

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.1214 OF 2008

ORDER:

This Criminal Revision Case is filed by the petitioner/accused under Sections 397 and 401 of the Code of Criminal Procedure, 1973 challenging the judgment, dated 11.8.2008, in Criminal Appeal No.302 of 2006 on the file of the X Additional District and Sessions Judge (Fast Track Court), Guntur at Narasaraopet whereunder and whereby, the learned Sessions Judge dismissed the appeal filed by the petitioner against the judgment, dated 3.7.2006, in Sessions Case No.348 of 2005 on the file of the Principal Assistant Sessions Judge, Narasaraopet.

2. The brief facts that are necessary for the disposal of the case are as under:-

The accused has been doing as R.M.P. Doctor in Kannegundla Village to which P.Ws.1 to 4 and 6 belong. The victim girl is a minor aged 15 years and daughter of P.W.2 and one Ranga Rao (L.W.3) and sister of P.W.4. From the beginning of January, 2005, P.W.1 was suffering from fever and asthma and hence, the accused has been visiting the house of P.W.1 and giving treatment everyday.

On 12.1.2005, at about 11 a.m., when P.Ws.1 and 4 were alone in the house, the accused went to their house on the pretext of giving treatment to P.W.1 as usual. He gave an injection to P.W.1. Then the accused sent P.W.4 giving him some money to get him cigarettes from bazaar. Then, the accused shut the doors of the house and committed rape on P.W.1, who was in a drowsy condition, forcibly without her will or consent and also criminally intimidated by warning her that if she informs to anybody, he would kill her.

3. Cognizance was taken against the accused for the offences under Sections 376 and 506 I.P.C. After appearance of the accused, he was charged under Sections 376 and 506 I.P.C. and he pleaded not guilty. So, the accused was placed for trial. The prosecution examined eleven witnesses and marked eight documents apart from three material objects. After considering the evidence on record, the accused was found guilty of the offences punishable under Sections 376 and 506 I.P.C. and accordingly, convicted him under Section 235(2) Cr.P.C. and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for a period of one month for the offence punishable under Section 376 I.P.C., and to undergo simple imprisonment for a period of six months for the offence punishable under Section 506 I.P.C. Challenging the same, the accused preferred CrI.A.No.302 of 2006 on the file of the X Additional District and Sessions Judge (Fast Track Court), Guntur at Narasaraopet and the same was dismissed confirming the judgment, dated 3.7.2006, in Sessions Case No.348 of 2005 on the file of the Principal Assistant Sessions Judge, Narasaraopet on the ground that the trial Court has not committed any error. Challenging the said judgment, the petitioner filed this Criminal Revision Case.

4. Learned counsel for the petitioner contended that there is an inordinate delay of three days in lodging the complaint by the victim; that the evidence of the Doctor would go to show that the victim girl was accustomed to sexual intercourse and the evidence adduced by the witnesses is also highly improbable and unbelievable and hence, he prays to set aside the impugned judgment.

5. The delay in lodging the complaint itself is not fatal to the case of the prosecution. At the same time, the delay should be explained properly. The unexplained delay to lodge the complaint is always fatal to the case of the prosecution, that too, in an offence of grave nature.

The silence of the victim girl in informing the occurrence to P.Ws.3 and 4 is highly unbelievable. P.W.3 is the sister and P.W.4 is the brother of the victim girl. She was examined on the alleged date of occurrence by a Doctor. The evidence of the Doctor would go to show that she was suffering from excessive bleeding due to menstrual period. The victim has also not stated about the said occurrence of sexual intercourse with the accused to the said Doctor, who examined her for the first time. When specific questions were put to P.W.1 regarding the occurrence of the incident, she stated that she had sexual intercourse with the petitioner for the first time, but the evidence of the Doctor is totally contrary to the statement of P.W.1. According to the said Doctor, the victim was accustomed to sexual intercourse and two fingers were admitted in her vagina freely. The contention of P.W.1 that she was subjected to sexual assault by the petitioner and she sustained injuries and bleeding because of the first time is totally contrary to the evidence adduced by the Doctor.

6. Considering the said facts, this Court is of the view that in a grave offence, when reasonable doubts are raised by the defence, conviction cannot be safely imposed on the accused person. Hence, this Court is of the view that on the available evidence, it is highly unsafe to convict the accused for the offences punishable under Sections 376 and 506 I.P.C.

7. Accordingly, the Criminal Revision Case is allowed setting aside the conviction and sentence recorded by the Principal Assistant Sessions Judge, Narasaraopet *vide* judgment, dated 3.7.2006, in Sessions Case No.348 of 2005, which was confirmed by the X Additional District and Sessions Judge (Fast Track Court), Guntur at Narasaraopet *vide* judgment, dated 11.8.2008, in Criminal Appeal No.302 of 2006 against the appellant/accused for the offences punishable under Sections 376 and 506 I.P.C. and accordingly, he is

acquitted of the said charges. The fine amount, if any, paid by the petitioner/accused shall be refunded to him. The petitioner/accused shall be released forthwith, if he is not required in any other crime.

8. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

JUSTICE RAJA ELANGO

20.7.2016
AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

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