

(1993) 11 GAU CK 0004

Gauhati High Court

Case No: Criminal Appeal No. 143 of 1987

Baga Sing Morang

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Nov. 16, 1993

Acts Referred:

- Criminal Procedure Code, 1973 - Section 222(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 222(2)
- Penal Code, 1860 - Section 376, 417
- Penal Code, 1860 (IPC) - Section 376, 417

Citation: (1994) 1 GLJ 421

Hon'ble Judges: M.Sharma, J

Bench: Single Bench

Advocate: D.C.Mahanta, T.J.Mahanta, R.C.Barpatragohain, M.Phukan, Advocates
appearing for Parties

Judgement

1. This criminal appeal has been preferred against the judgment dated 7.9.87 passed by the Sessions Judge, Lakhimpur in Sessions Case No. 16 (NL)/87 convicting and sentencing the appellant under section 417 IPC to pay a fine of Rs. 4.000/, in default, to undergo rigorous imprisonment for eight months.

2. One Bombeswar Taye (PW 2) lodged a complaint to the effect that his daughter Sumadoi Taye (PW 1) was married to the accused appellant, but he deceived her. A case was registered and investigated and a charge under section 376 IPC was framed. Trial of the case proceeded under the said section. At the time of hearing the learned Sessions Judge being not found the accused guilty under section 376 IPC converted the charge under section 376 IPC to section 417 IPC and after hearing arguments convicted and sentenced the accused appellant under section 417 IPC as stated above.

3. The moot point for consideration, as raised in this appeal is that whether the learned Sessions Judge, invoking the jurisdiction under section 222 (2) of the CrPC can alter the charge under section 376 IPC to section 417 IPC when the section subsequently altered is not minor in relation to the offence with which he has been originally charged.

4. Further grounds raised by the appellant was that the complaint was barred by limitation under section 468 CrPC and that ingredients under section 4i 5 IPC were not available in the complaint case.

5. Prosecution has examined six witnesses including the victim girl and also the Medical Officer. On examination of the prosecution witnesses the learned trial Court came to the finding, after appreciation of the evidences, that the aggrieved girl, who was major, had sexual intercourse with the accused appellant and cohabited with him with her own consent but she was deceived by the accused and therefore for the deception there cannot be a case under section 376 IPC and further held that the accused can be held guilty under section 417 IPC. Hence he has been acquitted of that charge. But being satisfied that there has been sufficient evidence on record under section 493 IPC by which it was established that the accused by deceiving the woman, not lawfully married to him, made her believe that she was married to him and she cohabited with him in that belief, that the woman would not have cohabited with the accused, if she were not deceived and that his act caused damage or harm to her body by causing pregnancy and also to her mind and reputation. Accordingly the accused was convicted under section 417 and sentenced as aforesaid.

6. Mr. Mahanta, learned counsel for the appellant submitted that provision of section 222 was not applicable in this case from the facts and circumstances of the case as evident on record. The ingredients of section 376 IPC and section 417 IPC have no common features and cannot be regarded as cognate offence.

7. Section 222 CrPC reads as follows :

"When offence proved included in offence charged (1) When a person is charged with an offence consisting on several particulars, a combination of some only of which constitutes a complete minor offence and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduced it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of

that minor offence have not been satisfied."

8. From reading section 222 (4) it shows that a conviction for minor offence is not authorised when the requirements imposed by law initiation of proceedings in respect of the minor offence have not been complied with. Here the question arises whether section 417 IPC being a minor offence than section 376 IPC is independent of the main offence, charged or an offence merely involving lesser punishment. Certainly minor offence required to be composed of some of the ingredients constituting the main offence and be a part of it Minor offence required to be cognate offence and not entirely different offences involving different elements.

9. Section 417 IPC reads as follows :

"Punishment for cheating Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

10. The question is whether in view of the allegations made in the complaint ingredients of section 417 were present. Exhibit 1 is the complaint lodged by the father of the victim girl which alleged that the accused (appellant) since five years kept visiting the victim girl and made her convinced to the effect that she was his wife and made her cohabit with him and made her pregnant. Accused kept her in the house of the complainant (father) with assurance that he would take her to stay with him as soon as he would get a job. But after getting the job (teacher in LP School) he was keeping another woman as his wife and in spite of many efforts the accused refused to accept his daughter as his wife. The contents of the complaint as stated above made out a case under section 417 IPC and in the trial the prosecution proved the allegation beyond reasonable doubt. Though accused was charged under section 376 IPC complaint referred to the offence under section 417 IPC and cognizance was taken accordingly. It cannot be said in view of that matter that a conviction for a minor offence is not authorised where the requirements imposed by law for initiation of proceeding in respect of minor offence have not been complied with. In the case in hand the accused was acquitted of the charge under section 376 IPC on the ground that the victim girl was a consenting party. But her consent, as evidence on record established, was obtained deceiving her as accused's married wife. In her evidence she categorically stated that she agreed to cohabit with the belief on his promise that she was his wife and that she would not have cohabited and be pregnant, if she were not so deceived. It was also disclosed in her evidence on record that her reputation had been damaged and she had been mentally suffering. The particular offence under section 417 IPC is cognate and not independent from the facts and circumstances of the case made out and charged under section 376 IPC. The particulars of prosecution case made out under section 376 IPC were present in section 417 and the offences do form part of the same transaction and therefore can be sustained in exercise of power by the trial Court under section 222 (2) CrPC.

11. Further, on perusal of the judgment of the trial Court I hold that the trial Court very leniently considered the sentence of the accused appellant. The accused was aware of the nature of the case made at the trial, that evidence given and the accused had taken a line of defence and on sentence the accused was heard under section 235 (2) CrPC. He prayed for consideration of his sentence on the ground that it was his first offence and that he had to maintain a family. In that view of the matter the accused was not prejudiced in any way though conviction was made on a charge different from the original charge.

12. Reference of AIR 1950 Allahabad 471 (Raghunath Singh vs. State) by the counsel for the accused appellant has no application in the instant case on reasons stated above and other references, such as 1962 (1) CrLJ 843, 1971 CrLJ 125 are not applicable on the same reason.

13. In view of the reasons discussed above the offence proved under section 417 IPC included the offence charged under section 376 IPC. Accordingly I do not find any infirmity in the judgment and order of the trial Court and, therefore, the same is affirmed.

14. In the result the appeal is dismissed.