffers from basic infirmity and improbability, since the prosecution witnesses did not come forward wholeheartedly to say with the allegation against the accused person and since the prosecution case did not find support from the medical evidence then the allegation as made out in the written complaint has now become a doubtful proposition and the accused person is entitled to get the benefit of such doubt. Thus I have come to a conclusion that materials and evidence on record are not sufficient to book the accused person under the net of section 417/376 I.P.C.

To conclude, the prosecution in the instant case has failed to bring on record the credit worthy evidence to instill confidence in the mind of the court that the accused person made cohabitation with the victim girl giving an assurance to marry her and subsequently retracted from his such promise and declined to marry her.

S.T. 1(7)16.

On my earnest and conscious consideration of the materials and evidence on record, considering the preponderance of probability and improbability and in the light of the observation made herein above, I have come to a conclusion that the prosecution has failed to bring home the charges so labelled against the accused person beyond the shadow of all reasonable doubts. Consequently, it would be safe to lean towards the defence.

The point for consideration is thus disposed of in negative against the prosecution. As a whole the instant case fails.

Hence, it is

ORDERED

that the accused person namely Panchanan Murmu is found not guilty to the charge punishable u/s 417/376 I.P.C. He is acquitted in terms of section 235(1) Cr.P.C. The surety be discharged from his bail bond.

The seized alamats, if any, be disposed of according to law after the period of appeal is over.

Dictated & corrected

A.S.J. Khatra.

(SUBHASIS GHOSH)

Additional Sessions Judge
Khatra, Bankura.