

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1825 of 2007

JUDGMENT:

This Criminal Appeal is filed by the State challenging the judgment of the Principal Assistant Sessions Judge, Tenali dated 23.08.2005 in S.C.No.329 of 2004 whereby the learned Assistant Sessions Judge acquitted the sole accused of the charges under Sections 448 and 376 IPC.

The brief facts of the case of the prosecution are as follows:

On 10/11.02.2004 at about 12 midnight while the victim-P.W.1 along with her grandson and granddaughter was sleeping in the verandah of her house at Kollur village, the accused went to P.W.1, gagged her mouth forcibly, took her from the verandah to the room of the house, laid her on the ground and committed rape on her. Meanwhile, her grandson woke up, the accused threatened P.W.1 that he would kill her if she reveals the incident to her son and went away throwing aside P.W.2. Because of interference of elders, she immediately did not report the incident to the police. On 22.3.2004 on arrival of her son-P.W.3, she went to the police Station and basing on her statement under Ex.P.1, police registered a case in Crime No.22 of 2004 for the offences under Sections 448 and 376 IPC. P.W.9-Inspector of Police took up investigation and after completing all the formalities and on completion of investigation, laid the charge sheet against the accused for the said offences.

In order to bring home the guilt of the accused, prosecution examined P.Ws.1 to 9 and marked Exs.P.1 to P.10. On behalf of defence, Exs.D.1 to D.6 were marked.

The trial Court after evaluating the entire evidence brought on record more particularly, the evidence of P.W.1 acquitted the accused of the charge.

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

The learned trial judge at para 21 of the judgment, recorded the reasons for acquitting the accused-respondent of the charge as follows:

“21..... The facts and circumstances of the case appears that the version of PW1 exaggerative and intended to implicate the accused in a major offence such as rape. The evidence of PW1 is not corroborated by the attending surrounding circumstances. The medical evidence is also totally against the prosecution case. The evidence of PW1 is also not supporting the case of prosecution. PW3 though the son of PW1 he is only returned to their house about 12 days after the incident. PW4 is the Panchayat Secretary who attested the scene of offence observation report Ex.P2. Simply because the accused is capable for performing sexual intercourse, he cannot be made scapegoat for the false, self contradictory and unreliable statement of PW1, which also appears to be untrustworthy. The evidence of PW7 is only in respect of recording the statement of PW1 in Government Hospital, Tenali on 23.02.2004, PW8 is the ASI of Police, Kollur Police Station who registered the case on 23.02.2004 and PW9 is the Investigating Officer. The evidence of PW1 not appears to be trustworthy and did not inspire any confidence or truthfulness.”

As rightly observed by the trial Court, the evidence of prosecutrix suffers with infirmities and her evidence is highly unbelievable in the facts and circumstances of the case. She is aged about 65 years and she has stated in the chief-examination that she did not resist or try to make any cries over the attempt made by the

accused. Further the doctor who examined the prosecutrix opined that no definite opinion could be given about any recent sexual intercourse having taken place with the prosecutrix. That apart, the inordinate delay in lodging the complaint was not properly explained. Thus the prosecution miserably failed to prove the charges levelled against the accused. Hence, no grounds are made out to interfere with the impugned order of acquittal recorded by the trial Court.

In the result, the Criminal Appeal fails and the same is accordingly dismissed.

Miscellaneous Petitions, if any, pending shall stand closed.

29.08.2016
Tsr



RAJA ELANGO,J