

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Revision Case No.696 of 2007

Between :-

Yarlagadda Rama Rao

.. Petitioner

and

The State of A.P.,
Through rep.by Public Prosecutor,
High Court, Hyderabad

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 30th July, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of Judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether His Lordship wish to see
the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.696 of 2007

ORDER:-

This criminal revision case is filed by the petitioner/accused

challenging the Judgment of the learned XI-Additional District and Sessions Judge (FTC), Guntur at Tenali, dated 24-04-2007, in Criminal Appeal No.434 of 2004, by which the learned Sessions Judge has confirmed the conviction of the petitioner/accused for the offence punishable under Section 376 IPC., and sentence of seven years rigorous imprisonment and a fine of Rs.2,000/- as imposed by the learned Assistant Sessions Judge, Tenali in S.C.No.172 of 2004, dated 18-10-2004.

2. The case of the prosecution is as under:-

The victim in November, 2003 was a girl, aged about 14 years, and was studying 9th class. The accused was a resident of neighbourhood and was plying auto. On 16-11-2003 at about 07.00 p.m., while the victim girl was going to her paternal grand-mother's house, the accused went behind her in his auto, offered her to drop at her grand-mother's house and since they were neighbours, the victim boarded the auto of the accused but instead of taking her to her grandmother's house, the accused took her into the fields, laid her on a bontha in the field by the side of the road and forcibly committed rape on her thrice by holding out a threat that if she reveals about the incident to anybody, her entire family will be killed by setting fire to her house. Thereafter, the accused took the victim in the auto and dropped her at the village centre and went away. Out of fear, the victim did not reveal about the incident to anyone and was not even in a position to take food. Seeing the victim in a dejected and depressed mood, her mother and others asked her as to what happened and on being persuaded, on 19-11-2003 she told her people about the offence committed by the accused. The mother of the victim took her to Duggirala P.S., and lodged the complaint, on the basis of which, a case in Cr.No.95 of 2003 was registered and during the course of investigation, the statements were recorded, the bontha was seized, the clothes of the victim were seized, the clothes of the accused were also seized, both the accused and the victim were medically examined, the clothes were analyzed by RFSL and after completing the investigation, charge sheet is

filed.

3. The case was taken on file as PRC No.11 of 2004 and after complying the mandatory requirements, the case was committed and was tried by the learned Assistant sessions Judge as S.C.No.172 of 2004. The accused denied the charge under Section 376 IPC., which was put to him. The prosecution examined PWs.1 to 10 and produced Exs.P.1 to P.12 and M.Os.1 to 7. The accused denied the evidence on record. The learned trial Judge found the petitioner/accused guilty of the charge, convicted and sentenced him as stated above. The accused was unsuccessful in his appeal. Hence, the revision.

4. The contention of the petitioner/accused is that there are disputes in between the accused and one Koteswar Rao and at the behest of One Ramesh, who is an Advocate, the false case is foisted against the accused. It is submitted that falsity of the allegation is evident from the fact that the complaint is filed three days after the incident even though the jurisdictional Police Station is 4 KMs., away. Learned Counsel further submits that the medical evidence do not corroborate the version of the prosecution witnesses and the evidence of the victim who was examined as PW.1 is riddled with material discrepancies thereby affecting her credibility. Learned Counsel further submits that even if the evidence of the victim is believed, what is manifest is that she was a consenting party to the sexual intercourse in between her and the accused and the prosecution failed to produce genuine evidence to show that the victim was aged about 14 years and hence the accused is entitled to an acquittal. Learned Counsel submits that both the Courts below have erred in believing the testimony of prosecution witnesses and erroneously convicted the accused.

5. On the other hand, learned Public Prosecutor submits that with regard to the delay in lodging the complaint, the same cannot be said to be fatal in view of the convincing explanation offered by the prosecution. The victim girl was aged about 14 years and as is well-known, people in the villages do not rush to a police station to lodge the complaint, thereby adversely affect the future prospects of the tender aged girl. Naturally,

there bound to be consultations and discussions amongst the elders in the family and after giving due thought to all the aspects, a complaint will be lodged. With regard to the discrepancy in the evidence, learned Public Prosecutor submits that the evidence of PW.1 is cogent, convincing and consistent. The discrepancies that are highlighted are too trivial in nature, which do not affect the main fabric of the case of the prosecution. Learned Public Prosecutor submits that the so-called contention of the accused about false implication is too insignificant and by no stretch of imagination can it be said that in the disputes involving the accused and others, a serious imputation will be made by the family of the victim and the victim making serious allegations against the accused. Learned Public Prosecutor submits that with regard to the age, the prosecution has produced the best possible evidence and even medical evidence substantiate that the victim was just aged about 14 years. Her consent, if any, has no significance in the eye of law and therefore the prosecution proved its case against the accused beyond reasonable doubt and accordingly both the Courts below accepted the same. There are no merits in the revision and the same is liable to be dismissed.

