

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.94 of 2008

JUDGMENT:

Petitioner/accused filed this criminal revision case by invoking the provisions under Sections 397 & 401 of the Criminal Procedure Code, being aggrieved by the judgment, dated 07.01.2008 rendered in Criminal Appeal No.6 of 2007 by the VI Additional District and Sessions Judge (Fast Track Court), Ranga Reddy District, at Vikarabad, whereby and whereunder the conviction and sentence of the petitioner/accused to undergo Rigorous Imprisonment for a period of seven (7) years and also to pay a fine of Rs.1,000/-, in default to suffer Simple Imprisonment for a period of two (2) months for the offence punishable under Section 376 IPC recorded in judgment, dated 15.03.2007, in S.C.No.6 of 2006, passed by the Assistant Sessions Judge at Vikarabad, Ranga Reddy District, was confirmed.

2. The brief facts, that are necessary for the disposal of the present Criminal Revision Case, may be stated as follows:

The victim woman Smt. Sathyamma is a married woman and her marriage took place about 20 years back, but she had no children. On 21.03.2005, she came to her parents house at Hajipur Village. On 22.03.2005 night, she went to witness a street play along with her mother Anjilamma, which was organized by the villagers in front of her house and at about 3.00 a.m., she got thirsty and she went to their house to drink some water and she had water, locked the doors, in the meantime the accused, who is her maternal uncle went to her and caught hold of her and lifted her to a distance of 200 feet through a small way and laid her in the waranda or a house belonging to one Md. Fareed which is an isolated house and committed rape on her forcibly due to which she became unconscious and suffered with bleeding from her private parts. One Ananthaiah saw the victim laying unconscious condition and informed the same to the mother of the victim. In turn, the mother of the victim went to the spot and shifted the

victim to the house and later the victim narrated the incident to her mother. On 23.03.2005, the mother of the victim questioned the accused about the incident for which he confessed his guilt and gave Rs.500/- for the treatment of the victim. She took the victim to Tandur and consulted private medical practitioner and returned to village, but the discharge of blood was not yet stopped then, the mother of the victim informed the incident to the village elders and relatives and on the same day a panchayath was conducted at 8.00 p.m., but the accused did not attend. On 24.03.2005 night, the victim was shifted to Government Civil Hospital, Tandur, for treatment. The victim gave her statement to the police on 24.03.2005 at 2.00 a.m., basing on which the police has registered a case in Crime No.23 of 2005 and took up the investigation and conducted the scene of offence in the presence of mediators. The doctor, who treated the victim opined according to FSL Report that the spermatozoa not detected so rape cannot be ruled out. The accused was arrested on 30.03.2005 and he was sent to potency test and later remanded to judicial custody. Hence, the complaint.

3. On appearance of the accused, charge under Section 376 IPC was framed, read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

4. To substantiate the charge, the prosecution examined P.Ws.1 to 11 and got marked Exs.P-1 to P-12.

5. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence appearing against him in the evidence of P.Ws.1 to 11. He denied the same. On behalf of the accused, no witnesses were examined, but Exs.D-1 & D-2 were marked.

6. The trial Court, after considering the evidence on record, found the accused guilty of the offence punishable under Section 376 IPC and sentenced as stated above. On appeal, the said conviction and sentence was confirmed. Hence, the present Criminal Revision

Case.

7. Now the point for determination is whether the judgment under revision is correct, legal and proper?

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

9. P.W.1, who is the *de facto* complainant, is the victim woman. P.W.2, Anjilamma, is the mother of the victim. P.W.3 is one P. Ananthappa, resident of Hajipur Village, who found the victim women in an unconscious condition. P.Ws.4 & 5, Bichalppa & S. Ananthaiah, are the elder persons of Panchayat. P.W.6 is the private medical practitioner, who examined the victim. P.Ws.7 & 8, Mogulaiah and Venkataiah, are the Panch witnesses for the scene of offence. P.W.9 is Dr. Lavanya, who treated the victim and issued certificate. P.W.10 is the Inspector of Police Y. Yadagiri, who investigated the case and P.W.11 is the doctor Mukesh, who examined the accused to prove the potency of the accused. The entire case of the prosecution is relied on the oral testimony of P.W.1 corroborated by the circumstantial evidence of P.W.2 and the medical evidence of P.W.6 and P.W.9 and Ex.P-8, the opinion given by P.W.9. The evidence of P.Ws.3 to 8 did not support the version of the prosecution and they were turned hostile.

