Crl.A. 118/2012 BEFORE HON'BLE MR. JUSTICE A.C. UPADHYAY

This appeal is directed against the judgment and order dated 12. 3.2012 passed by the learned Sessions Judge, Hailakandi, in Sessions Case No. 42 /08, whereby the accused was convicted under Section 417 IPC and was sentenced to undergo R.I. for 3 months and to pay a fine of Rs. 1000/-, in default, to suff er imprisonment for a period of one month.

2. The facts leading to filing of this appeal may be stated in brie f as follows:

A few months prior to the filing of the FIR, the accused develop ed intimacy with the minor sister of the first informant and established physical relationship with her by promising to marry her. Finally, the victim conceived and on 31.10.2007, accused on promise of marriage, took the victim girl for causing miscarriage and got the pregnancy aborted. Thereafter, the accused left the victim at the house of informant's cousin Jamila Begum. On query, the victim reported the incident to the first informant stating all the above facts. The informant, elder brother of the victim, immediately lodged the aforesaid FIR.

- 3. On receipt of the FIR to the effect aforesaid, an investigation was launched and on completion of the investigation charge-sheet was submitted a gainst the accused under Section 376/417 IPC. During trial, the prosecution exam ined as many as nine witnesses including the doctor and the I.O and on completion of recording of the evidence of the prosecution witnesses, statement of the accused under Section 313 Cr.P.C. was recorded. The accused took the plea of total denial and came forward to adduce the testimony of two witnesses as D.W. 1 and 2. The defence witnesses categorically stated that the victim got married with the accused socially and they are living together as husband and wife. On complet ion of the trial, the accused was convicted under Section 417 IPC and sentenced as aforesaid giving rise to the present appeal.
- 4. I have heard Mr. B. Kaushik, learned counsel for the appellant a nd Mr. NJ Dutta, learned Addl. Public Prosecutor, Assam, representing the State.
- 5. Learned counsel for the accused-appellant submitted that in orde r to constitute an offence under Section 417 IPC, the accused has to have the di shonest intention to induce the victim to cheat the victim to part with the prop erty by giving a false promise. In order to attract the ingredients of offence u nder Section of 417 IPC, the accused has to dishonestly induce the victim for se xual intercourse with a promise of getting married with her and the intention to cheat has to be discernible from the very inception. There should be dishonest inducement and such intentional inducement must cause or likely to cause damage or harm to the victim in body, mind, reputation or property. But in the instant case, the accused never had attempted to dishonestly induce the victim to belie ve that he would marry her, as because both of them got married subsequently. Le arned counsel for the appellant further pointed out that it is clear from the ev idence of prosecution witnesses that the accused was eager and willing to marry the victim, but because of the resistance put forward by the parents of the vict im the marriage could not be solemnized. Therefore, the element of cheating whi ch is required to establish the charge under Section 417 of IPC was not availabl e against the accused.
- 6. P.W.5, another witness has categorically revealed in his cross-e xamination that due to the resistance put forward by the parents of the victim,

the marriage between the accused and the victim could not be solemnized. In such a situation, the accused cannot be said to have induced the victim to believe t hat he was ready and willing to marry her only for the purpose of enjoying sex w ith the victim.

- 7. D.W.1 and 2 by adducing their evidence have categorically reveal ed that both the victim and the accused got socially married and started living together as husband and wife. The above fact of getting married socially clearly reveals that the accused had no intention to cheat the victim. Therefore, the ingredients of offence under Section 417 IPC are not attracted in the instant case.
- 8. On perusal of the evidence of the witnesses, it clearly transpir es that it was due to the resistance put forward by the parents of the victim th at the marriage between the accused and the victim was not solemnized. The victim and the accused have socially got married, has been proved by the defence witn esses. Apparently, the ingredients of offence under Section 417 IPC are not available against the accused in the instant case. Therefore, the accused is entitle d to acquittal from the aforesaid charges.
- 9. In the result, the appeal is allowed and the appellant is acquit ted of the charge under Section 417 of IPC and the sentence imposed by the learn ed Court below on the appellant, is set aside. Bail bond so submitted on behalf of the appellant stands discharged.
- 10. Send down the records immediately.