

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1745 of 2008

JUDGMENT:

1. This revision is filed by the petitioner-accused against the Judgment dated 24.11.2008 passed in CrI.A.No.107 of 2006 by the III Additional Sessions Judge, Tirupathi.

2. The case of the prosecution is as follows:

On 6/7.6.2005 at about 1 a.m., Miss K. Muni Lakshmi (for short, 'the victim') went to rear side of their house to answer calls of nature and the accused, a neighbour, forcibly closed her mouth with his hands and took her to the stair case of her house and committed rape underneath the stair case. The victim girl informed the same to her parents K. Elumalai (P.W.1) and Smt. K. Chengamma (P.W.3) and on hearing the voice from their house, the neighbours gathered there. When the neighbours reached the house, the accused absconded from his house. On the next day, the incident was informed to the elders and the elders held mediation between P.W.1 and the family members of the accused. As the elders of the family of the accused refused to perform the marriage of the victim girl with the accused, the incident was reported to the police by P.W.1 on 12.6.2005, basing on which a case was registered and investigated into. After completion of the investigation, charge sheet was filed.

3. The learned Judicial Magistrate of First Class, Srikalahasti took the case on file and committed the same to the Court of Sessions. The learned District and Sessions Judge, Chittoor took the case on file and made over the same to the learned Assistant Sessions Judge, Srikalahasti for disposal.

4. The trial Court framed a charge for the offence under Section 376 IPC against the accused, read over and explained to him, for which he pleaded not guilty and claimed to be tried.

5. During the course of trial, P.Ws. 1 to 10 were examined and Exs.P1 to P11 and M.Os.1 to 5 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

6. On appreciation of oral and documentary evidence, the trial Court found the accused guilty for the offence under Section 376 IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for three months. Aggrieved by the same, the petitioner-accused filed appeal in CrI.A.No.107 of 2006. The said appeal was dismissed. Hence, the petitioner filed this revision.

7. Learned Counsel for the petitioner submitted that the prosecution failed to adduce any legal evidence so as to make out an offence under Section 376 IPC and that there is abnormal delay in reporting the matter and that the medical evidence is contrary to the ocular evidence and that the conduct of the victim is very unnatural and that the Courts below failed to appreciate the evidence in a proper perspective.

8. Learned Additional Public Prosecutor submitted that the trial Court has appreciated the evidence in a proper perspective and that there are no grounds to interfere with the judgment under revision.

9. In a case of this nature, the evidence of the victim plays a very important role. The victim was examined as P.W.2. Now, it is to be examined as to whether the evidence of the victim inspires confidence or

not. After perusing the evidence of P.W.2, this Court is of the view that the evidence of P.W.2 does not inspire any confidence on the following reasons:

She stated in her evidence that when she went to the calls of nature, the accused came behind her, closed her mouth with his hands and took her to the stair case, whereas she admitted in her cross-examination that she was dragged by the accused and that her both hands were free. Even though she stated that her mouth was closed by the accused, in her cross-examination she has not stated as such. Apart from that, after the occurrence the same was informed to the parents by the victim. But they never intended to lodge a complaint immediately. They entered into the house of the accused and thereafter, mediation was conducted by the elders. Further, the incident took place in the mid night when the victim went to the calls of nature. It is not known as to how the accused could know about her arrival at that mid night to the open land behind her house for attending calls of nature. After lapse of five days, the complaint was lodged.

One of the mediators, who is neighbour of the accused, deposed before the Court as if the occurrence took place in the house of the accused. There is no cross-examination by the Public Prosecutor to rebut the said fact.

Further, the medical officer categorically stated that the victim was accustomed to sexual intercourse. When P.W.8- Medical Officer was questioned before the Court, she deposed that on physical examination of the victim girl, she could be able to say that the victim was accustomed to sexual intercourse.

10. For the reasons mentioned above, the evidence of P.Ws.1 to 3 is highly improbable and their evidence does not inspire any confidence. Therefore, the conviction and sentence imposed against the accused are not sustainable.

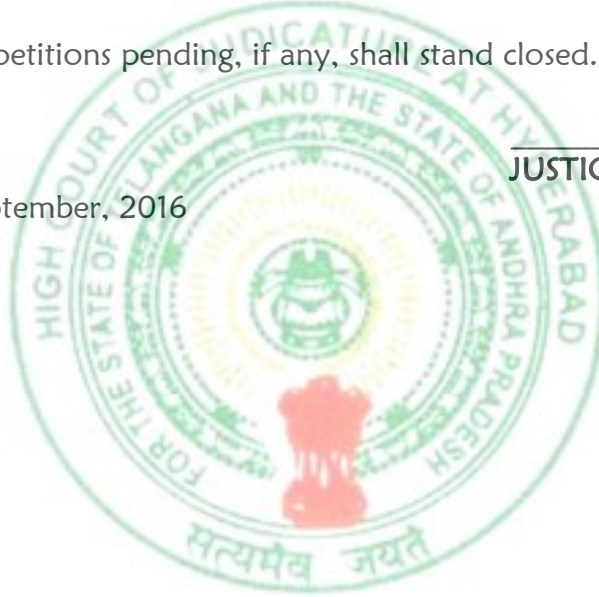
11. In the result, the conviction and sentence imposed by the Courts below against the accused for the offence under Section 376 IPC are set aside. Consequently, the accused is acquitted for the said offence. The fine amount paid, if any, shall be refunded to the petitioner-accused.

12. Accordingly, the Criminal Revision Case is allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

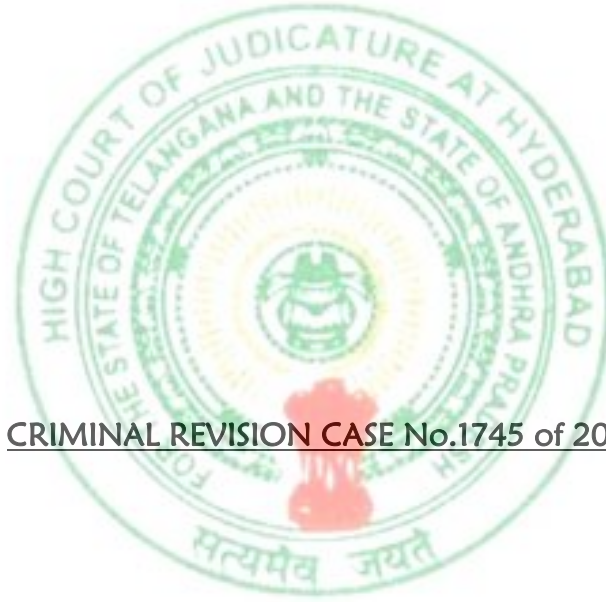
Dated:22nd September, 2016

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JUSTICE RAJA ELANGO



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22.9.2016

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