

(2010) 12 GAU CK 0026

Gauhati High Court (Agartala Bench)

Case No: Criminal Appeal (J) No. 70 of 2009

Md. Dilder Ali

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision: Dec. 23, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 160, 164
- Penal Code, 1860 (IPC) - Section 376, 417

Citation: (2011) 2 GLR 617

Hon'ble Judges: B.D. Agarwal, J

Bench: Single Bench

Advocate: S. Chakraborty, for the Appellant; R.C. Debnath, Special Public Prosecutor, for the Respondent

Judgement

B.D. Agarwal, J.

The Appellant herein, has been convicted u/s 376 of the Indian Penal Code (hereinafter, referred to as "the IPC", for short), vide impugned judgment and Order dated 05.08.2009, passed by the learned Assistant Sessions Judge, North Tripura, Kailashahar, in Case No. S.T. 17 (NT/K) 2009. On such conviction, the Appellant has been sentenced to undergo RI for 10 (ten) years. Being aggrieved with the conviction the accused has preferred this appeal.

2. Heard Sri S Chakraborty, learned Counsel for the Appellant and Sri R C Debnath, learned Special Public Prosecutor for the State of Tripura. I have also perused the impugned judgment and the evidence on record.

3. Apparently, the FIR was lodged when the victim girl was carrying pregnancy of 4 (four) weeks. The impugned judgment discloses that the conviction has been recorded on the sole testimony of the victim girl and her father, who came to know about the incident when his daughter was carrying pregnancy. All the remaining witnesses have stated that they did not know anything. The victim girl has deposed

that when her parents and brothers were out of home, the accused came to her house and subjected her to sexual intercourse against her will and consent. The victim has further deposed that she had not reported about the incident to anyone out of shame. In other words, there is no allegation of threat to the victim girl.

4. At the same time, while giving statement u/s 164 Code of Criminal Procedure the victim girl has stated before the Judicial Magistrate that she had affairs with the accused and on the relevant day at about 12 noon, the accused came to her house and declared that he has married her by way of keeping his hand on the Holy Quran and thereafter, co-habited with her. In this way, the victim's earlier statement slightly contradicts to the deposition given in the Court. As per the FIR and the medical evidence, the victim was above 17 years of age and as such, she was capable of giving consent. Having regard to the statement given u/s 160 Code of Criminal Procedure and her deposition given in the Court, it appears to me that the victim was a consenting party. However, the co-habitation has taken place due to false declaration of marriage by the accused/ Appellant. Hence, the conviction of the Appellant u/s 376 of the IPC is converted to Section 417 of the IPC. Section 417 prescribes 1 (one) year imprisonment. In the present case, the accused is in custody since 1 1/2 years.

5. In the result, the appeal stands dismissed albeit modification in the conviction and sentence. Since, the accused has already undergone the period of sentence prescribed u/s 417 IPC, the Registry is directed to issue release order.