

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.897 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 petitioner herein challenging the judgment dated 20-06-2008, passed by the III Additional District and Sessions Judge, Tirupati, Chittoor District, in Criminal Appeal No.310 of 2005, whereunder and whereby the conviction passed against the revision petitioner herein for the offence punishable under Section 376 (1) of the Indian Penal Code, 1860, (for short 'I.P.C'), vide the judgment dated 27-12-2005 in S.C.No.145 of 2004 by the Assistant Sessions Judge, Puttur, was confirmed.

2. The revision petitioner herein is the accused, whereas respondent is the complainant in S.C.No.145 of 2004 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 prosecution in brief is that on 09-11-2003 at about 10.00 A.M., PW1 went to water tap situated near the house of PW4, which is at a distance of 70 feet from her house to fetch water. At that time the accused approached her and enquire her well being, but she did not respond to it positively. As the accused advanced to get more acquaintance with her turned down, caught hold of her with one hand and gagged her mouth with another hand and dragged her into the unlocked house of PW4 and committed rape on her forcibly during the temporary absence of inmates in the house of PW4. Due to that the defacto complainant suffered heavy bleeding from her genital organ and after committing rape the accused absconded from the village. PW1 reached her house and fell unconscious. While proceeding to her house she informed this fact to PW6. PW6 was passed on the information to the parents of PW1, who were working in the fields. Immediately the parents of PW1 took her to a private

nursing home of PW8 at Pallipattu on the same day and admitted her for treatment. On 10-11-2003, PW1 informed to the lady doctor that accused committed rape on her. After discharging from the hospital PW1 along with her parents proceeded to Police Station on 10-11-2003 and presented a complaint against the accused and the same was registered as a case in Crime No.59 of 2003 under Section 376 of IPC by PW12 - A.S.I., of Police, S.R. Puram Police Station. PW12 collected the blood stained clothes of PW1 under the cover of panchanama in the Police Station on 10-11-2003 at about 11.00 P.M., and handed over the investigation to PW13 – Inspector of Police. PW13 recorded statements of PW1 and sent her for medical examination to the Government Hospital Community Health Centre, Pallipattu. He also examined the parents of the victim PW1 and visited the scene of offence and noted the features of scene of offence and examined PWs.3, 4 and 6 and recorded their statements. Thereafter he recorded the statement of private Doctor – PW8. On 11-11-2003, at about 5.00 P.M., the Investigating Officer arrested the accused and seized M.Os.4 and 5 from the accused under the cover of Mahazar and sent him to judicial custody for remand. After conducting the potential test and after receiving the report from the R.F.S.L., Thirupati, PW13 filed charge sheet against the accused for the offence under Section 376 of I.P.C.

4. The charge sheet was taken on file by the learned Judicial Magistrate of First Class, Puttur, vide P.R.C.No.3 of 2004 against the accused, numbered as S.C.No.145 of 2004. During trial, on behalf of prosecution, PWs.1 to 13 were examined and Exs.P1 to P17 and M.Os.1 to 5 were got marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C, putting the incriminatory material deposed against him. The Accused denied the same and reported no oral evidence, but got marked Ex.D1 on his behalf. After hearing the arguments and after perusing the record, the learned Assistant Sessions Judge on 27-12-2005, gave judgment and convicted the accused and sentenced him to undergo simple imprisonment for a period of seven (7) years and to pay a fine of Rs.1,000/-, and in default to undergo Simple Imprisonment for a period of one month for the offence punishable under Section 376 (1) I.P.C.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.310 of 2005 before the III Additional District and Sessions Judge, Tirupati, where the appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the findings of the trial Court, dismissed CrI.A.No.310 of 2005 by confirming the conviction passed by the trial Court for the offence punishable under Section 367 (1) I.P.C.

7. Being aggrieved by the judgment of the appellate Court in CrI.A.No.310 of 2005, accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/accused argued that there is no necessity for the victim girl to come to the house of PW4 for taking water from the tap situated there where the incident alleged to have been occurred when there is another water tap in between the house of PWs.1 and 4. It is also argued that the prosecution story is created by PW1 only to pressurise the accused to marry her. It is also argued that there are no injuries either on the cheek, breast, hands and external genitalia of PW1, which shows that she has not resisted the acts of the accused when the accused attempted to close her mouth with one hand and dragged her into the house of PW4. It is also argued that as per the evidence of PW2, the village consisting of 100 to 150 houses and there are the houses of one Manikyam, Peddagangaiah and Krishnaiah and if at all the incident occurred at 10.00 A.M. it must have attracted their attention. The alleged incident has taken place in the midst of the village so not hearing of cries of victim and not witnessing the incident by any person cannot be believed. It is also argued that PW1 already taken treatment with PW8 private Doctor. Therefore, because of committing rape on her she got heavy bleeding cannot be believed and the Investigating Officer has not noticed any incriminating material at the scene of offence. It is also argued that it is an unnatural story of PW1 that PW4 was unlocked the house and went away from the house. Learned counsel also argued that the material objections were sent to RFSL on 14-11-2003 and report given by the RFSL on 13-11-2003. Learned

