

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL Nos.436 & 439 OF 2009

COMMON JUDGMENT:

These two Criminal Appeals are arising out of the same judgment and therefore, they are heard together and being disposed of by this common judgment.

Criminal Appeal No.436 of 2009 is preferred by A.2 & A.3 and Criminal Appeal No.439 of 2009 is preferred by A.1 challenging the judgment of the Special Judge for Trial of cases under the SCs & STs (POA) Act, West Godavari at Eluru dated 24.4.2009 in SCs & STs S.C.No.10 of 2006. By the said judgment, A.1 was convicted for the offence under Section 376 IPC and sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.50,000/-, in default, to undergo S.I. for one year. Out of the said fine amount, an amount of Rs.25,000/- was ordered to be given to the male child of P.W.1 & A.1 towards compensation after his attaining majority. A.1 is also convicted for the offence under Section 417 IPC and sentenced to undergo R.I. for one year. He is also convicted for the offence under Section 3(1)(xii) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') and sentenced to undergo R.I. for two years and to pay a fine of Rs.1,000/-, in default, to undergo S.I. for one month. The trial Court convicted A.2 & A.3 for the offence under Section 312 IPC and sentenced them to undergo R.I. for one year each.

The case of the prosecution, in brief, is that A.1 is the son of A.2 & A.3. P.W.1, who is a member of scheduled caste, used to work as servant maid in the house of accused. After six months of her working in the house of accused, A.1 committed rape on her and promised to marry her. Subsequently, on the said promise of marrying, he used to have sexual intercourse with P.W.1 and she became pregnant. The accused gave some tablets to P.W.1 and got her pregnancy aborted. Even thereafter, A.1 had sexual intercourse with P.W.1 with the same promise. Again P.W.1 became pregnant. P.W.1 brought it to the notice of A.2 and A.3, who are the parents of A.1. They promised to perform her marriage with A.1 after completion of his studies and they took her to P.W.5. By that time, P.W.1 was six months pregnant. P.W.5 refused to perform abortion. A.2 and A.3 threatened P.W.1 with dire consequences. Later P.W.1 was sent to her relative's house at Tenali, where she gave birth to a male child. On 14.8.2004 P.W.1 gave a report under Ex.P.1 to the police, basing on which, P.W.9-S.I. of police registered a case in Crime No.72 of 2004 under Sections 417, 420 and 493 r/w 109 IPC and after completion of investigation, laid the charge sheet by altering section of law by adding Section 376 IPC and Section 3(2)(v) of the Act against all the accused.

In order to bring home the guilt of the accused, the prosecution examined P.Ws.1 to 10 and marked Exs.P.1 to P.20. On behalf of defence, no oral or documentary evidence was adduced.

After analyzing the evidence brought on record, the trial Court mainly relying on the evidence of P.W.1-victim, convicted and sentenced the appellants-accused as aforementioned. Hence, the appeal by the accused.

Heard the learned counsel for the appellants and learned Public Prosecutor. Perused the material available on record.

The trial Court convicted the appellants mainly basing on the evidence of P.W.1, who is the victim girl. As per the evidence on record, it is a case of consent and thereafter A.1 promised to marry P.W.1. As seen from the evidence, the prosecution failed to prove the age of the victim girl-P.W.1 at the time of occurrence. Since, on evaluation of the evidence brought on record, the court decided the issue that it is a case of consent by victim, when the age of victim girl-P.W.1 is not proved by the prosecution, the offence under Section 376 IPC is not attracted against A.1 and hence, the conviction for the said charge is not sustainable under law and liable to be set aside. Since it is a case of consent, the offence under Section 3(1)(xii) of the Act is also not attracted against A.1 and the same is also liable to be set aside.

As far as the offence under Section 417 IPC is concerned, it is evident from the DNA test that the male child born to P.W.1 is through A.1 and it is established by the prosecution beyond any doubt as against A.1 and therefore, this Court finds no ground to interfere with the same. The

trial Court while awarding fine of Rs.50,000/- against A.1 for the count under Section 376 IPC, directed that a sum of Rs.25,000/- be given to the child born to P.W.1 through A.1 towards compensation. This Court while acquitting A.1 for the offence under Section 376 IPC is inclined to confirm the same fine amount and compensation for the offence under Section 417 IPC as against A.1 and in addition, he is directed to pay additional fine of Rs.1,00,000/- before the trial Court on or before 15.11.2016. The said fine amount is directed to be given to the son of P.W.1 towards compensation after his becoming major. As far as A.2 and A.3 are concerned, the prosecution failed to connect A.2 and A.3 for the offence under Section 312 IPC and the conviction under the said count is liable to be set aside as against them.

In the result, Criminal Appeal No.439 of 2009 is allowed in part. The convictions and sentences imposed on A.1 for the offences under Section 376 IPC and Section 3(1)(xii) of the Act are hereby set aside and he is not found guilty of the said offences and acquitted of the said charges. But, the conviction imposed by the trial Court on A.1-appellant for the offence under Section 417 IPC is confirmed and the fine & compensation imposed by trial Court on A.1 under Section 376 IPC is to be treated as has been imposed by this Court under Section 417 IPC. In addition to that, the A.1-appellant is directed to pay additional fine of Rs.1,00,000/- before the trial Court on or before 15.11.2016, in default, to undergo R.I. for six months. The said amount is directed to be given male

child born to P.W.1 through A.1 after his attaining the age of majority. Till such time, the said amount shall be kept in fixed deposit in any nationalized bank.

The Criminal Appeal No.436 of 2009 is allowed and the impugned conviction and sentence imposed on the appellants-A.2 & A.3 for the offence under Section 312 IPC is hereby set aside and they are found not guilty of the offence and acquitted of the said charge.

Pending Miscellaneous petitions, if any, shall stand closed.

28.09.2016
Tsr



JUSTICE RAJA ELANGO