10. In the oral evidence of P.W.1, she corroborated the contents of Ex.P-1 statement, dated 24.03.2005, about her marriage about 20 years back with one Eswaraiah of Rukmapally Village and she had no children. She also corroborated that she came to her parents house at Hajipur one day prior to the incident and she also corroborated that there was street play in the Hajipur Village on the incident day and she along with her mother went to the said street play for watching and while the play was going on in the early hours at about 3.00 a.m., and she got thirsty, so she went to house for taking water and after taking water when she closed the doors while

returning, the accused, who is her maternal uncle went to her and caught hold of her by closing her mouth and dragged her to some distance and committed rape on her as result she suffered bleeding and lost conscious for some time. P.W.1 also corroborated the prosecution case that five minutes after the incident her mother came and took her to P.W.6's clinic and she has stated before P.W.6 that the accused has committed rape on her and requested her to give treatment for the time being, but she insisted her to approach to the Government Hospital, so they came to their village in an auto and after that her mother approached the accused for her treatment to save her life. During the cross-examination, P.W.1 clearly stated that the accused dragged her to the house of Muslim, which was locked and she struggled to escape from the hands of accused and also raised the cries. P.W.1 denied the suggestion that she has stated in her Statement under Section 161 Cr.P.C. that the accused admitted his guilt and gave Rs.500/- for her treatment, but when specific question was asked about the same, she stated that she do not know.

11. P.W.2, who is the mother of the victim, corroborated the oral evidence of P.W.1. She also corroborated the evidence of P.W.1 with regard to taking her to clinic of P.W.6. During the cross-examination, Ex.D-2, a portion of Statement of P.W.2 under Section 161 Cr.P.C., was marked to the effect that she found P.W.1 in front of the house of Md. Fareed. In the absence of any evidence to show that the distance between the house of P.W.2 and the house of Md. Fareed, it was far away from the house of P.W.2. Hence, Ex.D-2 is not a material contradiction to throw away the oral evidence of P.W.2 with regard to that on the incident day, while she was watching street play in her village at about 3.00 a.m., P.W.3 came and informed to her that her daughter was in an unconscious stage and on knowing that she went and found her daughter in court-yard in unconscious condition. The oral evidence of P.W.1, corroborated by the evidence of P.W.2 and P.W.6 clearly show that after the incident, P.W.1 was suffering

with bleeding from her private part, so in the said circumstances, P.W.1 and P.W.2 might not have gone to the police station for lodging the complaint and in the said circumstances, mere delay in lodging F.I.R., the oral evidence of P.Ws.1 and 2 cannot be brushed aside. According to the evidence of P.W.9 Dr. Lavanya, there are no symptoms or signs of rape over the victim.

13. Being this is a case of concurrent findings of prosecution and if there is evidence of the victim and the medical evidence, then the medical evidence has to be appreciated, which plays a very important role, then the evidence of the victim inspires confidence. The doctor, who examined the victim, specifically stated before the Court concerned that the victim has not sustained any injury and there is no evidence to suggest that the victim was subjected to sexual harassment and there is nothing to suggest that she had recent sexual intercourse. The medical evidence is totally contrary to the evidence of P.W.1 and further it is not supported by any of the eye witnesses, who turned hostile in the present case.

14. Considering the facts and circumstances of the case, the Criminal Revision Case is allowed and the judgment, dated 07.01.2008, passed in CrI.A.No.6 of 2007, by the VI Additional District & Sessions Judge (Fast Track Court), Ranga Reddy District, at Vikarabad, confirming the judgment in S.C.No.6 of 2006, dated 15.03.2007, passed by the Assistant Sessions Judge, at Vikarabad, Ranga Reddy District, is set aside and the petitioner/accused is acquitted of the offence under Section 376 IPC. The fine amount, if any, paid by the petitioner/accused is directed to be refunded to him. Bail bonds, if any, shall stand cancelled.

15. Accordingly, the Criminal Revision Case is allowed. Consequently, the Miscellaneous Petitions, if any, pending in this criminal revision case shall stand closed.

RAJA ELANGO, J

Date: 9th August, 2016

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HONOURABLE SRI JUSTICE RAJA ELANGO

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