

(2018) 02 GAU CK 0082

Gauhati High Court

Case No: 344 of 2009

Sri Sushil Agarwal

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Feb. 8, 2018

Acts Referred:

- Code of Criminal Procedure, 1973, Section 397, Section 401 - Calling for records to exercise powers of revision - High Courts powers of revision
- Indian Penal Code, 1860

Hon'ble Judges: Hitesh Kumar Sarma

Bench: Single Bench

Advocate: P Bora., B Sarma

Judgement

1. This is a criminal revision petition filed under Sections 397/401 of the Cr.PC challenging the legality, propriety and correctness of the judgment

and order, dated 10.06.2009, passed by the learned Judicial Magistrate First Class, Bishwanath Chariali in GR Case No. 122/2004 convicting the

accused-revision petitioner under Sections 341/342/293 of the IPC and sentencing him to various sentences as indicated in the said judgment as

well as the judgment of the learned Appellate Court of the Additional Sessions Judge, Bishwanath Chariali in Criminal Motion No. 11(S-3)/2009

partly allowing the appeal and setting aside the order of conviction and sentences under Section 341/342 of the IPC and retaining the conviction

and sentence under Section 293 of the IPC.

2. Heard Mr. P Bora, learned counsel for the accused-revision petitioner as well as Mr. B Sarma, learned Additional Public Prosecutor, appearing

for the State respondent.

3. The fact leading to the case is that, the victim who is a student of class-IX, was taken on a motor cycle to the house of the accused-revision

petitioner by the accused-revision petitioner himself and he had touched his genital organs and wanted the victim to enjoy an English cinema.

4. On such facts, the father of the victim lodged an FIR in the Bishwanath Chariali Police Station and the same was registered as BNC PS Case

No. 38/2004 under Sections 341/342/293 of the IPC and after completion of investigation, charge-sheet was laid against the accused-revision

petitioner under the aforesaid sections of law.

5. After conclusion of the trial by the learned trial court of Judicial Magistrate First Class, the accused-revision petitioner was convicted and

sentenced under Sections 341/342/293 of the IPC to separate sentences as indicated in the judgment of the learned trial court. But, on appeal, the

learned Additional Sessions Judge, Bishwanath Chariali acquitted the accused-revision petitioner of the charge under Sections 341/342 of the IPC

and the conviction of the accused-revision petitioner was retained so far the offence under Section 293 of the IPC is concerned.

6. Before entering into the evidence on record, to decide whether an offence under Section 293 of the IPC is made out or not on the basis of the

evidence on record, as submitted by the learned counsel for the accused revision petitioner, this Court has visited the provisions of Section 293 of

the IPC as well as the facts which is the basis of the prosecution case.

7. Section 293 of the IPC provides as follows:-

Sale, etc., of obscene objects to young person.?Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the

age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be

punished 2[on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which

may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description

for a term which may extend to seven years, and also with fine which may extend to five thousand rupees

8. Therefore, from the provisions of Section 293 of the IPC, it appears that selling, distributing, exhibiting, etc, of any obscene object to any person under the age of 20 years is made punishable.

9. But, the facts in the instant case, as appears from the evidence of the victim as well as his father/informant and the contents of the FIR, read in combination that none of the said ingredients existed to hold the accused revision petitioner guilty of an offence under Section 293 of the IPC.

There is no allegation of selling, distributing, exhibiting, circulating, etc of any obscene object. There is an unusual allegation of touching the penis of the victim by the accused-revision petitioner and such unusual act on the part of the accused revision petitioner is not found to have been covered by the provisions of Section 293 of the IPC, and therefore, apparently the provisions of Section 293 of the IPC is not attracted in the instant case.

10. Therefore, this revision petition is allowed.

11. Therefore, the judgments of both the Courts below are set aside.

12. Send down the LCR along with the copy of this judgment.