counsel further argued that there is every likelihood of doubt regarding the report of PW11 and benefit of doubt should be given to the accused. It is also argued that the evidence of PWs.8 and 9 i.e., private and the Government Doctors shows that the victim girl does not have any injuries on her person. Further in the absence of any injuries on the body of PW1 shows that there is no such incident has taken place and finally argued that the accused was falsely implicated in this case and prayed the Court to allow the revision and set aside the judgment, dated

20-06-2008 passed in Criminal Appeal No.310 of 2005, confirming the judgment, dated 27-12-2005 passed in S.C.No.145 of 2004 on the file of the Assistant Sessions Judge, Puttur.

9. On the other hand, learned Public Prosecutor argued that the prosecution able to prove the guilt of the accused by producing the cogent evidence. Further, the evidence of PW1 itself is sufficient to prove the ingredients of Section 376 of IPC and the Investigating Officer after recording the statements of witnesses sent the material objects to RFSL for examination and after receiving the report and after completing the investigation he filed charge sheet into the Court. It is also argued that the evidence of PW1 coupled with the evidence of PWs.2, 8, 9 and 11 clearly proved that the accused committed rape on PW1 forcibly without her consent. Therefore, the prosecution able to prove the guilt of the accused for the offence under Section 376 of IPC and the concurrent findings of both the Courts below needs no interference by this Court and prayed the Court to dismiss the revision.

10. Now, the point for determination is --

Whether the revision petitioner herein is entitled to set aside the judgment passed by the appellate Court, as prayed for or not?

11. **P O I N T:** A perusal of the record shows that PW.1, who is the *de facto* complainant and the victim girl, stated in her evidence that on 09-11-2003 at

about 10.00 A.M. she went to fetch water from the tap situated near the house of PW4. At that time her parents were not present in the house as they went for coolie work. While she was fetching water from the tap the accused went there and enquired about her, when she did not respond to the accused, the accused caught hold her with one hand and gagged her mouth with another hand and dragged her into the unlocked house of PW4 and committed rape forcibly on her. At that time PW4 and his family members were not present in the house. Though she resisted the act of the accused she was helpless. PW1 also stated that after committing rape on her the accused ran away from the scene of offence and she suffered heavy bleeding from her vagina. PW1 also stated that with great difficulty she went to her house and in the midway she informed about the incident to PW6. After reaching the house she lost consciousness and regain consciousness in the noon. Her parents took her to Vijaya Nursing Home of PW8 and when she regained consciousness she narrated the incident to PW8 also. PW8 advised her parents to take her to Government Hospital. On the same day at about 10.00 P.M. PW1 along with her parents went to S.R. Puram Police Station and lodged Ex.P1 complaint and the same was registered as a case in Crime No.59 of 2003 under Section 376 of IPC. Thereafter she was sent to Government Hospital for medical examination. On 11-11-2003, on the requisition of S.H.O., S.R. Puram Police Station, PW9 examined her and found no external injuries over the lips, cheeks, breast and hymen absent. She also observed no tear or fresh injury. She further stated that Vaginal swabs, smear, public hair and nail clippings of PW1 were preserved and sent to R.F.S.L. for analysis. During the course of investigation, Police seized M.Os.1 to 3, under garment, petty coat, and jacket (polyester) from PW1. PW9 further stated that after intercourse semen and spermatozoa will be detected upto 36 hours and by chemical test they can detect upto few months also.

