

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1175 OF 2014

ORDER:

The petitioner has preferred the present criminal revision case by invoking the provisions under Sections 397 and 401 of Code of Criminal Procedure (Cr.P.C.) being aggrieved by the order, dated 20.03.2014, passed in Criminal Appeal No.41 of 2010 by the Court of the Special Judge for Trial of Offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-V Additional District and Sessions Judge, Nellore, whereby the learned Sessions Judge dismissed the Criminal Appeal by confirming the order of conviction and sentence, dated 16.02.2010, passed in S.C.No.25 of 2009 by the Principal Assistant Sessions Judge, Nellore, whereby the learned trial Judge convicted the petitioner/accused for the offences under Sections 366 and 376 IPC and accordingly sentenced the petitioner/accused to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs.500/- (Rupees five hundred only), in default, to suffer simple imprisonment for a period of one month, for the offence under Section 366 IPC; and to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs.500/- (Rupees five hundred only), in default, to suffer simple imprisonment for a period of one month, for the offence under Section 376 IPC.

The case of the prosecution, as recorded by the Court below, is as follows.

The victim girl Natalam Prasanthi (L.W.4) is aged about 15 years and a minor girl studying 10th class at Z.P.Girls High School, Dargamitta, Nellore. The accused, who is also resident of the same

village, used to follow and tease her while she was going to school and returning to home in town service bus. The accused proposed his love and used to make false promises saying that he would marry her. Then she informed the same to her mother Natalam Parvathi (L.W.1). Then Parvathi chastised the accused several times, but the accused continued to tease Prashanthi.

While so, on 19.06.2008, after school time, the accused went to the school, met Prashanthi, asked her to get down the bus at Muthukur gate and threatened her if she failed to get down at Muthukur gate, he would commit suicide. Due to the said fear Prashanthi got down at Muthukur gate and met the accused. The accused took her in an auto rickshaw, without her willingness. The same was witnessed by Pasam Hymavathi (L.W.3), she informed the same to L.W.1. L.W.1 gave report in the Police Station. The accused took Prashanthi to Thirupathi and kept her in the house of Pokula Siva (L.W.5) for three days. On 22.06.2008, the accused tied yellow thread with a turmeric root around the neck of Prashanthi at Gangamma Temple. The accused pledged the gold ear studs of Prashanthi for Rs.1,500/- and took a house at Satyanayanapuram for rent and stayed with her in that house. The accused had sexual intercourse with Prashanthi on the pretext that he married her. Later, the accused took Prashanthi to their village and kept her in his house for two days and started neglecting her and used to threaten her when she demanded for marriage in the presence of elders. Then Prashanthi, out of fear of accused, went to her parent's house and informed the same. Then, Natalam Parvathi went to Balaji Nagar Police Station, Nellore, and gave report to the police. During the

course of investigation, the Inspector of Police arrested the accused and sent him to the Court for remand. Hence, the case.

To substantiate the case of the prosecution, P.Ws.1 to 9 were examined and Exs.P.1 to P.11 were marked. No oral evidence was adduced on behalf of the defence, but Exs.D.1 to D.3 were marked.

On appreciation of oral and documentary evidence, the trial Court found the petitioner guilty and convicted for the offences under Sections 366 and 376 IPC and sentenced him as stated above. Aggrieved over the same, the petitioner preferred the criminal appeal before the lower appellate Court and that the said appeal is also dismissed. Aggrieved by the same, the present criminal revision case is preferred by the petitioner/accused.

Heard and perused the entire material available on record.

In a case of this nature, the evidence of the victim girl, P.W.5 and the Doctor, P.W.6, who examined P.W.5 victim girl, is to be examined carefully. As per the evidence of victim girl, P.W.5, who is aged about 16 years, she has stated that she was subjected to sexual intercourse without her consent, but in her cross-examination, she has admitted that she has not stated so before the police concerned. Apart from that, a careful perusal of evidence of P.W.1, the mother of the victim girl, P.W.5, establishes the fact that the victim girl is a consenting party. If the consent is given below 15 years, it cannot be said to be a legal consent, but the fact remains here is that the victim girl is aged about 16 years as per the evidence of the victim girl, P.W.5 and her mother, P.W.1. Even though the Doctor opined that the victim girl is aged about 15 years, it can be taken as one or two years plus or minus. Considering the same, it can be taken that the age of the victim girl is about 17 years. Further,

the age of the accused is about 21 years. The fact remains that the petitioner along with the victim girl went to the temple and married her and also traveled to various places.

This Court is of the view that as the petitioner is in adolescent age and the victim girl is age about 17 years, and that too, there is a love affair between the petitioner and the victim girl, the consent given by the victim girl is to be treated as a legal consent knowing all the consequences of the said affair. Hence, the offence under Section 376 IPC is not made out and that the petitioner/accused is entitled for acquittal of the offence under Section 376 IPC.

Insofar as offence under Section 366 IPC is concerned, it is an admitted case of the victim girl, P.W.5, that she went along with the petitioner/accused and also traveled to various places along with the petitioner/accused and also the petitioner tied the yellow thread on the victim girl concerned. Hence, this Court is of the view that in the absence of ingredients of Section 366 IPC, the petitioner/accused cannot be convicted for the said offence and as such, the petitioner/accused is entitled for acquittal for the said offence.

In view of the above, the conviction and sentence imposed against the petitioner/accused for the offences under Sections 366 and 376 IPC are liable to be set aside and the petitioner/accused is entitled for acquittal of the said offences.

The conviction recorded against the petitioner-accused by the trial Court in S.C.No.25 of 2009 as confirmed by the lower appellate Court in CrI.A.No.41 of 2010 for the offences under Sections 366 and 376 IPC are hereby set aside and he is found not guilty of the said offences and acquitted of the charges. The fine amount, if any,

already paid by the petitioner shall be returned. The petitioner shall be set at liberty forthwith if not required in any other crime.

The Criminal Revision Case is accordingly allowed.

JUSTICE RAJA ELANGO

29.07.2015
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