

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

Criminal Revision Case No.603 of 2007

ORDER:-

The revision is directed against the Judgment dated 25-01-2007 in Criminal Appeal No.62 of 2005 on the file of the I-Additional District and Sessions Judge, Kurnool, by and under which, the conviction of the petitioner/accused for the offences punishable under Sections 451 and 376 (2)(f) r/w 511 IPC., and sentence of one year and five years respectively with a fine of Rs.100/- and Rs.500/- inflicted by the Principal Assistant Sessions Judge, Kurnool, in S.C.No.256 of 2004, dated 30-06-2005 was confirmed.

2. The facts in brief are as under:-

The victim PW.1, aged about 13 years in September, 2003, is the grand-daughter of PW.2. She is the daughter of PW.3 and agnate of PW.4. PW.1 is a school drop out after completing her V standard. They were all residents of Munugala village, Gudur mandal. The petitioner/accused is the resident of the same village and a neighbouring resident.

The allegations in brief are that on 06-09-2003 the parents of the victim PW.1 went to the fields leaving PW.1 in the company of her grandmother PW.2. At about 02.00 p.m., in the afternoon, PW.2 went to answer the calls of nature. The petitioner/accused entered the house and enquired from PW.1 as to where is PW.2. On being told that PW.2 went to answer calls of nature, the petitioner/accused lifted the victim and laid her down in the 'gadipadu' (a place where the cattle is kept), removed her petticoat, cut drawer, kissed her cheeks and raped her and when she raised hue and cry, her grandmother PW.2 came and on seeing her, the accused ran away from there. The neighbouring residents have seen the accused going away from the house. On the same day at about 05.00 p.m., a complaint was lodged which was registered as Cr.No.28 of 2003 by Gudur Police and during the course of investigation, the statements

were recorded, material objects were seized, scene of offence panchanama was conducted, the victim girl was sent for medical examination, the accused was apprehended and after completing the investigation, charge sheet was filed.

3. The learned trial Court recorded the evidence of P.Ws.1 to 13 and Exs.P.1 to P.20 and M.Os.1 to 8 were marked. Upon considering the material on record, the learned trial Court convicted the petitioner/accused and sentenced him as stated, which was confirmed in appeal by the learned I-Additional District and Sessions Judge, Kurnool.

4. Aggrieved by the same, the petitioner/accused preferred the present revision contending that both the Courts below have erred in believing the case of the prosecution witnesses inspite of there being material contradictions and inconsistencies and erred in holding them guilty of the offences. The contention of the petitioner/accused is that there were disputes with regard to the property in between the petitioner/accused and the family of the prosecutrix and in view of the same, he has been falsely implicated. It is further submitted that the medical evidence on record do not substantiate the charge and the evidence of the victim – prosecutrix is not corroborated. Hence, the accused is entitled for acquittal.

5. The substance of the allegation is that finding the victim PW.1 alone in the house, the petitioner/accused lifted her, laid her down and committed the offence. The petitioner/accused of having attempted to commit rape on the victim, he was seen going out of the house by the neighbouring residents and also PW.2 who returned home just at that time. Within about three hours thereafter, the complaint is lodged. The testimony of PW.1 is crucial for determining the guilt or otherwise of the accused and what is required to be seen is as to whether there is corroboration to the claim made by the prosecutrix from the medical evidence which comprises of the oral evidence of PW.9 and Ex.P.7. Ex.P.11 is the final opinion issued by the Doctor and it is borne out from the above that human semen and spermatozoa are detected in the specimen vaginal fluid. It also establishes that the victim girl did not attain

puberty, that the hymen was intact and there was no penetration and consequently there was no rape. PW.1, the victim, has given the following narration of events that took place on the date of the incident. She being a child witness aged about 13 years was searchingly enquired about her competence to give evidence and on being satisfied, her evidence was recorded. Having carefully perused the entire evidence of PW.1, I have no hesitation in holding that PW.1 is a witness competent to give evidence and the same has a ring of truth without there being any semblance of being tutored. It is in her evidence that on 06-09-2003 at about 02.00 p.m., herself and her grandmother PW.2 and her younger brother, aged about 3 years, were in the house. Her parents went to Chinthamanu Cheru and her elder brother went to Gudur High School and her younger sister went to her school. At about 02.00 p.m., her grandmother went to attend calls of nature and asked PW.1 to sweep the house in her absence. When she was sweeping the house and the youngest brother went out to play, the accused came there and enquired from her as to where her grandmother has gone. On being told that she went to answer calls of nature, the accused lifted her and threw her in *gadipatlo* which she clarified as the place where the cattle is kept. She further deposed that thereafter the accused lifted her langa, removed her underwear and did mayadaram on her. She further deposed that the petitioner/accused has rubbed her private parts with his body and kissed her. In the meantime, some liquid has oozed from his body which fell on her private parts and also thighs. She further deposed that when the accused was doing those acts, she was weeping and was pushing the accused aside. In the meanwhile, her grandmother came and seeing her, the accused escaped from there. Thereafter, she cleaned her body and thighs with the underwear and narrated as to what happened to her grandmother. Immediately, they all went in an auto to the Gudur P.S. and lodged the complaint.