6. The point for consideration is as to whether the prosecution could prove its case beyond reasonable doubt so as to sustain the conviction and sentence as imposed by both the Courts below or whether the Judgments rendered by the trial Court and the first appellate Court suffers from any material illegality or irregularity warranting interference by the revisional Court?

7. **Point:-** The admitted case is that the victim PW.1 and the accused are residents of neighbourhood. When the victim is said to be aged about 14 years in 2003, the accused was aged about 22 years. The accused was an auto driver and the victim was a student studying 9th class. The paternal grand-parents of the victim stayed at a distance of about 1 KM., from her house.

8. The allegation, in brief, is that on 16-11-2003 at about 07.00 p.m., when the victim girl was proceeding by walk to her paternal grand-parents house, the accused followed her in auto and offered her to drop at the

destination and since they were known to each other and neighbours, the victim boarded the auto and thereafter, the accused diverted the auto into fields, took out a bontha from the auto, laid it in the fields, and forcibly committed rape on the girl thrice and thereafter, both the accused and the victim boarded the auto and the accused dropped the victim girl in the centre of the village and went away. The further allegation is that the accused has held out a threat of annihilation of the entire family of the victim by setting fire to her house if she reveals the incident to anybody. This made the victim girl to keep silent. But due to the violation of her body, she was not in a position to take food properly and was not keeping good spirits. This prompted her mother to question the victim as to what happened and after great deal of persuasion by her mother and others, the victim narrated the incident which took place on 16-11-2003 and on 19-11-2003 the complaint was filed.

9. The plea of the accused is one of denial and it is his contention that one Ramachandraiah was a tenant in a portion of the house of the accused and he was evicted therefrom. Ramesh, an Advocate and Koteswar Rao are the relations of the said Ramachandraiah. Bearing this grudge in mind, they got the present complaint foisted falsely. The other plea of the accused is that the parents of the victim girl insisted upon the accused to marry the victim girl and since he refused the same, a false complaint is filed. The last and the alternative submission is that even if the evidence is believed, taking into consideration the totality of the facts and circumstances, what is evident is that both the victim girl and the accused had a consensual sex and due to the above rivalries, complaint was filed with a delay of three days.

10. The contentions which are advanced now were raised before both the Courts below. Learned Additional Assistant Sessions Judge and the District and Sessions Judge have negated the said contentions resulting in his conviction.

11. At the outset, it may be stated that though the incident took place at 07.00 p.m., on 16-11-2003, the complaint is filed on 19-11-2003. The reasons for this delay in lodging the complaint are satisfactorily explained

by the prosecution. The victim girl claims that she was under fear and threat of the accused and therefore she did not reveal about the incident to anybody and only after being persistently questioned, she revealed the same on 19-11-2003. This delay, in view of the circumstances of the case, cannot be termed to be decisive and the accused cannot take advantage thereof. It is no doubt true that promptitude in lodging the F.I.R. is what is expected and that is intended to rule out the possibility of false implication due consultations and confabulations. However, if satisfactory explanation is offered about the delay, that aspect pales into insignificance. In cases such as the one in hand where the victim was a teenaged girl and the accused was a neighbour and considering the social stigma that is likely to be attached, there is bound to be delay in giving the complaint. Added to this, there is a plea of the accused that the parents of the victim girl have pressurized him to marry her and when he refused, the complaint is filed. Putting pressure on the accused to marry the victim would not have arisen if the incident in question had not taken place.

12. The other aspect of the matter is as to whether the evidence of the victim who is examined as PW.1 is worthy of acceptance or whether there are any circumstances which makes it difficult to believe her allegation of a physical assault on her. The victim as PW.1 has consistently spoken about the facts which are narrated above. She deposed that on the date of the incident, when she was going to her paternal grandmother's house, which was at a distance of 1 KM., the accused followed her and offered to drop her but instead took her towards the fields, which was at a distance of half a Kilo Meter from Manchikalapudi and when she questioned him as to why he is taking her there, the accused told her that there are certain firewood bundles in the fields to be taken into the auto and so saying stopped the auto. She further deposed that after getting down, the accused asked her to help in lifting the firewood and when she went there, the accused closed her mouth, pushed her down, threatened her by showing a knife, spread a bontha on the ground, removed her clothes and also his own clothes, kept them aside and committed rape on her thrice. It

