

HONOURABLE SRI JUSTICE RAJA ELANGO

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CRIMINAL APPEAL No.1845 OF 2007

JUDGMENT:

This criminal appeal is preferred by the State by invoking the provision under Section 378 (3) & (1) of the Code of Criminal Procedure being aggrieved by the judgment, dated 03.07.2006, rendered in S.C. No.238 of 2005, by the V-Additional Metropolitan Sessions Judge-cum-Mahila Court, Hyderabad, whereby and whereunder the learned Judge found the respondent – accused not guilty of offences under Sections 363 and 376 IPC and accordingly, acquitted him of the said offences.

The brief facts of the case are that the respondent – accused kidnapped the daughter of the de facto complainant and took her to a military area and forcibly committed rape upon her and thereafter, left her at Chaderghat. On the complainant lodged by the de facto complainant, the Police, Kanchanbagh Police Station, registered a case in Crime No.77 of 2004 for the offence punishable under Sections 363 and 376 IPC against the respondent. After completion of investigation, the police filed charge sheet.

The case was taken on file by the committal Court and after completion of required legal formalities, the committal Court committed the case to the Metropolitan Sessions Division, Hyderabad and thereafter, the case was made over to the trial Court for trial and disposal in accordance with law. On appearance of the accused, charges under Sections 363 and 376 IPC were read over and explained to him, for which he pleaded not guilty and claimed to be tried.

To prove its case, the prosecution examined PWs.1 to 8 and marked Exs.P.1 to P.10 besides MOs.1 to 3. No oral or documentary evidence was adduced on behalf of the accused.

After evaluating the oral and documentary evidence adduced by the prosecution witnesses, the trial Court found the respondent – accused not guilty of the offences under Sections 363 and 376 IPC and accordingly acquitted him. Aggrieved by the same, State preferred the present appeal.

Heard the learned Public Prosecutor and the learned counsel for the respondent and perused the material available on record.

A perusal of the judgment of the trial Court discloses that the learned Judge, while acquitting the respondent has taken into consideration the following points:

The age of girl was not proved and contrary to the claim of the prosecution, as per the evidence of doctor the age of the victim girl is more than 16 years. The evidence of PW.2, victim girl, varies from the case of the prosecution with regard to her kidnap. She deposed in her evidence that she had acquaintance with the accused and he used to follow her and on the date of incident, she went to her aunt's house and while she was returning from her aunt's house, the accused met her and told her that he would marry her and on saying so, he took her to a military area on his vehicle and committed rape upon her and they both stayed there and on the next day at about 4.00 a.m., he left her at Koti and from there, she returned to her house. In her cross-examination, PW.2 stated that herself and the accused used to meet at Dargah near Balapur and they both went to a movie also and her parents were not aware of her movements. Therefore, PW.2 herself accompanied the accused out of her own and free will and she was not kidnapped by the accused. She further deposed that she sustained minor injuries on both her hands and also on chest. But, it was revealed from the evidence of PW.1 – Doctor, who examined PW.2, that there are no external injuries on the body of PW.2. Therefore, the

evidence of PW.2, and the mother and father of PW.2, i.e. PWs.5 and 6 contradicts the evidence of PW.1-doctor with regard to the injuries on the body of PW.2. The medical evidence also does not disclose any commission of rape against PW.2. In her evidence PW.1 stated that she found that hymen was not in tact, and hence, no rape was committed against PW.2, however, the semen and spermatozoa are detected on the pyjama of PW.2. The presence of semen and spermatozoa on the pyjama of PW.2 would not amount to commission of rape and therefore, there was no rape against the victim. By observing as above, the learned Sessions Judge came to the conclusion that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt and accordingly, acquitted the accused.

In a case of acquittal, if the trial Court considered two views and basing on one of the views, which is in favour of the accused, acquits the accused, normally this Court will not interfere with the judgment of the trial Court unless and otherwise, the evidence adduced by the prosecution clinchingly points towards the guilt of the accused. Hence, as rightly pointed out by the learned trial Judge, the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt and this Court is of the view that the trial Court has rightly acquitted the accused disbelieving the case of the prosecution. This Court is not inclined to interfere with the judgment of the trial Court and hence, the appeal is liable to be dismissed.

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Accordingly, the Criminal Appeal is dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed.

RAJA ELANGO, J

July 26, 2016.
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