

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.986 OF 2008

-
JUDGMENT:

-
This Criminal Appeal is preferred by the sole accused challenging the judgment of the Additional Assistant Sessions Judge, Chittoor dated 31.7.2008 in S.C.No.153 of 2007, whereby the learned Judge convicted the appellant for the offences under Sections 376 and 417 IPC and sentenced him to undergo R.I. for one year and to pay a fine of Rs.2,000/-, in default, to suffer S.I. for one month for the offence under Section 417 IPC. He is further sentenced to undergo R.I. for 10 years and to pay a fine of Rs.5,000/-, in default, to undergo S.I. for three months for the offence under Section 376 IPC.

The case of the prosecution is that P.W.1-victim and the accused are residents of same village. The accused made P.W.1 to believe that he would marry her and on that pretext he had sexual intercourse without her consent. Subsequently, he refused to marry her. During 2004, marriage of P.W.1 was performed with another person and subsequently, the accused went to her in-laws house and created a galata asking P.W.1 to accompany him. On seeing the said galata, husband of P.W.1 left her in her parents' house. Even at her parents' house, again the accused came to her and on the pretext of marrying her, he committed rape on her. When P.W.1 was four months pregnant, the accused approached her, postponed the marriage and asked to get abortion. P.Ws.3 and 4 took her to Bangarupet and got her pregnancy terminated. On knowing the incident, there took a panchayat before the elders of the village. When P.W.1 went to Bangalore and was living there, the accused forcibly got her again to the village and forcibly sexual intercourse threatening

her with dire consequences. Again, P.W.1 became pregnant and when the accused forced her for abortion, she lodged Ex.P.1 complaint with the police, basing on which, a case in Crime No.65 of 2006 was registered under Sections 417 and 376 IPC and after due investigation, police laid the charge sheet against the accused.

In order to bring home the guilt of the accused, the prosecution examined P.Ws.1 to 15 and marked Exs.P.1 to P.13. On behalf of defence, no oral or documentary evidence was adduced.

After analyzing the evidence brought on record, the trial Court convicted and sentenced the appellant-accused as aforementioned. Hence, the appeal by the accused.

Heard the learned counsel for the appellant and learned Public Prosecutor. Perused the material available on record.

The trial Court convicted the appellant mainly basing on the evidence of P.W.1, who is the victim girl. The admitted fact is that the accused and the victim girl had sexual relationship. The fact that is to be ascertained from the evidence is whether the said sexual intercourse between the appellant-accused and P.W.1 is with consent or against the refusal by P.W.1. On a reading of the entire evidence, the events as narrated by P.W.1 clearly discloses the fact that she is a consenting party. One time she underwent abortion and thereafter she married to another person. Subsequent thereto, as per the evidence of P.W.1, the accused had a quarrel with the husband of P.W.1 and thereafter she was sent to her parents' house by her husband. Even after the said incident, P.W.1 and the accused had sexual relationship for a long time. As a result, she became pregnant of

six months and when she asked, the accused refused to marry her. The said evidence of P.W.1 clinchingly establishes that she is a consenting party for the sexual intercourse with the accused.

The learned Additional Public Prosecutor submitted that even if it is assumed that there is a consent by P.W.1, still it cannot be called as a consent as per law since P.W.1 was aged about 15 years at the relevant time. But as per the evidence of P.W.12-Civil Assistant Surgeon, P.W.1 was aged about 18 years. Even though the prosecution relied on the evidence of P.W.8-Head Master of school where P.W.1 studied, who issued the birth certificate pertaining to P.W.1, which shows the age of P.W.1 as 16 years, neither the doctor certificate nor the birth certificate issued by the school Head Master are not authenticated documents to decide the age of P.W.1. It is an admitted evidence of P.W.12-doctor that she did not conduct any test to decide the age of P.W.1. The fact remains that as per the evidence of P.W.12-doctor, P.W.1 is aged about 18 years and as per the birth certificate, she is aged about 16 years at the time of incident. Hence, this Court is of the view that since this Court came to the conclusion that P.W.1 is a consenting party, when there is no proper evidence to show that she is less than 15 years, the offence under Section 376 IPC is not attracted and the conviction and sentence under the said charge is liable to be set aside.

As far as the offence under Section 417 IPC is concerned, according to P.W.1, the accused had sexual intercourse with her and subsequently, she became pregnant and when she questioned, he promised to marry her. Even according to P.W.1, she had sexual relationship with the accused even after her marriage with another person. P.W.1 herself deposed that the

accused had sexual intercourse with her and subsequent to the said intercourse, on her insisting, he promised to marry her. Since the alleged promise by the accused is subsequent to the intercourse with P.W.1, it cannot be said that the accused induced P.W.1 on the pretext of marriage and had sexual intercourse. Hence, this Court is of the view that the offence under Section 417 IPC is also not attracted. Hence, the convictions and sentences imposed on the appellant for the offences under Sections 376 and 417 IPC are liable to be set aside.

In the result, the Criminal Appeal is allowed. The impugned convictions and sentences imposed on the appellant for the offences under Sections 379 and 417 IPC are hereby set aside and he is found not guilty of the offences and acquitted of the said charges. The fine amount, if any, paid by the appellant herein shall be refunded to him.

Pending Miscellaneous petitions, if any, shall stand closed.

JUSTICE RAJA ELANGO

11.08.2016

Tsr