is further in her evidence that the accused threatened that if she revealed about the incident to the inmates of her house, he would kill all of them by setting fire to the house. Thereafter, the accused took her in the auto and dropped at the village centre. The gist of the evidence is in respect of the events subsequent thereto which have been discussed above. PW.1 is subjected to elaborate and searching cross-examination. She has stood the test of cross-examination and did not fault of. The contradictions that are highlighted are not in respect of the incident proper. She denied the suggestion that by the date of incident, she has completed 16 years of age. She denied that she is giving false evidence on being tutored. She also denied the suggestion that she was having a strong desire to marry the accused and since the accused was not agreeing, this false case is foisted. Her oral evidence is consistent with her complaint Ex.P.1 on all the material aspects. It is also in her evidence that she had no sexual intercourse other than with the accused and on occasion other than the date of the incident.

13. The medical evidence that is produced on record needs to be perused before accepting the oral testimony of the victim. PW.6 is a lady Medical Officer who examined the victim on 19-11-2003 in the afternoon. After having done the examination, the Medical Officer did not find any external injuries on the body of the victim. She however found the hymen was torn but no contusion or tenderness was present. It is elicited in the cross-examination of the Medical Officer that though hymen is torn two or three days prior to the examination, there will not be any pain or tenderness. The Medical Officer gave her opinion that her examination reveal that the victim had sexual intercourse. Ex.P.5 is the medical certificate issued by the Medical Officer.

14. If the medical evidence is juxtaposed with the oral evidence of PW.1, the victim, it clearly shows that the victim had sexual intercourse about two or three days prior to her being examined by the Doctor. Admittedly, the incident took place on 16-11-2003 and the Medical Officer examined the victim girl on 19-11-2003.

15. In view of the above, I have no hesitation in holding that the

prosecution has proved its case beyond reasonable doubt that it is the accused who has sexually assaulted the victim girl on 16-11-2003.

16. The next aspect of the matter is about the age. A careful scrutiny of the evidence on record, no doubt, point towards there being consensual sexual intercourse in between the victim girl and the accused. The following circumstances give strength to this theory.

17. The victim and the accused were neighbours. They were known to each other. The parents of the victim were putting pressure on the accused to marry her. The incident took place after 07.00 p.m. The victim claims that she was going alone towards her grand-parents house which was at a distance about one K.M., and she had to pass half of the distance which had no residential habitation around. The claim of PW.1 is that she was taken into the fields to a distance of 10 yards from the main road which is a busy road connecting Tenali and Mangalagiri. It is also in the evidence that several vehicles pass that way frequently. The time was just around 07.30 p.m. The claim of PW.1 that the accused first went towards the field on the pretext of picking up firewood and then called her to help and when she went inside the field, the accused committed the offence, it is difficult to believe for the reason that there will be no firewood at that time at a turmeric field and that PW.1 would not have ventured inside the field on being called by the accused. There is a specific admission from PW.1 that before the crime was committed, the accused has took out a bontha from the auto, took it inside the fields and laid on the ground and committed the offence. It is also in the evidence of PW.1 that after the crime was committed, the accused took the bontha and kept back in the auto and thereafter they went away ahead. The Medical Officer has not found any external injuries on the person of the victim. If a girl, aged more than 14 years, is forcibly laid down on the ground and that too in the field, which is having standing crops, there are bound to be several injuries on the person of the victim if really force was used on her. Absence of any injuries on any part of the body goes to show that virtually there was no resistance from the victim. These circumstances are sufficient for raising a reasonable suspicion in the claim of the victim

insofar as her allegation about the forcible rape is concerned.

18. Be that as it may, whether the accused is entitled to the benefit of the consent of the victim is the other aspect of the matter. According to the prosecution and the victim PW.1, she was aged 14 years and was studying 9th class. The Medical Officer – PW.7 has examined the girl for determining the age. He is an Assistant Professor, Department of Forensic Medicine, Guntur Medical College. He examined the girl on 21-11-2003 and found that she was a girl of the height of 152 cms., with a weight of about 98 pounds. Her chest was about 73 cms., abdomen 71 cms., and the scalp hair 35 cms. The Doctor found the pubic hair of 4 cms., and also found mammary gland - developing; generative organs – developing, onset of puberty, that the girl attained menarche about six months back, that the victim had 28 permanent teeth with space for 3rd molar present and after a detail examination opined as under:-

“On physical, dental and radiological examination, I am of the opinion that the age of PW.1 is about 14 years. He issued a certificate – Ex.P.8.”

The evidence of the Medical Officer is inspiring. He did a meticulous job in determining the age of the victim as 14 years.

