

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1933 of 2006

JUDGMENT:

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1. This revision case is filed by the petitioner-accused against the judgment dated 10.11.2006 passed by the V Additional Sessions Judge, Mahaboobnagar in CrI.A.No.205 of 1999.

2. The case of the prosecution is as follows:

The victim-Kum. Nagamani is the daughter of the de facto complainant-Bijja Ramachandraiah. On 23.6.1996 at 5 a.m., the accused, who is working as Excise and Prohibition constable at Atmakur took the victim from her house to Atmakur with a promise to marry her and kept her in a rented house and had sexual intercourse with her. Later, he brought her back to Kollapur and kept in his own house. On the basis of the complaint, the police raided the house of the accused and took the victim girl. Thus, the accused abducted the victim girl and committed rape on her. A case was registered against the petitioner-accused. After completion of the investigation, police filed the charge sheet. The learned Judicial Magistrate of First Class, Kollapur took the case on file and made over the same to the Court of Sessions, Mahaboobnagar. The Court of Sessions registered it as S.C.No.241 of 1997 and made over the case to the learned Assistant Sessions Judge, Nagarkurnool for disposal.

3. The trial Court framed charges under Sections 366 and 376 IPC against the petitioner-accused, read over and explained to him, for which he pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 10 were examined and Exs.P1 to P10 and M.Os.1 and 2 were marked on behalf of the prosecution. D.W.1 was examined and Ex.D1 was marked on behalf of the accused.

5. On appreciation of oral and documentary evidence, the trial Court found the petitioner-accused guilty for the offence under Section 366 IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/- in default to suffer rigorous imprisonment for a period of three months. However, the petitioner-accused was acquitted for the offence under Section 376 IPC. Aggrieved by the said conviction, the petitioner filed appeal viz., CrI.A.No.205 of 1999 before the V Additional Sessions Judge (FTC), Mahabubnagar. The learned Additional Sessions Judge dismissed the appeal. Aggrieved by the same, the petitioner-accused filed this revision.

6. Learned Counsel for the petitioner submitted that the victim girl has got acquaintance with the petitioner and she had sexual intercourse with the petitioner prior to the present incident and that she went along with the petitioner voluntarily. He further submitted that the trial Court convicted the petitioner for the offence under Section 366 IPC, whereas the lower appellate Court observed that the petitioner is liable to be convicted under Section 366-A IPC and the said observations of the lower appellate Court are not sustainable and that the prosecution has failed to prove the age of the victim girl and that the Courts below failed to appreciate the evidence in a proper perspective.

7. Learned Additional Public Prosecutor submitted that the Courts below have rightly appreciated the evidence and that the prosecution has established the guilt of the accused and that the judgment under revision does not warrant any interference.

8. In a case of this nature, the evidence of the victim-girl plays a vital role. The prosecution has also mainly relied upon the evidence of the victim, who was examined as P.W.4. The fact that remains

undisputed in the instant case is that the petitioner and the victim had sexual intercourse. The trial Court framed charges under Sections 366 and 376 IPC. Insofar as the offence under Section 376 is concerned, P.W.4 has not stated that she was compelled and forced to have sexual intercourse or the accused had sexual intercourse against her will. Further, it is her evidence that on invitation by the accused, who is known to P.W.4, she followed him and subjected herself for sexual relationship. As the evidence of P.W.4 does not disclose any offence under Section 376 IPC, the trial Court acquitted him for the said offence.

9. Insofar as the offence under Section 366 IPC is concerned, Section 366 runs as follows:

“Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable as aforesaid.”

For proving the offence under Section 366 IPC, the Prosecution has to prove the following ingredients. The essential ingredients of Section 366 IPC are :

- (a) A person kidnaps or abducts any woman.
- (b) The act is done
 - (i) with intent that she may be compelled to marry any person against her will, or
 - (ii) knowing it to be likely that she will be so compelled, or

- (iii) in order that she may be forced or seduced to illicit intercourse, or
- (iv) knowing it to be likely that she will be so forced or seduced.

The main ingredients of Section 366 IPC are that the act of kidnap or abduction must have been done with an intention to compel the victim to marry against her will or to compel to illicit intercourse. The ingredients of Section 366 IPC would not attract to the present facts of the case. It is not the case of the victim that the petitioner compelled her or seduced her for marriage, whereas it is her evidence that she intended to marry the petitioner and she compelled the petitioner to marry her as they have sexual relationship.

10. On the entire reading of the evidence, it is clear that the petitioner wants to marry the victim and there was also a proposal by the families and the said proposal was rejected by the family of the victim. But the victim continued her relationship with the petitioner. The prosecution has failed to establish its case for the offence under Section 366 IPC against the petitioner.

11. It is unfortunate to note that even though the petitioner filed the appeal against the conviction under Section 366 IPC and even though there is no charge for the offence under Section 366-A IPC, the lower appellate Court wrongly observed that the conviction of the petitioner for the offence under Section 366-A IPC is based on the evidence,.

12. Considering the facts and circumstances of the case instead of remanding the matter for appreciation of the evidence afresh by the lower appellate Court, this Court proceeded to decide the issue on the evidence available on record.

13. For the above said reasons, this Court is of the view that the prosecution failed to prove its case against the petitioner-accused beyond all reasonable doubt for the offence under Sections 366 IPC,

and that the observation of the lower appellate Court that the conviction of the petitioner-accused for the offence under Section 366-A IPC is based on the evidence is not sustainable.

14. In the result, the Criminal Revision Case is allowed setting aside the conviction and sentence imposed by the lower appellate Court against the petitioner-accused in Crl.A.No.205 of 1999 vide judgment dated 10.11.2006. The fine amount paid, if any, shall be refunded to the petitioner. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:8th August, 2016
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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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