

DISTRICT :: SONITPUR

**IN THE COURT OF THE JUDICIAL MAGISTRATE, 1ST CLASS,
TEZPUR.**

G. R. Case No. 153/2009

U/S. 420 & 493 I.P.C.

STATE

V.

Deepak Maji

... Accused Person

PRESENT: Sri Kiran Lal Baishnab, AJS.
Judicial Magistrate, 1st Class,
Tezpur.

For the Prosecution: Sri L. Hazarika, Asstt. P. P.

For the Defence: Sri P. K. Sharma, Advocate.

Evidence recorded on: 13.12.2010, 21.01.2011 and 29.12.2011.

Argument heard on: 11.01.2012.

Judgment delivered on: 30.01.2012.

JUDGMENT

1. The prosecution case in brief, as reflected from the 'ejahar', is that on 15.01.2009 one Sumuni Munda, unmarried sister of the informant delivered a female child and on enquiry she stated that the accused Deepak Maji had sexual intercourse with with fake promise of marrying her. It is also alleged that the accused persons deceived her and engaged in sexual intercourse with her as a result of such deception.

2. On 27.01.2009 the alleged occurrence was intimated through a written ejahar before the Officer-in-charge, Rangapara Police Station and the same was received and registered as Rangapara P.S. Case No. 19/09 U/s. 493 & 420 I.P.C.

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3. On the basis of the 'ejahar' police started investigation and after completion of investigation the police found sufficient materials and submitted charge-sheet against the accused Deepak Maji U/S- 493 & 420 I.P.C. vide Charge-Sheet No. 33/09, dated 28.02.2009.

4. On submission of the charge-sheet, the learned C.J.M. accepting the charge-sheet took cognizance U/s. 493 & 420 I.P.C. and transferred the case to this court for trial. Subsequently, summons was issued to the accused person and on his appearance he was enlarged on bail. During trial copies of relevant documents were furnished to the accused complying with the provisions contained U/s. 207 Cr.P.C. and finding sufficient materials against the accused Md. Nizam Hussain to proceed for the offences U/s. 420 I.P.C. charge under the said section was framed and was discharge of the offence U/S- 493 I.P.C. as there was no sufficient materials on record against him. The charge was then read over and explained to the accused person and was asked as to whether he pleads guilty to the offences charged, to which he pleaded not guilty and claimed to be tried.

5. In the course of hearing the prosecution examined altogether Seven (7) witnesses, including the Investigating Officer (I.O.). P.W.1 Sukleswar Munda is the informant. P.W.2 Sumani Munda is the victim. P.W.3, Madhu Munda is the mother of the victim. P.W.4, Sukesh Munda is the younger brother of the victim, P. W.5, Bhimqa Tanti is a co-villager of the victim and P.W.6 Asha Munda is the sister-in-law of the victim and P.W.7, Sub-Inspector Lakhikanta Bora is the Investigating Officer (I.O.).

6. The prosecution side also exhibited Three (3) documents. Ext-1 is the 'ejahar' (F.I.R.), Ext-2 is the Charge-sheet, Ext-3 is the Sketch Map. The accused was also examined U/s. 313 Cr. P. C. and his answers were accordingly recorded. Moreover, defence side declined to adduce any evidence. The defence story is of total denial.

7. Points for determination:-

- (a) Whether one day in April,2008 at around 08.00 P.M the accused Deepak Maji called the victim Sumani Munda to the Club and dishonestly induced her to enter into sexual intercourse with fake promise of Marriage and thereby committed an offence punishable U/s. 420 I.P.C.?

