

HON'BLE SMT JUSTICE ANIS
CRIMINAL PETITION No.835 OF 2008

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ORDER:
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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioners herein challenging the judgment dated 12.06.2008, passed by the Sessions Judge, Vizianagaram, in CrI.A.No.123 of 2005, whereunder and whereby the conviction and sentence passed against the revision petitioners herein for the offence punishable under Sections 376(g), 307 and 201 IPC, vide the judgment dated 30.09.2005 in S.C.No.175 of 2002 by the Assistant Sessions Judge, Vizianagaram, was confirmed.

2. The revision petitioners herein are the accused and respondent herein is the complainant in S.C.No.175 of 2002 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the S.C. before the trial Court.

3. The case of the prosecution is that on 10.03.2002 after completion of poultry work Lodagala Ramulamma and Dalli Ramulamma were coming to their village, both the accused followed them which was witnessed by P.W.6 and Dalli Ramulamma, while Lodagala Ramulamma was alone picking up the Palmyra leaves, both the accused caught her, laid her down and A1 gauged the mouth with his towel and both the accused committed rape on her and after completion of the said act, both the accused in order to screen the offence thrown her into the well nearby the fields. On hearing the cries from well, some villagers brought her

out from the well and thereafter she gave a complaint to the police. P.W.15 received the complaint from P.W.1 and registered the case in Crime No.34 of 2002 of Bhogapuram Police Station. After recording the statements of witnesses and after receiving the medical reports and after completing the investigation, the Investigating Officer filed the charge sheet into the Court.

4. The learned Additional Judicial Magistrate of First Class, Vizianagaram, took cognizance of the case as PRC No.27 of 2002 under Sections 376(g), 307, 201 and 323 IPC and committed the case to the Court of Sessions, Vizianagaram and the same is numbered as SC 175 of 2002 and made over to Assistant Sessions Judge, Vizianagaram for disposal. During trial, to prove the case of prosecution, PWs.1 to 19 were examined and Exs.P1 to P36 were marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C putting all incriminating material available against them. Accused denied the material evidence and reported no oral evidence on their behalf. M.Os.1 to 28 were marked.

6. Trial Court after considering the evidence on record, convicted the accused 1 and 2 for the charges under Sections 376(g), 307 and 201 IPC and sentenced to undergo Rigorous Imprisonment for a period of five years each for the offence under Section 376(g); for the offence under Section 307 IPC, A1 and A2 are sentenced to undergo rigorous imprisonment for a period of four years each and to pay a fine of Rs.1000/- each for the offence under Section 307 IPC and for the offence under Section 201 IPC, A1 and A2 are sentenced to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs.250/- each; and in

default of payment of fine of Rs.1000/- each for the offence under Section 307 IPC, A1 and A2 are sentenced to undergo simple imprisonment for two months each respectively and also directed that the sentences imposed shall run concurrently under Section 427 Cr.P.C.

7. Aggrieved by the conviction and sentence passed by the trial Court, the accused 1 and 2 filed Criminal Appeal No.123 of 2005. The appellate Court after considering the evidence on record, dismissed the appeal confirming the judgment of conviction and sentence passed by the trial Court on 12.06.2008.

8. Aggrieved by the judgments of both the Courts, accused 1 and 2 preferred the present revision. Learned counsel for the revision petitioners argued that the accused are innocent and not committed any offence and trial Court after considering the evidence rightly acquitted the accused for the charge under Section 323 IPC. It is also argued that all the material witnesses turned hostile including P.W.1 and who categorically stated that she had not identified the accused. It is also argued that the evidence of P.W.1 is not corroborated with the evidence of doctor and other witnesses. Therefore, both the petitioners are entitled for benefit of doubt and entitled for acquittal.

9. On the other hand, the learned Public Prosecutor appearing for the State argued that though P.W.1 in her chief examination supported the evidence of prosecution and in the cross-examination she turned hostile, but in the re-examination by the public prosecutor, she again supported the prosecution case. Further, the evidence of P.W.1 supported by the evidence of P.W.10 and medical evidence also supported the evidence of P.W.1 and both the Courts rightly held that both the accused

committed rape on P.W.1. It is also argued that when P.W.1 was examined on 18.05.2005, the lower Court ought not to have granted adjournment till 17.06.2005 and thus violated the provisions of Section 309 Cr.P.C. Further, in the re-examination P.W.1 again supported the prosecution version. Therefore, both the courts rightly convicted the accused for the offences under Sections 376(g), 307 and 201 IPC and prayed the Court to dismiss the revision petition.

10. Now, the point for consideration is --

Whether the petitioners are entitled to set aside the judgment of the appellate Court in Criminal Appeal No.123 of 2005 dated 12.06.2008 confirming the judgment of the trial Court in S.C.No.175 of 2002 passed by the Assistant Sessions Judge, Vizianagaram dated 30.09.2005 as prayed for?

11. **POINT:**

A perusal of the evidence on record clearly establish that P.W.1 is the victim lodged a complaint on 10.03.2002 with P.W.15 stating that on that day she finished her work in poultry firm and she along with one G.Ramulamma coming to their village, at that time both the accused followed them. While P.W.1 alone went and picking up the Palmyra leaves, both the accused caught hold of her and A1 gauged her mouth with towel and both the accused committed rape one after other. Thereafter both the accused to screen the evidence thrown her in a well, which is situated near by fields. On hearing the cries of P.W.1, some of the villagers rushed to the spot and brought her out from the well. Thereafter, she lodged the complaint to the police. As per the evidence of Investigating Officer, who recorded the statements of all the witnesses and P.W.1 was sent to medical examination and also the accused. Admittedly P.W.1 was examined in chief on 18.05.2005, but on the

same day, she was not cross-examined. On 17.06.2005 she was cross-examined by the defence counsel and in the cross-examination she has not supported the prosecution case. But, in the re-examination by the Public Prosecutor, again she supported the prosecution version and she gave the reason for turning hostile in the cross-examination as she was compromised with the accused. Admittedly, the other witnesses, i.e., P.Ws.2 to 9 turned hostile and not supported the prosecution case. But P.W.10 to whom P.W.1 narrated the incident and who drafted Ex.P1 supported the evidence of P.W.1. Coming to the other evidences are concerned, the doctor who examined as P.W.14 states that she examined P.W.1 at 11.30 a.m. and found multiple linear abrasions on both her breast red in colour and that hymen is ruptured and her vagina is admitting two fingers easily and collected some material from her to be sent to the RFSL, Visakhapatnam. Therefore, it is clear that on the date of incident, both the accused raped P.W.1. The other witnesses like P.W.11 Surpanch and P.W.12 Vice surpanch also not supported the prosecution case followed by other witnesses. Both the trial Court as well as the appellate Court after considering the evidence of P.W.1, who clearly stated in her chief-examination that both the accused committed rape on P.W.1 and her evidence is supported by the evidence of P.W.12 the Investigating Officer, held that the prosecution proved the case beyond reasonable doubt for the offences under Sections 376-G and 307 IPC and 201 IPC as per the evidence. Therefore, both the Courts rightly convicted the accused for the above offences and the petitioners have not made out any case for interference of this Court in the judgment of the appellate Court as well as the trial Court and the criminal revision case is liable to be dismissed.

12. Accordingly, the Criminal Revision Case is dismissed.

13. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date:12.03.2015

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