

HASI MOHAN BARMAN AND ANR.

v.

STATE OF ASSAM AND ANR.

NOVEMBER 13, 2007

[G.P. MATHUR AND ALTAMAS KABIR, JJ.]

Penal Code, 1860—s.313 r/w. s.34—Non-compoundable offence of causing miscarriage of woman without her consent—Principal accused was paramour of the victim—Courts below convicted him and a co-accused—Meanwhile, victim married principal accused—She filed affidavit before Supreme Court stating that she had entered into a compromise and wanted criminal case against both accused to be withdrawn—Effect of the subsequent developments of marriage and compromise—Held: Affidavit filed by victim cannot be utilized for acquitting the accused—Conviction maintained, but in interest of justice, sentence reduced to period already undergone—Code of Criminal Procedure, 1973—s.320.

PW-1 got pregnant through Appellant No.1, her paramour, who wanted PW-1 to abort the child. As PW-1 declined to do so, Appellant No.1 with the help of Appellant No.2 allegedly caused miscarriage of the pregnancy without the consent of PW-1. Trial Court convicted both Appellants under s.313 r.w. s.34 IPC. High Court maintained the conviction.

During pendency of the case, PW-1 married Appellant No.1. She filed an affidavit before this Court stating that she had entered into a compromise and wanted the criminal case pending against Appellant No.1 (now her husband) and Appellant No.2 to be withdrawn.

The question which arose for consideration is whether in view of the said subsequent developments of marriage and compromise, conviction of the Appellants is liable to be set aside.

A Partly allowing the appeal, the Court

HELD: 1. A perusal of Section 320, CrPC shows that the offence under Section 313 IPC is not compoundable. Therefore, the consent given by the wife PW-1 or the affidavit filed by her cannot be utilized for the purpose of recording a finding of acquittal in favour of the accused appellants. [Para 8] [1139-A, B]

2. In the present case, the complainant PW1 and the principal accused (Appellant No.1) having already married it will be in the interest of justice if the sentence is reduced to the period already undergone. The conviction of the appellants under Section 313 IPC is maintained but the sentence is reduced to the period already undergone which appears to be about ten months. The fine imposed upon the appellants is also set aside. [Para 12] [1140-B]

Ram Pujan and Ors. v. State of Uttar Pradesh, [1973] 2 SCC 456; Surendra Nath Mohanty and Anr. v. State of Orissa, [1999] 5 SCC 238; Bankat and Anr. v. State of Maharashtra, [2005] 1 SCC 343, Badrilal v. State of M.P., [2005] 7 SCC 55 and Jetha Ram and Ors. v. State of Rajasthan, [2006] 9 SCC 255, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1534 of 2007.

From the final Judgment and Order dated 2.1.2007 of the High Court of Gauhati at Guwahati in Criminal Appeal No. 372 of 2001.

P.K. Goswami, K.T.S. Tulsi (A.C.), Rajiv Mehta, A. Henry, B. Aggrawal, Gaurave Bhargava and Evneet Uppal for the Appellants.

Jai Prakash Pandey and Avijit Roy (for Corporate Law Group) for the Respondents.

The Judgment of the Court was delivered by

G.P. MATHUR, J. 1. Leave granted.

2. This appeal, by special leave, has been preferred against the judgment and order dated 2.1.2007 of Gauhati High Court by which the appeal preferred by the appellants was disposed of with the modification

that the sentence of five years R.I. and fine of Rs.7,000/- imposed upon each of the appellants under Section 313 read with Section 34 IPC by the learned Additional Sessions Judge, Kokrajhar, was reduced to three years R.I. and fine of Rs.5,000/-.

3. The case of the prosecution, in brief, is that the appellant Hasi Mohan Barman was having love affair with the first informant PW-1 Haleswari Barman, which subsequently developed into physical relationship and as a result thereof PW-1 became pregnant. The villagers put pressure upon Hasi Mohan Barman to marry PW-1 which he declined. He asked PW-1 to abort the child which she refused to do. Thereafter, in the night of the incident Hasi Mohan Barman took PW-1 Haleswari Barman to the pharmacy of co-accused Abinash Biswas, who administered certain injection whereupon PW-1 became unconscious and the child was aborted. She was administered Saline and the appellant Hasi Mohan Barman kept her at 'Pampghar' for about nine days wherefrom she was taken to her parents house. After few days PW-1 lodged an FIR against both the appellants. The police, after investigation, submitted charge-sheet only against Hasi Mohan Barman but subsequently co-accused Abinash Biswas was also summoned under Section 319 Cr.P.C. to face the trial.

4. In the trial PW-1 Haleswari Barman deposed that on the promise that the appellant No. 1 will marry her they entered into sexual relationship and as a result whereof she became pregnant. Thereafter, the appellant No. 1 put pressure upon her to abort the child but she did not agree. On the night of occurrence the appellant No. 1 along with his brother forcibly took her to the pharmacy of co-accused Abinash Biswas and she was forcibly administered an injection due to which she became unconscious. When she regained consciousness she saw that saline was being administered to her. After some time on the asking of appellant No. 1 co-accused Abinash Biswas administered another injection due to which she became unconscious. When she regained consciousness she found that she had lost her pregnancy and then she was taken to the house of her parents.

