

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.803 OF 2009

JUDGMENT:

This Criminal Appeal is preferred by the sole accused challenging the judgment of IV Additional Metropolitan Sessions Judge, Hyderabad dated 17.7.2009 in S.C.No.409 of 2008, whereby the learned Judge convicted the appellant for the offences under Sections 376 and 506 IPC and sentenced him to undergo R.I. for ten years and to pay a fine of Rs.2,000/-, in default, to suffer S.I. for one year for the offence under Section 376 IPC. He is further sentenced to undergo S.I. for two years for the offence under Section 506 IPC.

The case of the prosecution, in brief, is that the accused is neighbour of the victim girl, aged 14 years, and taking advantage of aloneness of the victim, he took her to his house on different occasions and committed rape on her apart from threatening to kill her if she discloses the same to anybody. Three days thereafter, since the victim girl complained stomach pain, on enquiry by her grandmother-P.W.1, she informed that that the accused committed rape on her. On 14.2.2008 at 1.30 p.m., on the oral statement of P.W.1, a case in Crime No.63 of 2008 was registered for the offences under Sections 376 and 506 IPC and after completion of investigation, police laid the charge sheet against the accused for the said offences.

In order to bring home the guilt of the accused, the prosecution examined P.Ws.1 to 11 and marked Exs.P.1 to P.9. On behalf of defence, D.Ws.1 to 3 were examined.

After analyzing the evidence brought on record, the trial Court convicted and sentenced the appellant-accused as aforementioned. Hence, the appeal by the accused.

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

In this case, except P.W.4, all other independent witnesses including the crucial witnesses i.e. P.Ws.1 and 2 did not support the case of the prosecution and they were declared hostile. In the cross-examination by the prosecution, P.W.2-victim girl deposed in the same lines as of the case of prosecution, but at the time of cross-examination by the defence, she has accepted the defence of the accused. The answers given by the victim clearly reveals her imbalanced mental condition and that she was not in a position to understand the things before the Court. At one stage, she stated that the accused had committed rape on her. At some other stage, she deposed that the accused has not committed anything on her. She stated that she is not deposing as per the instructions of her grandmother i.e. P.W.1. Whereas, in the cross-examination by the accused, she stated that as per the instructions of her grandmother, she is deposing before the Court. Basing on the said evidence, the trial Court convicted the accused-appellant. Further the prosecution

has also not produced any certificate to substantiate the age of the victim girl. This Court after perusal of the entire evidence is of the view that it is highly unsafe to convict the accused on the basis of the evidence of P.W.2, which is inconsistent, highly unbelievable and suffers with infirmities since she is not in a position to depose before the Court about the exact commission of offence allegedly committed by the accused. Hence, the convictions and sentences imposed by the trial Court on the appellant-accused are liable to be set aside by extending benefit of doubt in favour of the accused.

In the result, the Criminal Appeal is allowed. The impugned convictions and sentences imposed on the appellant by the trial Court in S.C.No.409 of 2008 dated 17.7.2009 for the offences under Sections 379 and 506 IPC are hereby set aside and he is found not guilty of the offences and acquitted of the said charges. The fine amount, if any, paid by the appellant herein shall be refunded to him.

Pending Miscellaneous petitions, if any, shall stand closed.

JUSTICE RAJA ELANGO

07.09.2016
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