

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.1748 OF 2006

ORDER:

This Criminal Revision Case is filed by the petitioner/appellant/accused under Sections 397 and 401 of the Code of Criminal Procedure, 1973 challenging the judgment, dated 13.10.2006, in Criminal Appeal No.15 of 2005 on the file of the IV Additional District and Sessions Judge (Fast Track Court), Karimnagar whereunder and whereby, the learned Sessions Judge dismissed the appeal filed by the petitioner against the judgment, dated 11.1.2005, in Sessions Case No.911 of 2000 on the file of the Assistant Sessions Judge at Peddapalli.

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

The complainant – victim lodged a written complaint on 2.6.2000 in Julapally Police Station stating that she is a resident of Kachapur Village and studied upto 7th class. On 5.4.2000 i.e., on the day of Ugadi festival, the accused – Durgam Mallesham offered her to marry her through his friend Jadi Kumar and two others. Thereafter, the accused himself approached her and asked her as to whether she would marry him or not for which, she agreed to marry him. Then, he took her to movies about four times at Peddapalli. On one day, while she was in her agricultural field, the accused approached her and took her by the side of the bushes and raped her. One month thereafter, on one day, while she was returning from her paternal uncle's house after watching T.V., the accused again took her inside the hut which is situated in front of her paternal uncle's house and raped her. The said incident was learnt by the parents of the victim. The father of the victim sent her out of the house whereupon, the victim went to the house of

the accused and stayed there for about one month. During this period, the accused did not come to his house. After few days, the victim went to attend the marriage of her cousin sister along with her parents at Mallannapalle Village without the permission of the accused. The accused beat her as she went to attend marriage at Mallannapalle Village without his permission. Thereafter, a panchayat was conveyed in the presence of elders. When accused was enquired, he promised to marry her later on and he put a condition that he would marry the victim if she bring Rs.30,000/- towards dowry failing which, he himself would pay Rs.10,000/- towards compensation and dropped the proposal of the marriage. The complainant further stated that the accused had intercourse on the promise that he would marry her and cheated her by refusing the marriage with her.

3. The learned Judicial Magistrate of First Class, Sulthanabad committed the case to the Court of Sessions, Karimnagar Division. The learned Sessions Judge, Karimnagar made over the case to the Court of the Assistant Sessions Judge at Peddapalli for disposal according to law.

4. After appearance of the accused, he was charged under Sections 376 and 420 I.P.C. and Section 4 of the Dowry Prohibition Act, 1961 for which, he pleaded not guilty. So, the accused was placed for trial.

5. On behalf of the prosecution, P.Ws.1 to 9 were examined and got marked Exs.P-1 to P-5.

6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the same. On behalf of the accused, none was examined and Ex.D-1 was got marked.

7. After considering the evidence on record, the trial Court held that the prosecution has proved the guilt of the accused for the offences punishable under Sections 376 and 420 I.P.C. and that the prosecution has failed to prove the guilt of the accused for the offence under Section 4 of the Dowry Prohibition Act; and accordingly, convicted the accused 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.2,000/-, in default, to suffer simple imprisonment for a period of six months for the offence punishable under Section 376 I.P.C., and to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months for the offence punishable under Section 420 I.P.C. Challenging the same, the accused preferred the aforementioned appeal and the same was dismissed confirming the judgment of the trial Court on the ground that the trial Court has not committed any error. Challenging the said judgment, the petitioner filed this Criminal Revision Case.

8. Learned counsel for the petitioner informed that the petitioner and the victim married on 28.10.2009 and their marriage was registered and he also produced the marriage certificate; that the petitioner and the victim loved each other and moved together and they had sexual intercourse with mutual consent and hence, prays to set aside the impugned judgment.

9. The marriage certificate produced by the learned counsel for the petitioner cannot be taken into consideration for the purpose of deciding the issue. Hence, this Court heard the arguments and perused the judgments of the Courts below.

10. As far as the evidence of P.W.1, who is the victim, is concerned, she categorically deposed that the petitioner informed that he would marry her and had sexual intercourse with her and thereafter, due to

misunderstanding, he refused to marry her. From the said evidence of the victim, it is evident that she is also a consenting party. If she is a consenting party, the offence under Section 376 I.P.C. will not attract if the age of the victim is more than 15 years. Even, as per the evidence of the Doctor, the age of the victim is between 13-15 years. If two years error of margin is given, the victim will be more than 16 years. Once the age of the victim is decided to be more than 16 years, the sexual relationship on the basis of the consent of the victim does not attract the offence under Section 376 I.P.C.

11. As far as the offence under Section 420 I.P.C. is concerned, the fact remains that after the sexual relation, the victim stayed along with the accused for more than one month in his house and the said fact is also known to the other witnesses, who are personally related to the victim. The subsequent refusal to lead marital life will not attract the offence under Section 420 I.P.C. Hence, this Court is of the view that the prosecution has miserably failed to connect the accused with the crime and the judgments of the Courts below are liable to be set aside.

12. Accordingly, the Criminal Revision Case is allowed setting aside the conviction and sentence recorded in the judgment, dated 11.1.2005, in Sessions Case No.911 of 2000 passed by the Assistant Sessions Judge at Peddapalli, which was confirmed in the judgment, dated 13.10.2006, in Criminal Appeal No.15 of 2005 passed by the IV Additional District and Sessions Judge (Fast Track Court), Karimnagar against the petitioner/accused for the offences punishable under Sections 376 and 420 I.P.C. and accordingly, he is acquitted of the said charges under Section 235(1) Cr.P.C. 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.

13. Miscellaneous petitions pending, if any, in this Criminal Revision

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Date: 3.8.2016

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