5. PW-4 Dr. Dilip Bhowmik, an Ayurvedic Physician, has deposed that the appellant Hasi Mohan Barman had brought PW-1 to his clinic

A and on examination he had found that PW-1 was running pregnancy of 4-5 months. As she had some problem he gave some medicine to her. PW-3 Dr. Rezaul Karim examined PW-1 on 22.3.1995, i.e., more than one month after the abortion and found as follows: -

B “There was active slight bleeding as per vagina. For confirmation D & E (Dilatation and Evacuation) done and found placental parts inside the uterine cavity which is a sign of incomplete abortion i.e. she was pregnant.”

6. The High Court, after a thorough examination of the evidence, C has recorded a finding that PW-1 was pregnant through the appellant Hasi Mohan Barman who wanted PW-1 to abort the child. As PW-1 declined to do so, Hasi Mohan Barman with the help of Abinash Biswas caused miscarriage of the pregnancy without the consent of PW-1. The High Court accordingly held that it was established beyond any shadow of doubt that D both the appellants had committed an offence under Section 313 IPC. The High Court thus maintained the conviction but reduced the sentence from seven years R.I. and a fine of Rs. 7,000/- to three years R.I. and a fine of Rs. 5,000/- of both the appellants.

7. It appears that during the pendency of the case the complainant E Haleswari Barman married appellant No. 1 Hasi Mohan Barman and both of them are living as husband and wife. She filed an affidavit that she had entered into a compromise and wanted the criminal case pending against her husband Hasi Mohan Barman and the appellant No. 2 Abinash Biswas to be withdrawn as the entire matter had been compromised and both F PW-1 and the first appellant were living peacefully as husband and wife. This Court passed an order directing the learned Additional Sessions Judge to verify the correctness of the affidavit given by PW-1 Haleswari Barman. The learned Additional Sessions Judge has sent a report to this Court that PW-1 Haleswari Barman had verified the affidavit given by her and G had deposed about the correctness of the same, namely, that she and Hasi Mohan Barman were living peacefully as husband and wife. In view of this development that PW-1 Haleswari Barman and appellant No. 1 Hasi Mohan Barman have married and are peacefully and happily living as husband and wife it has been submitted that the appeal deserves to be H allowed and the conviction of the appellants should be set aside.

8. Section 320 of Code of Criminal Procedure says that the offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table. A perusal of Section 320 will show that the offence under Section 313 IPC is not compoundable. Therefore, the consent given by the wife PW-1 or the affidavit filed by her cannot be utilized for the purpose of recording a finding of acquittal in favour of the accused appellants.

9. There are some decisions of this Court wherein the factor of compromise between the accused and the complainant (or injured or person aggrieved) has been taken into consideration for reducing the sentence.

10. The first decision on this point was rendered by this Court in *Ram Pujan and Ors. v. State of Uttar Pradesh*, [1973] 2 SCC 456, wherein the trial court had convicted the accused under Section 326 IPC which is a non-compoundable offence and had sentenced the accused to four years R.I. The High Court took into consideration the compromise between the accused appellant and the injured and reduced the sentence to two years R.I. This Court, after observing that the fact of compromise can be taken into account in determining the quantum of sentence, reduced the sentence to the period already undergone which was little more than four months and further imposed a fine of Rs.1500/- on each of the appellants. *Surendra Nath Mohanty and Anr. v. State of Orissa*, [1999] 5 SCC 238 is a decision of a Bench of three learned Judges. It was observed that in view of the legislative mandate contained in Section 320 Cr.P.C. an offence can be compounded only in accordance with the provisions of the said section. The Court followed the view taken in the case of *Ram Pujan* (supra) and having regard to the fact that the parties had compromised and a period of ten years had elapsed from the date of the incident reduced the sentence of five years R.I. imposed under Sections 307 and 326 IPC to the period of sentence already undergone which was three months and also imposed fine of Rs.5,000/-.

11. There are several other decisions of this Court wherein factor of compromise has been taken into consideration and the sentence has been reduced mostly to the period already undergone and they are *Bankat*

A *and Anr., v. State of Maharashtra*, [2005] 1 SCC 343, *Badrilal v. State of M.P.*, [2005] 7 SCC 55 and *Jetha Ram and Ors. v. State of Rajasthan*, [2006] 9 SCC 255.

B 12. Following the view taken in the above noted cases we are of the opinion that the complainant and the principal accused having already married it will be in the interest of justice if the sentence is reduced to the period already undergone. The appeal is accordingly partly allowed. The conviction of the appellants under Section 313 IPC is maintained but the sentence is reduced to the period already undergone which appears to be about ten months. The fine imposed upon the appellants is also set aside.
C The appellants are on bail. Their sureties and bail bonds are discharged.

B.B.B.

Appeal partly allowed.