

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1241 of 2006

JUDGMENT:

This criminal appeal is preferred by the appellant/accused by invoking the provision under Section 374(2) of the Code of Criminal Procedure being aggrieved by the judgment, dated 28.06.2006, rendered in S.C.No.191 of 2005, by the V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad, whereby and whereunder the learned Sessions Judge found the accused not guilty for the offence under Section 307 IPC and acquitted him for the said offence under Section 235(1) Cr.P.C. The accused was found guilty for the offences under Sections 354 & 376 read with 511 IPC, convicted and sentenced him to undergo Rigorous Imprisonment for a period of five (5) years and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for four (4) months for the offence under Section 354 IPC and to undergo Rigorous Imprisonment for a period of five (5) years and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for four (4) months for the offence under Section 376 read with 511 IPC.

2. The brief facts, that are necessary for the disposal of the present Criminal Appeal, may be stated as follows:

On 06.12.2004 at about 19.10 hours, the complainant Smt. K.S.S. Deepa, sent a written report through her husband stating that on that day at about 1.30 p.m., her husband left the house after lunch and that she has been alone in the house. At about 3.45 p.m., watchman Subba Rao knocked the door and she opened

the same. The watchman came inside and asked her for lid of water can, on which she went towards bathroom. The watchman bolted the door from inside and torn her clothes and tried to outrage her modesty by trying to commit rape on the point of knife. She raised cries and pushed him aside. She sustained bleeding injuries on her neck and both hands. The accused threatened to kill her if she does not surrender for the rape. At about 4.30 p.m., somebody knocked the door, but the accused did not open the same. After five minutes, he opened the door and left the flat. The wife of the accused, who is the maid servant, came to attend her work. She informed her to call Smt. Laxmi. On the instructions of the victim, she also informed Sri Poornachander Rao to in turn inform her husband about the incident. Her husband came home on receiving the information and shifted the victim to Image Hospital for treatment. Based on the said report, a case in Crime No.1357 of 2004 for the offence punishable under Sections 354 & 307 IPC was registered.

During the course of investigation, P.W.12, M. Pitchaiah, Sub-Inspector of Police, Panjagutta Police Station, Hyderabad, recorded the statement of P.W.2. He visited the scene of offence and recorded the statements of other witnesses. He conducted the scene of offence panchanama. He also lifted the blood stains from the scene of offence and got the scene of offence photographed. He arrested the accused on 11.12.2004 and recorded his confessional statement. He also seized one knife and blood stained shirt at his instance and referred him to Gandhi Hospital for treatment of cut injuries, found on his body. He was also sent to Sri Shiridi Sai

Baba Temple Diagnostic Centre, D.P. Colony, Panjagutta, for his blood sampling. He was later sent to judicial custody. After concluding investigation, charge sheet was laid against the accused for the offences punishable under Sections 354 & 307 IPC.

3. On appearance of the accused before the committal report, the committal Court complied with all the required legal formalities and committed the case to the Metropolitan Sessions Division, Hyderabad. The learned Metropolitan Sessions Judge, Hyderabad, in turn made over the case to the V Additional Metropolitan Sessions Judge (Mahila Court), at Hyderabad, for trial and disposal.

4. On appearance of the accused before the trial Court, the charges under Sections 354 & 307 IPC were framed, but later an additional charge was framed for the offence punishable under Sections 376 IPC read with 511 IPC and explained to him, for which he pleaded not guilty and claimed for trial.

5. During the course of trial, P.Ws.1 to 12 were examined and Exs.P-1 to P-11 and M.Os.1 to 7 were marked on behalf of the prosecution. On behalf of the accused, D.W.1 was examined and no documents are marked.

6. On appreciation of the oral and documentary evidence, the trial Court found the accused not guilty of the offence under Section 307 IPC and acquitted him for the said offence under Section 235(1) Cr.P.C. The accused was found guilty for the offence under Sections 354 and 376 read with 511 IPC, convicted and sentenced him as stated above. Aggrieved by the said

conviction order, the present appeal is preferred by the appellant/accused.

7. Heard and perused the entire material available on record.

8. After evaluating the evidence adduced by the victim lady P.W.2 and also other witnesses, who deposed in favour of the prosecution and after examining the material available on record and after hearing the arguments, when this Court informed that the Court is not inclined to interfere with the judgment of the trial Court in convicting the appellant/accused for the offences under Sections 354 & 376 read with 511 IPC, learned counsel for the appellant/accused confined his arguments only to the quantum of sentence and prayed for reduction of sentence on the ground that the appellant/accused is the only breadwinner of the family and he has to take care of his old aged parents and also his children and he has suffered a substantial period in prison and prayed this Court to take a lenient view in imposing the sentence.

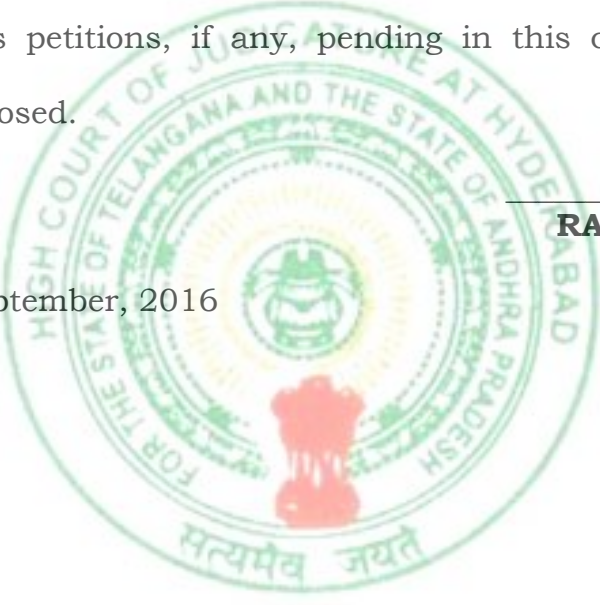
9. Considering the facts and circumstances of the case and also the submissions of the learned counsel for the appellant and the time elapsed, this Court is inclined to reduce the sentence of imprisonment for the offences under Sections 354 and 376 read with 511 IPC imposed by the trial Court against the accused to Rigorous Imprisonment for a period of two (2) years.

10. In the result, the conviction recorded by the trial Court against the appellant/accused in S.C.No.191 of 2005 vide judgment, dated 28.06.2006, for the offences under Sections 354 and 376 read with 511 IPC is confirmed. However, the sentence of

imprisonment imposed by the trial Court is modified and reduced to Rigorous Imprisonment for a period of two (2) years and the sentence of fine is not interfered with. The period of imprisonment already suffered by the appellant/accused is directed to be given set off.

11. The appellant/accused is directed to surrender before the Court concerned on or before 30th October, 2016, in default, the Court concerned is at liberty to take appropriate steps in accordance with law.

12. Accordingly, the Criminal Appeal is partly allowed. Miscellaneous petitions, if any, pending in this criminal appeal shall stand closed.



RAJA ELANGO, J

Date: 27th September, 2016

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