8. Discussion, Decision and Reasons thereof:-

Heard arguments of both sides. Perused the Case Record very minutely. My findings are as follows:-

Now lets move forward discussing the points for determination:-

- (a) ***Whether one day in April,2008 at around 08.00 P.M the accused Deepak Maji called the victim Sumani Munda to the Club and dishonestly induced her to enter into sexual intercourse with fake promise of Marriage and thereby committed an offence punishable U/s. 420 I.P.C.?***

The defence side took the plea that no evidence was forwarded from the side of the prosecution to establish the fact of inducement of the victim and entering into sexual intercourse by the accused. Now in order to establish the offence punishable U/S- 420 I.P.C. against the accused person the prosecution has to fulfil the criteria of Section 415 of I.P.C. which defines the offence of Cheating and also Sec - 420 of I.P.C. which defines the offence of cheating and dishonestly inducing delivery of property and also imposes punishment for the offence. So as per Section 415 of I. P. C. r/w Sec-420 of I.P.C., in the instant case in order to bring home the charge under the said section against the accused person, the prosecution has to prove the following ingredients:

- i. That one day in April,2008 at around 08.00 P.M the accused Deepak Maji called the victim Sumani Munda to the Club;
 - ii. That the accused person deceitfully entered into sexual intercourse with the victim with fake promise of marriage;
- And
- iii. That the accused by his such act, dishonestly induced the victim to deliver any property;

As regard the date, time and place of occurrence P.W. 2, Sumani Munda, the victim deposed that about two years ago from the date of her deposition (i.e. 13.12.2010) the accused entered into sexual intercourse with her with promise to marry her. None of the other PWs including the informant had seen the incident but all of them came to know from the victim about the incident only when she gave birth to a Baby. P.W.2, the victim further deposed that she gave birth to a baby on 15th January and stated the incident to all the witnesses on being questioned by them. P.W.3, Madhu Munda, mother of the victim also deposed that the victim gave birth to a girl child on 15.01.2008 at about 7.00 P.M. and on being asked by them the victim stated before them that the accused had sexual intercourse with her and also promised to marry her. This being the position, I am of the considered opinion that the prosecution had successfully proved the fact of date, time and place of occurrence beyond all reasonable doubts.

Now, the facts remains to be proved is that the accused Deepak Maji called the victim Smani Munda to the Club and deceitfully induced her to enter into sexual intercourse with him with a fake promise of marriage. I have gone through the entire prosecution evidence minutely find that none of the witnesses have stated as to that they have seen the accused person entering into sexual intercourse with the victim but they have entered the scene of crime only after delivery of the child by the victim. P.W.2, Sunami Munda, the victim deposed that she was called by the

accused person in the club about two years back from her date of deposition i.e. 13.12.2010 at about 8 P.M. She further deposed that the accused person loved her and promised her that he will marry her and as such he had sexual intercourse with her against her will. She also deposed that she informed the accused of her stoppage of menstruation after three months of their intercourse when the accused told her that she is carrying and directed her not to inform of it to anyone with assurance that he will do something in this regard. She further deposed that she did not tell anyone of her pregnancy only because the accused said her not to do so. She also deposed that on 15th January when she delivered a child she disclosed the matter to everyone on being questioned by them. P.W.2, in her cross-examination stated that the accused called her in the club in the month of April which supports the fact as the date of delivery falls about nine months from the day of alleged intercourse. Though, none of the witnesses had seen her pregnant and also her intercourse with the accused person but everyone corroborated her on the fact that she gave birth to a child and also that she stated before them that the accused had intercourse with her and the child is the result of that intercourse. The defence vehemently argued that all the witnesses except P.W.2 are reported witnesses and have not seen the incident, thus, are not acceptable. But, I am of the view that though all the witnesses are reported but have been corroborated by the person who has reported the matter to them. Hence, this argument of the defence is not acceptable to me. The learned defence counsel also argued vehemently that neither child allegedly born was brought before the Court nor had any medical report in this regard was submitted, hence, he pleaded that actually no child at all was born. But, in my view all the witnesses had seen the delivery of the child as is revealed from their deposition. P.W.5, Bhima Tanti, who is an independent witness, also deposed that there was a village meeting in this regard and he was present in the meeting.