12. There is no dispute that PWs.3, 4, 6 and 7 not supported the prosecution case. A perusal of the evidence of PW5 shows that he was called by Inspector of Police and visited the scene of offence and drafted Ex.P4 scene of offence observation report. PW10 is the Doctor who examined the accused and issued Ex.P10 certificate stating that the accused is a potent person. PW11 -

Assistant Director, R.F.S.L., Thirupathi stated about examining of the material objects sent to him in Crime No.59 of 2003 and issued opinion under Ex.P11. PW12 – A.S.I. of Police stated that he received complaint from PW1 and registered the same as a case in Crime No.59 of 2003 and issued F.I.R. He also stated that he seized M.Os.1 to 3 under Ex.P13 and thereafter PW13 – Circle Inspector of Police took up further investigation. PW13 stated that he recorded the statement of witnesses and conducted rough sketch of scene of offence in the presence of PWs.5 and 7. He also stated that on 12-11-2003 he produced the accused before the Medical Officer and after receiving the certificate from the Doctor he arrested the accused and sent him to the Court for judicial custody. Thereafter on 15-11-2003 he filed requisition before the Prl. Judicial Magistrate of First Class, Puttur for examination of PW1 under Section 154 of Cr.P.C., and after completion of investigation he filed charge sheet into the Court.

13. Learned counsel for the accused submitted that there is no need for the victim girl to fetch the water near the house of PW4 and further it is also argued that a false case has been foisted by PW1 against the accused to pressurise him to marry her. He further argued that sending of material objects to the R.F.S.L. is also doubtful as the R.F.S.L. report was on 13-11-2003 and as per the evidence of Investigating Officer he sent the material objects for analysis on 14-11-2003. He also argued that as per the evidence of PWs.8 and 9 there are no external injuries on the defacto complainant and PW8 stated that prior to the alleged offence, she was taken treatment for about six days.

14. Admittedly, all these grounds were raised by the petitioner/accused during the course of trial of Sessions Case No.145 of 2004 on the file of the Assistant Sessions Judge, Puttur and also taken the same grounds when argued before the appellate Court in Criminal Appeal No.310 of 2005. Both the Courts answered the grounds raised by the petitioner/ accused as per the evidence available on record. Even before this Court also the petitioner/accused raised the same grounds and prayed the Court to set aside the judgment of the appellate Court as well as the Sessions Court.

15. A perusal of the evidence of PW1 clearly shows that on 09-11-2003 at about 10.00 A.M., when she went to get the water from the tap near the house of PW4 the accused came there and took her to the unlocked house of PW4 and committed rape on her forcibly. It is settled law that conviction can be passed only on the solitary evidence of victim if it is convincing and trustworthy. PW1 in her evidence categorically stated that accused committed rape on her forcibly and she informed the said fact to her parents. PW2 is the mother of PW1. Her evidence also corroborated with the evidence of PW1 in all aspects. After the alleged incident, PW2 took PW1 to PW8 – private Doctor, who gave treatment and sent her to Government Hospital, as the bleeding was not stopped. PW9 is the Government Doctor, examined her and issued certificate. No doubt, PW9 noticed that there are no external injuries on the body of PW1. She issued Ex.P9 certificate and as per Ex.P9 – biological and serological examination report human semen and spermatozoa was detected on item Nos.1, 2, 4, 6 and 8.

16. It is no doubt true that PWs.3, 4, 6 and 7 turned hostile and not supported the prosecution case. Before going into the merits of the case it is to be noted that the revisional jurisdiction of the High Court, while examining an order of acquittal is extremely narrow. It ought to be exercised only in cases where the trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Further, the interference with the order of acquittal passed by the trial Court is limited only to exceptional cases, when it is found that the order under revision suffers from glaring irregularity or has caused miscarriage of justice or when it is found that the trial Court has no jurisdiction to try the case or where the trial Court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. If PWs.3, 4, 6 and 7 did not support the prosecution case no prejudice would be caused to the prosecution case as the evidence of PWs.1 and 2 is corroborated with each other and with the medical evidence. Therefore, both the Courts rightly gave a finding that accused committed rape on PW1.

17. The contention raised by the petitioner that he was pressurised to marry PW1 cannot be believed and none of the witnesses have stated all these aspects. It is also contended by the defence that when there is a tap near the house of PW1 why she went to the tap near the house of PW4 also not relevant to prove the case of the prosecution. In the cross-examination of PW1 it is not elicited that the tap near the house of PW1 is getting the water or not. The other contentions raised by the petitioner were negatived by both the Courts. Therefore, the re-appreciation of evidence by this Court does not arise and the petitioner has not made out any case to interfere with the concurrent findings of both the Courts through the revision petition.

18. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 20-06-2008, passed by the
III Additional District and Sessions Judge, Tirupati, in Criminal Appeal No.310 of 2005. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

April 01, 2015

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