(2014) 12 JH CK 0032

Jharkhand High Court

Case No: Cr. Appeal (DB) No. 961 of 2013

Anjana Rashmi Minz		APPELLANT
	Vs	
State of Jharkhand		RESPONDENT

Date of Decision: Dec. 11, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376, 420, 90

Hon'ble Judges: Ravi Nath Verma, J; Rakesh Ranjan Prasad, J

Bench: Division Bench

Advocate: Siddharth Jyoti, Advocate for the Appellant

Judgement

I.A. No. 5352 of 2014

1. Heard learned counsel appearing for the appellant and the learned counsel for the State on this interlocutory application, wherein prayer has been made to allow the appellant to implead the person, who has been acquitted under the impugned judgment, as party respondent in this appeal.

2. The person, to whom the appellant intends to implead as party, appears to be necessary party. Accordingly, the prayer made in this interlocutory application is hereby allowed. Let Shera Samson Tirkey be impleaded as party respondent No. 2 in this appeal.

3. I.A. No. 5352 of 2014, stands disposed of.

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4. This appeal is directed against the judgment dated 21st September, 2013, passed by the learned Additional Judicial Commissioner-III-cum-FTC (CAW), Ranchi in Sessions Trial No. 449 of 2012 (T.R. No. 131/2013), whereby the accused person, who was put on trial for the offence punishable under Sections 376 and 420 of the Indian Penal Code, was acquitted.

5. It is the case of the prosecution that the accused/newly added respondent No. 2, on the pretext of marrying the victim went on having sex with her, but he subsequently, refused to marry her.

6. On such accusation, the accused was put on trial, during which witnesses were examined including the prosecutrix (PW-1), who in her testimony did testify that the accused promised to marry her and under that promise she went on having sex with him. But, subsequently, he refused to marry. The prosecutrix is a major and under the circumstances, whatever act the accused-respondent No. 2, is said to have done that was done with the consent of the prosecutrix and in that situation the Court acquitted the accused of the charges framed under Sections 376 & 420 of the Indian Penal Code. That is under challenge.

7. According to learned counsel appearing for the appellant, the victim PW-1 though had given consent to the accused-respondent No. 2 to have sex with her, but that consent was given when promise had been made by the accused to marry her and, therefore, it can be said that the consent was given under misconception of the fact and if it is so then it can never be said that the accused had had sex with the consent of the appellant. Learned counsel in support of his submissions has referred to a decisions rendered in a case of State of U.P. Vs. Naushad, .

8. Thus, it was submitted that the trial court committed illegality in acquitting the accused-respondent No. 2.

9. The Hon''ble Supreme Court, in the case referred to above, was pleased to hold that the consent obtained under a misconception of fact as defined under Section 90 of the Indian Penal Code, cannot be said to be voluntary consent. But that was held under the facts and circumstances of the case where the accused having promised the prosecutrix to marry her, went on having sex with her and then refused to marry when the prosecutrix did carry pregnancy.

10. Here in the instant case the fact appears to be some what different as it is evident from the judgment that the prosecutrix was in love with the accused and in that situation, when the prosecutrix had fallen in love with the accused and if the accused makes a promise to marry her and under that promise if the accused was having sex with the prosecutrix, it cannot be said that the prosecutrix gave consent under a misconception of fact. In this regard, we may refer to a decision rendered in a case of Uday Vs. State of Karnataka, , wherein their Lordships after placing reliance on the decision of Jayanti Rani Panda Vs. State of West Bengal and Another, observed as follows:--

"It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we

must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar acts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them."

11. Apparently it does appear from the observation made by the Hon''ble Supreme Court that the consent given by the prosecutrix on the promise made by the accused to have sexual intercourse with a person with whom she is deeply in love, cannot be said to be given under a misconception of fact.

12. Under the circumstances, we do not find any illegality with the judgment and order under challenge. Accordingly, this appeal stands dismissed.