6. PW.1 has been elaborately and searchingly cross-examined on

every aspect. She withstood the comprehensive cross-examination but she is not shaken insofar as the material allegations are concerned. It is elicited in the cross-examination that while committing the acts, the accused has removed his dhoti but has not removed his underwear but committed the crime without removing it. She also admits that the accused did not put his penis inside her private part but he simply rubbed it on her private part by catching hold of his penis. She further stated that she did not sustain any injuries. Upon carefully perusing the evidence of PW.1, there is no doubt, whatsoever, that the tender aged girl has given a lucid account of what all happened on the said date and time without there being any embellishment or exaggeration. In substance, what could be culled out from her evidence is that the accused, a young boy aged about 21 years, lifted her and threw her on the ground, removed her clothes and rubbed his penis on the private part of the girl and in the meantime he had ejaculation which fell on both the thighs and the vagina of the victim girl. It is a clear case where the petitioner/accused has attempted to commit rape on the victim girl. Admittedly, there was no penetration and the medical evidence is also in accordance with what PW.1 claims that there was no penetration but there was ejaculation from the body of the accused when he rubbed his body with that of the victim girl PW.1. The other evidence on record comprises that of PW.2 to the effect that she has seen the petitioner/accused going out of the house and found PW.1 naked and when enquired, she was told about the incident. Without wasting any time, they went to police station and lodged the complaint. The neighbouring resident PW.4 has also seen the accused going out of the house. PW.3 is the father of the girl and he came to know about the incident. The Medical Officer PW.8 found the petitioner/accused potent and competent to have sexual intercourse. The lady Medical Officer PW.9 has found no injuries on the body of the victim girl but on chemical analysis it was found that there was presence of human semen and spermatozoa from the fluid taken out of the vagina of PW.1. The clothes with which PW.1 claim to have cleaned her body after

the accused ejaculated on her body have also been produced and they also substantiate the evidence of PW.1. The only defence taken by the petitioner/accused is that due to disputes in between the elders of PW.1 and the accused, he has been falsely implicated. Both the Courts below have relied upon the authority of the Supreme Court which clearly lays down that defence cannot be accepted for the reason that merely because there are some civil disputes in between the elders, the elders of a family would make a serious allegation of teenaged girl being raped by the opponent. As already stated, the evidence of PW.1 is consistent, cogent, convincing and inspiring the confidence of the Court. Even though there need be no corroboration therefor still substantial corroboration is found in the evidence of PWs.2, 4 and the medical evidence on record.

7. Both the Courts below have properly appreciated the evidence on record and found the petitioner/accused guilty of having attempted to commit rape on PW.1 after having criminally trespassed into the house. Upon carefully perusing the evidence on record, I see no reason to differ from the concurrent Judgments of the trial Court as well as the appellate Court.

8. The next aspect of the matter is about the quantum of sentence. Learned Counsel appearing for the petitioner/accused submits that he is a young boy aged about 21 years and that sentencing him to imprisonment of five years for the alleged offence of attempt to commit rape is disproportionate to the gravity of the crime committed by him. It is further submitted that the alleged incident took place in September, 2003 and that there are no other incidents of violation of law in between the two families. Learned Counsel submits that keeping in view the entire factual background, the punishment be reduced. It is further submitted that the offence that is attracted in the instant case is Section 376 read with 511 IPC., simplicitor but not Section 376 (2)(f) read with 511 IPC.

9. Upon carefully perusing the evidence on record, the surrounding facts and circumstances, the age of both the petitioner/accused and the

victim – PW.1, the relationship and the subsequent conduct, I feel that the ends of justice will be met if the sentence of rigorous imprisonment is reduced to the period of one year for the offence punishable under Section 376 read with 511 IPC. The other sentence of one year rigorous imprisonment for the offence punishable under Section 451 IPC., needs no interference. Subject to this modification, the Criminal Revision Case is liable to be dismissed.

10. In the result, the sentence of imprisonment imposed against the petitioner/accused by the Courts below for the offence under section 376 (2) (f) r/w. Section 511 IPC is modified to that of Section 376 r/w. Section 511 IPC and the sentence is reduced to one year rigorous imprisonment instead of 5 years rigorous imprisonment. The sentence of imprisonment imposed against the petitioner/accused under section 451 IPC shall be maintained without any modification. The fine imposed by the Courts below is sustained. Both the sentences shall run concurrently.

With the above observations, the Criminal Revision Case is dismissed. The trial Court shall take steps, in accordance with law, for apprehending the revision petitioner/accused for serving the sentence.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date:27-08-2015
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