

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.171 of 2007

ORDER:

This Criminal Revision Case is directed against the judgment of acquittal in S.C.No.87 of 2003, dated 03.10.2006 on the file of the Assistant Sessions Judge, Vizinagaram.

Heard the learned counsel appearing for the revision petitioner/*de facto* complainant and the learned counsel appearing for the 1st respondent/accused.

The case of the prosecution in brief is that the petitioner is the *de facto* complainant and she lodged a complaint before the concerned police stating that the 1st respondent/accused induced and committed rape against her. She alleged that one year prior to giving complaint the 1st respondent/accused followed her and promised to marry her and lured her in deceitful manner and had sexual intercourse with her on some occasions and threatened her not to reveal the said illicit relationship with anybody. The complainant became pregnant and when she asked the accused to marry her, he advised her to go to her sister's house at Visakhapatnam. After few days she returned back to Tammapuram village and on knowing the fact, the parents of the complainant placed the matter before elders PW 10-Dala Narayana Murty Raju, Kakarlapudi Seetharama Raju and PW 4-K.Chinnayya and in the Panchayat the 1st respondent/accused admitted his guilt and agreed to marry her and demanded Rs.25,000/- towards dowry, for which the father of the complainant agreed. Thereafter, the 1st respondent/accused refused to marry the complainant. Again in the month of April, 2003 the matter was placed before caste elder PW 7-Manyala Krishna and the matter was settled and the accused agreed

to give some compensation to the complainant. It is further alleged that again the 1st respondent/accused met the complainant and again informed her that he could not marry her due to the pressure from his parents and promised her to marry her, and again had started sexual contact with her and finally refused to marry her. Hence she lodged the complaint and basing on the said complaint, the police registered a case in Cr.No.41/2003 under Sections 417 and 376 IPC and after completion of investigation, filed charge sheet.

The jurisdictional Magistrate had committed the case to the Court of Sessions vide PRC.No.18/2003 under Section 209 Cr.P.C. The Court below, on appearance of the 1st respondent/accused, examined the 1st respondent/accused under section 239 Cr.P.C. and charges under 417 and 376 IPC were framed, for which, the accused pleaded not guilty.

To bring home the guilt of the accused, the prosecution examined PWs 1 to 12 and got marked Exs.P1 to P5. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C putting all incriminating material available against him, but the accused denied the material evidence.

On appreciation of oral and documentary evidence, the trial Court found the accused not guilty of the offences alleged and accordingly acquitted the accused. Challenging the acquittal of the accused, the *de facto* complainant filed the present revision.

Now the point that arises for consideration in this revision is whether there is any infirmity, legal or otherwise, warranting interference with the judgment of the Court below.

Point:

This revision is against acquittal. The learned counsel appearing for the petitioner/*de facto* complainant/PW 1 submits that the learned trial Judge has committed serious error in acquitting the

accused by not properly interpreting the provisions of Sec.415 IPC, even though conclusive findings have been arrived at to the effect that it is accused who has fathered the child born through PW 1.

In the impugned judgment, the learned trial Judge has held in paragraphs 34 and 35 as under:

“34. Considering the entire material on record, it is clear that the accused made a promise to PW 1 to marry her. The accused and PW 1 had sexual intercourse and PW 1 became pregnant and the accused accepted to marry PW 1 even before elders and demanded dowry of Rs.25,000/- cash. Subsequently, PW 2 prepared to pay the cash, but the accused did not respond thereafter and the accused placed the matter before PW 7 their caste elder who advised to pay compensation and PW 1 refused to receive the compensation. Ex.P1 also refers to such dispute, that it was settled, like that and PW 1 kept quite.

35. From the above circumstances, we can say that the accused was with a view to marry PW 1 up to a particular point of time that is up to the matter placed before the elders PWs 4 and 10, but on condition of paying dowry. Merely, because the accused asked cash dowry, we cannot say that his intention at the time of inception of making promise to marry PW 1 was not really to marry PW 1 and his intention was only to have sexual intercourse with her, without having idea of marrying her. It appears, there was a breach of promise committed by the accused, subsequently. The reasons for breach of promise are not known exactly. The evidence of PW 7 depicts something, about it. His evidence is that the accused denied the paternity of the child and he expressed he was prepared to the blood examination, whereas PW 1 refused to such course and compensation was settled, which was accepted by PW 2 and subsequently resiled. What had happened subsequent to panchayat held by PWs 4 and 10 is not known and parties have

suppressed. Naturally, the accused may not prefer to disclose such facts, with fear. I am not able to convince with the submission of the learned Additional Public Prosecutor that from the conduct of the accused it can be gathered that at the inception of making promise to marry PW 1, the accused was having intention to have sexual intercourse without really intending to marry PW 1 and his promise was a false promise known by him. The conduct of the accused up to the panchayat held by the elders accepting his responsibility before the elders spoken to by PWs 1 to 3, PW 5, the elders PWs 4 and 10 is clear, that he was prepared to marry PW 1. In such a case, it cannot be said that he had an evil design in his mind and made a false promise to marry PW 1 only to gain PW 1 sexually. I am not able to accept the theory of prosecution, in that regard. Therefore, I hold point No.2 that the prosecution has failed to establish that the accused had made false promise to marry PW 1 at the inception without really having any idea to marry her and made such false promise only to have sexual intercourse with her.”

On perusal of the above observations, I am of the opinion that the learned trial Judge has not properly appreciated the point in controversy vis-à-vis the legal position. The facts that are held to be proved by the trial Judge are that the victim woman PW 1 and the accused were known to each other and also relations and for about 2 years prior to 2003 they had been indulging in sexual intercourse, due to which, PW 1 became pregnant and gave birth to a male child 4 months prior to lodging the complaint i.e., on 07.05.2003. Findings are also there to the effect that originally the accused promised to marry PW 1 and subsequently the intention of the accused to marry the victim PW 1 fell through in view of certain non-fulfilment of the terms at the time of settlement. The evidence of PW 1 along with that of other

prosecution witnesses clearly show that the accused made PW 1 believe that he will marry her and had indulged in sexual intercourse and even after PW 1 became pregnant, he agreed to marry her before elders, but there arose some problems in the matter of payments to be made at the time of marriage and therefore, the accused is said to have gone back on his promise of marrying the victim PW 1.

In view of the above, without going into the merits of the case, I am of the opinion that it is a fit case to remand back to the trial Court for disposal afresh. Accordingly, the matter is remanded back to the trial Judge with a direction to reconsider the material available on record in right perspective and dispose of the matter afresh, in accordance with law, without being influenced by any of the observations made in this order, after affording an opportunity of being heard to both sides, within a period of 3 (three) months from the date of receipt of a copy of this order.

The Criminal Revision Case is accordingly disposed of.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 19.01.2016
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