Thus, finding the evidence put forward by P.W.2, Sumani Munda, the victim fully reliable and the chain of

circumstances being fully completed by the other witnesses, I am of the opinion that the prosecution has successfully proved the fact that the accused Deepak Maji called the victim Smani Munda to the Club and deceitfully induced her to enter into sexual intercourse with him with a fake promise of marriage.

Perusal of the evidences on record minutely, reveals that when the accused person allegedly built up relation with the victim, he was already married and had wife and children living. This fact is also admitted by the defence. Hence, in the above facts and circumstances it can be said that the accused had the intention to cheat the victim since the inception of their relation. Accordingly, the plea of the prosecution that the accused made fake promise of marriage with the victim is fully acceptable, because he never had the intention to marry the victim.

Now, as to the fact that whether the accused person dishonestly induced the victim to deliver any property, I am of the view that though it is proved in the foregoing discussions that the accused engaged into sexual intercourse with the victim deceitfully, it can not be said to be delivery of property as in my opinion, the chastity of a woman can not be treated as a chattel. But his deceitful means of entering into sexual intercourse with the victim very well comes under the act of Cheating as defined U/S- 415 of the Indian Penal Code.

Thus, in my considered opinion as formed after minute perusal of the evidences on record, though the prosecution has failed to prove the case U/S – 420 I.P.C. against the accused Deepak Maji but has successfully proved the case U/S – 417 I.P.C. against him beyond all reasonable doubts.

ORDER

Hence, considering the above discussions the accused Deepak Maji is not found guilty of the offence punishable U/s. 420 I.P.C. and thus, the accused person is accordingly acquitted of the said accusations/charges but, he is found guilty of the offence punishable U/s. 417 I.P.C. and thus, the accused person is accordingly convicted for the said offence.

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9. As regard consideration of the case of the accused either under Section 360 Cr.P.C. or under Section 3 or Section 4 of the Probation of Offenders Act, 1958, in the instant case, the accused person had deceitfully played up with the chastity of a innocent girl, the victim and thus showing utmost inhumanity. Moreover, releasing the persons at this stage without punishment for such offence would have great impact on the society. Hence I do not deem it a fit case to consider it under any of the aforesaid provisions of law.

SENTENCE

Heard the accused person on the question of sentence whereby he pleaded that they are first time offender and only bread earner of the family, thus, he should be dealt with leniently. Also heard the Id. A.P.P and the Id. defence counsel on the point of sentence. Considering all aspects and taking into account the plea of the accused person, the accused Deepak Maji is sentenced to Rigorous imprisonment of Six (6) months U/s. 417 I.P.C.

10. A copy of the judgment is supplied to the accused person free of cost.

11. The accused person's bail bond stands cancelled.

12. The Judgment is delivered and operative part of the same is pronounced in the open Court in presence of all the accused persons, this 30th day of January, 2012 under my hand and seal of this Court.

(KIRAN LAL BAISHNAB)
Judicial Magistrate, 1st Class,
Tezpur

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ANNEXURE

1. PROSECUTION WITNESSES:

P.W.1- Sukleswar Munda (informant),

P.W.2- Sumani Munda (victim)

P.W.3- Madhu Munda (the mother of the victim),

P.W.4- Sukesh Munda (the younger brother of the victim),

P.W.5- Bhimqa Tanti (a co-villager of the victim),

P.W.6- Asha Munda (the sister-in-law of the victim),

P.W.7- SI Lakhikanta Bora (the Investigating Officer),

2. DEFENCE WITNESSES:

NIL.

3. EXHIBITS(BY PROSECUTION SIDE):

Ext-1- the 'ejahar' (F.I.R.),

Ext-2- the Charge-sheet,

Ext-3- the Sketch Map,

4. EXHIBITS(BY DEFENCE SIDE):

NIL.

**Judicial Magistrate, 1st Class,
Tezpur.**