19. The prosecution also relied upon Ex.P.10 which is a Transfer Certificate issued by Head Master, Karumanchi Govindaiah High School, Kanthamrajukonduru – 522 330 for bringing home its case that the victim was aged about 14 years when the incident took place. PW.9 is the Head Master of the said school and he deposed that as per the admission register of the school, the victim joined school in 6th standard on 19-06-2000 and her date of birth is 12-08-1990. It is elicited in the cross-examination that the Transfer Certificate was obtained on 12-03-2004 by the mother of the victim. It is also in the evidence that the school will not maintain any record except the record sheet showing the date of birth of a student. He stated that except for the record sheet issued by the Primary School, there is no other record to mention the date of birth of the victim. It is elicited from the Head Master that the school is Un-aided school but he

denied the suggestion that they do not maintain the correct records as per the rules and regulations.

20. If the evidence of the Head Master of the school and the Transfer Certificate – Ex.P.10 is perused, I have no hesitation in holding that the evidence of PW.9 is truthful and there is no reason to suspect the school record which show that the date of birth of the victim girl is 12-08-1990. This evidence is not the solitary evidence. It is on all fours with the medical evidence on record, so also the claim made by the prosecution witnesses.

21. In view of the above, accepting the oral and documentary evidence on record, I have no hesitation in holding that when the incident took place in November, 2003, the victim girl was aged about 14 years, having attained puberty about just six months prior thereto.

22. In view of the above, the accused cannot be heard saying that he is not liable to be punished for the alleged offence, inasmuch as, both the victim and the accused have participated in a consensual sexual intercourse.

23. The defence of the accused that he being falsely implicated is difficult to be believed. The accused has taken inconsistent stands. Firstly, his case is that there were certain disputes between him and one Ramachandraiah in the matter of that person being evicted from the house of the accused and since Advocate Ramesh is his relation, the accused is falsely implicated. This defence, as already stated, cannot be believed for the reason that admittedly there are no serious disputes as such in between the family of the accused and victim family. The victim and her parents would not have gone to the extent of putting at stake the future and the reputation of the girl by implicating the accused falsely at the instance of either Ramachandraiah, Koteshwar Rao or Ramesh with whom they are not directly related.

24. The other plea of the accused is that this false complaint is foisted since the victim and her mother are insisting the accused to marry the victim. The victim and her mother would not go to the extent of alleging damage to the virginity of the victim and come out openly merely because

more particularly after the accused refused to marry the victim.

25. It is no doubt true that the cases are not far and few where the victim of a sexual assault makes false allegations against a person. But the reason, the ground, the grudge, or the grouse should be of such a nature that makes the victim to say publicly that she has been physically ravished by the accused. There would be no false implication with serious allegations on trivial grounds, disputes or issues. In the instant case, both the pleas taken by the accused cannot be said to be so strong as to make the victim and her people to make such serious allegation against the accused.

26. The alternative plea of the accused is that the victim and the accused being neighbours, had consensual sex. As discussed above, there is evidence on record which points towards the same, but as already noticed, considering the age of the girl as having been proved to be just about 14 years, the accused cannot escape the consequences. He was a young man, aged 22 years and the girl was a tender aged. She was his neighbour. She accompanied the accused in his auto. The accused took advantage of the innocence of the girl and his acquaintance with her and physically violated her.

27. In view of the foregoing discussion and having considered the entire oral and documentary evidence on record and having perused the Judgments of both the Courts below, I see no reason to differ from the view taken by both the Courts below in holding that the petitioner/accused had committed the offence punishable under Section 376 IPC. There are no merits in the revision and the same is liable to be dismissed.

28. With regard to the quantum of sentence, learned Counsel appearing for the petitioner/accused submits that when the incident took place, the petitioner/accused was a boy aged about 22 years and the victim was a teenaged girl. They were neighbours at that time. It is stated that the incident took place in 2003. Now, both the petitioner/accused and the victim girl married to other persons and they are living peacefully. Learned Counsel therefore submits that imposing a punishment of rigorous imprisonment for seven years is too excessive and this is a case

where the Court may exercise the discretion of reducing the sentence by taking a lenient view in the matter.

29. Taking into consideration, the totality of the facts and circumstances of the case, the manner and method in which the incident took place and the evidence on record, I feel that it is a fit case where the sentence of rigorous imprisonment for a period of two years can be imposed instead of sentencing seven years as imposed by both the Courts below. Subject to the above modification, the revision is liable to be dismissed. The point is answered accordingly.

30. In the result, the Criminal Revision Case is dismissed, however, the sentence of rigorous imprisonment for a period of seven years as imposed by both the Courts below is reduced to two years rigorous imprisonment. The sentence of fine shall be sustained. The trial Court shall take steps in accordance with law for serving the sentence.

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

M.S.K.Jaiswal, J

July, 2015
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