

CRIMINAL REVISION

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 3277 of 2009

Judgment On: 31-03-2010.

Santanu Maity

versus

State of West Bengal

POINTS:

DNA TEST- Rape charge made against the petitioner-Prayer for DNA test- Result of DNA test whether absolves him from the charge if other evidence against him-Whether adverse inference can be drawn for not surrendering for DNA Test - Indian Penal Code, 1869 S.376.

FACTS:

The petitioner had developed an affair with the victim on the assurance to marry her and on such assurance the victim allowed the petitioner to co-habit with her and due to such co-habitation she conceived and gave birth to a child. In connection with the case the petitioner filed an application praying for DNA Test, but the Court below rejected such prayer, hence this criminal revision.

HELD:

The petitioner has been charged under Sections 376/417 of the Indian Penal Code, therefore the result of DNA Test would not absolve him from the charge leveled against him, if there are other evidence against him. No adverse inference can also be drawn against any person for his or her not surrendering for DNA Test. Para-4

CASE CITED:

Gautam Kundu Vs. State of West Bengal, 1993 Calcutta Criminal Law Reporter (SC) 92.

For Petitioner: Mr. Pinaki Dhole

Ms. Pranit Mondal

For State: Mr. Joy Sengupta

Ms. Sreyashee Biswas

THE COURT:

1. The present petitioner has been charge-sheeted under Sections 376/417 of the Indian Penal Code. It was the case of the prosecution that the petitioner had developed an affair with the victim on the assurance to marry her and on such assurance the victim allowed the petitioner to co-habit with her and due to such co-habitation she conceived and gave birth to a child. In connection with the said case the petitioner filed an application praying for DNA Test, but the Court below rejected such prayer, hence this criminal revision.

2. Heard Mr. Pinaki Dhole, learned advocate appearing for the petitioner as well as Mr. Joy Sengupta, learned advocate for the State. Perused the impugned order and other materials on record.

3. In the case of Gautam Kundu Vs. State of West Bengal, reported in 1993 Calcutta Criminal Law Reporter (SC) 92 the Hon'ble Supreme Court held that the Court cannot order blood test as a matter of course and whenever application is made such prayer cannot be entertained in order to have a roving enquiry. The Apex Court further held no adverse inference can be drawn against refusal to undergo DNA Test and the Court must carefully examine as to what would be the consequence of ordering the blood test. In paragraph 26 of the said decision the Apex Court held as follows;

(i) That Court in India cannot order blood test as a matter of course;

(ii) Wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(iii) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.

(iv) The Court must carefully examine as to what would be the consequence of ordering the blood test, whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(v) No one can be compelled to give sample of blood for analysis.

4. This is a case, where the petitioner has been charged under Sections 376/417 of the Indian Penal Code, therefore the result of DNA Test would not absolve him from the

charge leveled against him, if there are other evidence against him. No adverse inference can also be drawn against any person for his or her not surrendering for DNA Test.

5. In such view of the matter, I do not find any merit in this application and the same stands dismissed. Interim order, if any, stands vacated.

6. However, this order will not preclude the petitioner to pray for DNA Test at the appropriate stage of the trial and in such case the Learned Trial Court shall dispose of his such prayer in the light of the observation of the Apex Court in the case of Gautam Kundu Vs. State of West Bengal (supra).

7. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)