

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.925 OF 2008

O R D E R:

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 28-04-2008 passed by I Additional District & Sessions Judge, Ongole, in CrI.A.No.4 of 2008 whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Sections 448, 376 r/w 511 IPC vide the judgment in S.C.No.6 of 2007 by the Principal Assistant Sessions Judge, Ongole was confirmed.

2. The revision petitioner herein is the accused and respondent herein is the complainant in S.C.No.6 of 2007 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The case of the prosecution in brief is that the victim girl Guthi Kalyani is a deaf and dumb girl aged 13 years and studying 4th class in Government school in Ongole along with others. In that school, there are girl and boy students and also physically handicapped students also such as deaf, dumb and blind. The girl students who are availing boarding facility used to sleep in the first room and boy students used to sleep in second room of said school. That on the intervening night of 17/18-11-06 after having dinner, all the students went to sleep and the accused who is aged 35 years and resident of Thurupupalem of Ongole town, is a vagabond, entered into the hostel of school by jumping the gate with a view to enjoy the girl students sexually and satisfy his lust. Having entered into the room he fell upon PW.2 G.Kalyani, embraced her, kissed on her face, lifted her skirt and attempted to commit rape on her. When

PW.2 woke up and raised hue and cries, the other girl students woke up and pushed the accused aside. But the accused pushed them aside. Thereupon, LW.3 Mis.Govindamma and other girl students woke up watchman PW.3 and his wife, who rushed there and found the accused on the victim girl trying to commit rape on her. It is further stated that the watchman with the assistance of girl students dragged the accused and thereafter, they have informed the incident to the Principal of the school and also to the police over phone. PWs 5 and 6 who were patrolling in Ongole Town rushed to the scene of offence immediately after receipt of phone call examined PW.1 and recorded her statement and said statement was sent to police station. PW.4 registered a case in Cr.No.300 of 2006 under Sections 448, 376 r/w.511 IPC and sent the express FIR to all concerned. Police took the custody of the accused, who was detained by the watchman and other school inmates, interrogated the accused and examined the victim girl PW.2 along with the other witnesses. The investigating officer prepared rough sketch of scene of offence and after completing the investigation produced the accused for judicial remand and after completing the investigation filed charge sheet into the Court.

4. The learned Principal Assistant Sessions Judge took cognizance of the case and framed charges for the offence punishable under Sections 447, 365 r/w.511 IPC against the accused. During trial, to prove the case of prosecution, PWs.1 to 6 were examined and Exs.P1 to P4 were marked. CW.1 also examined.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no oral or documentary evidence on his behalf.

6. The trial Court, after perusing the oral and documentary

evidence convicted the accused for the offence punishable under Sections 448 and 376 r/w. 511 IPC and sentenced him to under go Simple Imprisonment for a period of six months for the offence punishable under Section 448 IPC and further sentenced him to undergo Simple Imprisonment for a period of five years and to pay a fine of Rs.1000/- in default for one month for the offence punishable under Section 376 r/w.511 IPC. Both the sentences shall run concurrently.

7. Aggrieved by the judgment of the trial Court, the accused preferred Crl.A.No.4 of 2008 on the file of I Additional District & Sessions Judge, Ongole after considering the evidence on record, the Appellate Court passed the judgment on 20-04-2008 confirming the judgment of the trial Court and dismissed the appeal.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.4 of 2008 the accused preferred the present revision.

9. Learned counsel appearing for the revision petitioner/accused argued that there is discrepancy in the evidence of Pws 1 to 3. Therefore, the Court ought not to have believed the evidence of Pws 1 to 3. Further the trial Court and the appellate Court failed to consider the contentions raised by the accused and also failed to consider that PW.1 has not informed about the incident to PW.3 immediately. It is also argued that the Court below failed to consider that the accused was arrested after three days of the incident. That there is no actual incident happened. Therefore, prayed the Court to take lenient view as the accused was in intoxicated condition.

10. On the other hand, learned Public Prosecutor argued that the contention of the accused that he was arrested after three days of the incident cannot be accepted as the accused was caught hold red-

handedly by the police as well as inmates of the hostel. Further the evidence of Pws 1 to 5 is consistent regarding the manner of the incident and reporting to the police. PW.6 is the Investigating Officer who recorded the statements of all the witnesses and also prepared rough sketch of scene of offence under Exs P3 and P4 and filed charge sheet into the Court. As the prosecution able to prove the ingredients of Sections 448 and 376 r/w.511 IPC both the Courts concurrently held that the accused committed the offence and rightly convicted him for the said offence and the findings of both the Courts needs no interference and prayed the Court to dismiss the Revision.

11. Now, the point for determination is --

Whether the petitioner is entitled to set aside the judgment of the appellate Court in Criminal Appeal No.4 of 2008, dated 28-04-2008 as prayed for?

POINT:

12. A perusal of the record shows that PW.2 is deaf and dumb girl and she was studying 4th class in the Government high school for Boys and Girls. PW.2 who is the victim girl staying in the hostel meant for them along with the other inmates. PW.2 is a minor girl and she is a deaf and dumb girl and she could not have any acquaintance with the accused and she does not have animosity with the accused to file false complaint and depose falsehood. PW.2 in her evidence clearly stated about the acts of the accused through gesture and signs as embraced her, kissed her, lifted her skirt and tried to commit rape on her and the watchman came to the scene of offence after other inmates raised hue and cries. As she was deaf and dumb girl, CW.1 was brought into picture so that he can understand the questions and translated into evidence. The evidence of PW.1 go to show that while the victim was sleeping, the accused trespassed into the hostel room and tried to commit rape, when PW.2 raised hue and cries, the other inmates woke-up and caught hold the accused

rehandedly. The evidence of Pws 2 and 3 also similar in line regarding the manner of the offence committed by the accused while they were sleeping. When Pw.2 and other inmates raised hue and cries and tried to caught hold of the accused, the watchman and his wife arrived prevented the accused in committing the offence. Basing on the complaint given to the Principal and police through phone, the Investigating Officers Pws 5 and 6 who were on patrolling duty rushed to the spot and took the custody of the accused. Thereafter, a case in Cr.No.300 of 2006 was registered against the accused. PW.6 conducted investigation and filed charge sheet into the Court. Pws 1 to 3 are eye-witnesses to the occurrence and Pws 4 and 5 who are the Investigating Officers rushed to the scene of offence on that day. Therefore, the contention of the accused that he was arrested three days after the alleged incident cannot be accepted as the accused was arrested and remanded to judicial custody on the date of Ex.P.1. Basing on the evidence of Pws 1 to 3, the prosecution could able to prove the guilt of the accused for the offences punishable under Sections 448, 376 r/w.511 IPC, though there are discrepancies in the evidence of prosecution witnesses and those discrepancies are not fatal to the prosecution case. The evidence of PW.1 to 3 supported by the evidence of Investigating Officers clearly establishes the charge leveled against the accused. Therefore, the petitioner has not made out any grounds to interfere with the judgment of the appellate Court as well as the trial Court.

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

ANIS, J

10-03-2015
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