

THE HON' BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.2183 of 2006

ORDER:

The above Criminal Revision Case is filed by the petitioner - accused against Judgment, dated 27.12.2006, passed in CrI.A. No.174 of 2005, by the I-Additional Sessions Judge Mahabubnagar, whereby the learned Sessions Judge dismissed the appeal by confirming the conviction and sentence recorded by the Assistant Sessions Judge, Narayanpet, in S.C.No.298 of 2005, vide judgment, dated 08.12.2005, wherein the learned Sessions Judge found the petitioner - accused guilty of the offence under Section 376 IPC and convicted and sentenced him to undergo rigorous imprisonment for a period of Seven (7) years and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for a period of two (2) months.

The case of the prosecution, in brief, is as follows:

On 28.11.2003 at about 18.00 hours, the de facto complainant – victim lady was returning on foot to her house at Teelair village after getting down from an auto near Teelair gate, at the outskirts of the said village, the accused, who was traveling along with PWs.3 and 4 on a tractor being driven by PW.5 in the same direction asked her to board the tractor. The victim refused to board the tractor. Then the accused got down from the tractor and followed the victim and forcibly dragged her into the fields of one Hanif and committed rape on her and threatened to kill her if she disclosed the said incident to anyone. Then, the victim ran to the road and found another tractor proceeding to her village and stopped and boarded the same, wherein PWs.6 & 7 were traveling and she narrated the incident to them. After going to her home, she told about the incident to her husband – PW.2, who returned home at late hours from his fields. After consulting her brother, both

the victim and her husband went to Marikal police station on the next day at about 12.30 p.m., and lodged Ex.P.1 report. Basing on the said report, a case was registered against the accused, for the offence under Section 376 IPC. The accused was arrested and was sent to judicial custody. After completion of investigation, police filed charge sheet against the accused for the offence under Section 376 IPC.

The case was taken on file for the offence under Section 376 IPC against the accused by the learned Judicial Magistrate of First Class, Narayanpet. Since the offence is exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions, Sessions Division Mahabubnagar and thereafter, the case was made over to the trial Court for trial and disposal in accordance with law. On appearance of the petitioner, the charge under Section 376 IPC was read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

To substantiate its case, prosecution examined P.Ws.1 to 13 and marked Exs.P1 to P12 and M.O.1. On behalf of the accused, no oral evidence was adduced, but Ex.D1 was marked.

On appreciation of oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 376 IPC, and accordingly, convicted and sentenced him as stated above. Aggrieved by the conviction and sentence imposed by the trial Court, the petitioner filed CrI.A. No.174 of 2005 before the I-Additional Sessions Judge, Mahabubnagar. The learned Sessions Judge, after re-appreciating the evidence on record, dismissed the appeal by confirming the sentence and conviction recorded by the trial Court and also directing the petitioner to pay the fine amount paid to the victim, vide judgment

impugned. Challenging the said judgment, the present revision case is filed.

Learned counsel for the petitioner submits that the judgments of both the Courts below are contrary to law and both the Courts below have failed to appreciate the evidence of the prosecution witnesses in a proper way. He further submitted that there are discrepancies in the evidence of PW.1 and it was not supported by the other witnesses and also the medical evidence and without taking into consideration the discrepancies and the infirmities in the evidence of the victim i.e. PW.1, the Courts below convicted the accused and therefore, the conviction and sentence imposed against the petitioner may be set aside.

On the other hand, learned Additional Public Prosecutor submits that the findings of the Courts below need not be interfered with, inasmuch as the findings are based upon proper appreciation of evidence and therefore, he prays to dismiss the revision.

Being it is a case of forcible sexual intercourse against the victim, appreciation of her evidence is more important. This Court perused the evidence of PW.1. The said evidence suffered with the following infirmities and discrepancies.

According to PW.1, she was forcibly subjected to sexual intercourse in which she sustained number of injuries and also had pain on her cheeks. It is the evidence of Doctor, who examined PW.1, that she has not witnessed any such injuries on examination of PW.1. Doctor also stated that PW.1 has not stated with regard to sustaining of injuries or pain on her cheeks. Further, according to PW.1, on the date of incident, she wore a blue colour petty coat and after the incident, she did not change her clothes. On the next day, after giving complaint to

the police, she changed her clothes at the police station and handed over her petty coat to the police, and the same was marked as a material object. In the seizure panchanama, the colour of the petty coat was mentioned as 'ash'. Therefore, there is discrepancy in the evidence of PW.1, with regard to sustaining of injuries and also colour of the petty coat. The other aspect of the case is that there is delay in lodging the complaint. Even though delay in lodging the complaint itself is not fatal to the case of the prosecution, but the delay, which was not explained properly, is always fatal to the case of the prosecution. It is also evident from the record that that the police station is situated within five kilometers from the place of occurrence and further it is the case of PW.1 that she has informed about the incident to other persons, with whom she travelled subsequent to the incident. But P.W.1 has not stated anything as to whether the persons to whom she complained at the first instance, advised her to give a complaint or not. PW.2 was also not in a position to explain the reason for lodging the complaint on the next day. Further, there is every possibility of the victim to have sexual intercourse with her husband on the night of 28.11.2003. In such circumstances, the evidence adduced by PW.1 is highly improbable and unbelievable and hence, this Court is of the view that with the available evidence on record, it is highly unsafe to convict the accused for the offence under Section 376 IPC. Hence, the conviction and sentence imposed by the trial Court, as confirmed by the appellate Court, are liable to be set aside.

Accordingly, the Criminal Revision Case is allowed setting aside the conviction and sentence recorded by the Assistant Sessions Judge, Narayanpet, in S.C.No.298 of 2005, vide judgment, dated 08.12.2005, as confirmed by the I-Additional Sessions Judge, Mahabubnagar, in CrI.A.

No.174 of 2005, vide judgment, dated 27.12.2006. The petitioner - accused is found not guilty of the offence under Section 376 IPC and he is acquitted for the said charge. The fine amount, paid if any, shall be refunded to the petitioner. Bail bonds shall stand cancelled and the sureties are discharged.

Miscellaneous petitions, pending if any, shall stand closed.

RAJA ELANGO, J

August 26, 2016.
KTL

