

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1763 OF 2007

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 17.12.2007, passed in Criminal Appeal No.322 of 2005 by the Court of the VIII Additional Sessions Judge (FTC), Guntur, whereby the learned Sessions Judge modified the conviction under Section 376 IPC read with Section 511 IPC as one under Section 354 IPC and also modified the sentence of rigorous imprisonment for a period of two years instead of three years and confirmed the sentence of fine of Rs.1,000/- (Rupees one thousand only) imposed by the trial Court by order dated 31.08.2005, passed in S.C.No.244 of 2004 by the I Additional Assistant Sessions Judge, Guntur.

The case of the prosecution is that the victim girl, P.W.2 is the daughter of *de facto* complainant, P.W.1, who came to the police station at 8.00 p.m., on 05.12.2003 and complained that the accused is residing opposite to her house and at about 4.30 p.m., took the girl to his house and closed the doors and as he did not open the door, she went and knocked the door and when the accused opened the door, she found the girl on the cot and chastised the accused and brought the girl back to the house. At the time of giving bath, she found some blood stains on the drawer of the victim girl and when questioned, the victim girl stated that the accused bitten on her private part and again accused came in drunken state and picked up quarrel and behaved in abused manner. The said complaint was registered under Section 376(F) read with Sections 511, 377 and

354 IPC. After examination of the witnesses, the drawer was sent to forensic lab, which confirms there was no blood stains and as such, filed charge sheet under Section 376 IPC and Section 511 IPC and Section 354 IPC.

To substantiate the case of the prosecution, P.Ws.1 to 8 were examined and Exs.P.1 to P.5 and M.O.1 was marked on behalf of the prosecution. D.W.1 was examined on behalf of the accused.

On appreciation of oral and documentary evidence, the trial Court found the petitioner guilty and convicted for the offence under Section 376 IPC read with Section 511 IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- (Rupees one thousand only), in default, to suffer simple imprisonment for a period of three months. The lower appellate Court modified the conviction to the one under Section 354 IPC, instead of Section 376 IPC read with Section 511 IPC and also modified the sentence of rigorous imprisonment to the period of two years from three years and confirmed the fine of Rs.1,000/- (Rupees one thousand only). Aggrieved by the same, the present criminal revision case is preferred by the petitioner/accused.

Heard and perused the entire material available on record.

The main witness in the present case is the victim girl, P.W.2, who was aged about 8 years at the time of deposing before the trial Court and was aged about 6 years at the time of occurrence. Originally the case was registered under Section 376 IPC read with Section 511 IPC and the trial Court convicted the petitioner for the same offence, and thereafter, the lower appellate Court convicted the petitioner for the offence under Section 354 IPC.

It is the specific case of P.W.1, mother of the victim girl, that the accused committed rape upon the victim girl and that she found blood stains on the drawer as well as her private parts, and when she questioned, the victim girl stated that the accused had bitten on her private parts, whereas P.W.2, the victim girl, did not state regarding the attempt to commit rape upon her. Further, the medical evidence is totally contrary to the evidence of the victim girl, P.W.2 and the mother of the victim girl, P.W.1, that there were blood stains. It is the specific case of P.W.7, the Doctor, who examined P.W.2, victim girl, that he has not witnessed any injury or blood stains on the private part of the victim girl and that there is nothing to suggest that the victim girl was subjected to sexual intercourse.

It is true that the child witness alone can be believed to convict the accused, if it inspires the confidence of the Court. But, in the present case, the evidence of the victim girl, who is a minor, and the evidence of the mother of the victim girl, are totally contrary to the charges framed by the Court concerned and the entire oral evidence of the said witnesses is totally contrary to the evidence of the Doctor, P.W.7. Considering the same, this Court is of the view that it is highly unsafe to convict the accused only on the basis of the evidence given by the victim girl, P.W.2, and the mother of the victim girl, P.W.1, which is unreliable in view of the evidence of the P.W.7, the Doctor who examined the victim girl, P.W.2. Hence, the conviction and sentence imposed by the lower appellate Court against the petitioner for the offence under Section 354 IPC is liable to be set aside and is accordingly set aside.

In the result, the Judgment of the lower appellate Court in convicting the petitioner for the offence under Section 354 IPC, is set

aside, and the petitioner is acquitted of the charges. The bail bonds shall stand cancelled and the sureties stand discharged. The fine amount, if any, paid by the petitioner shall be refunded to the petitioner.

The criminal revision case is accordingly allowed. Consequently, the miscellaneous petitions, if any pending in this revision case, shall stand closed.

JUSTICE RAJA ELANGO

18.07.2016
pln

