

**THE HON'BLE SRI JUSTICE RAJA ELANGO**  
**CRIMINAL REVISION CASE No.889 of 2007**

**ORDER:**

The above Criminal Revision Case is filed by the petitioner - accused against the Judgment, dated 29.06.2007, passed in CrI.A. No.81 of 2006, by the VI Additional District & Sessions Judge (FTC), Markapur, confirming the conviction and sentence imposed by the Assistant Sessions Judge, Darsi, in S.C.No.66 of 2004, vide judgment, dated 21.09.2006, wherein the learned Sessions Judge found the accused guilty of the offence under Section 376 IPC and convicted and sentenced him to undergo rigorous imprisonment for a period of Seven (7) years and to pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for a period of one year.

The case of the prosecution in brief is as follows:

The petitioner – accused used to visit the house of PW.4, which is situated opposite to the house of PW.1, who is the mother of PW.2- victim girl, and PW.2 got acquaintance with the petitioner. Taking advantage of the same, the petitioner developed evil desire of enjoying her sexually. On 09.04.2002, PW.2 had been to their fields, situated at 3/4 k.m., distance from Balaramnagar village for fetching choppa. At about 5.00 p.m., when PW.2 was cutting the hay, the petitioner approached her and stated that he likes her and saying so, he tried to put his hand on her. Then PW.2 chastised the petitioner and on that he left the place. Later PW.2 collected the hay and started to their house by keeping the hayrick bundle on her head. Meanwhile, the petitioner came from southern side and pushed PW.2 on the ground, removed lower pyzama, laid on her and committed sexual intercourse with her by using force. PW.2 scuffled with petitioner and also made some scratches on his face with her nails. In spite of that, the petitioner committed heinous sexual assault on her. Thereafter, the petitioner threatened PW.2 with dire consequences if she reports to anybody. After came to her house, PW.2 narrated the incident to PW.1, LW.3 and PW.3. On the next day i.e. 10.04.2002 at about 10.00 hours, PW.1

accompanied by PW.2, PW.5 and LW.3 turned up at police station and presented a report. PW.13, ASI of Police, Mundlamur PS., registered the said report as a case in Cr.No.20 of 2002 u/s.376 IPC. LW.15 took up investigation. On 12.04.2002, LW.15 arrested the petitioner in the presence of PWs.7 and 8 and seized lungi from him. On completion of investigation, LW.16 laid charge sheet before JFCM Court, Darsi and the same was registered as PRC No.35/2003.

The learned Magistrate committed the case to the Court of Sessions, Prakasam Division, Ongole since the offence is exclusively triable by the Court of Sessions. Later the case was numbered as S.C. No.66 of 2004 and was made over to the Assistant Sessions Judge, Darsi, for disposal in accordance with law. On appearance of the petitioner, the charge under Section 376 IPC was read over and explained to him, for which he pleaded not guilty and claimed to be tried.

To substantiate its case, prosecution examined P.Ws.1 to 13 and marked Exs.P1 to P13. No oral or documentary evidence was adduced on behalf of the petitioner.

On appreciation of oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 376 IPC, and accordingly, convicted and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for a period of one year. Aggrieved by the conviction and sentence imposed by the trial Court, the petitioner filed CrI.A. No.81 of 2006 before the VI Additional District & Sessions Judge, (Fast Track Court), Markapur. The learned District & Sessions Judge, after re-appreciating the evidence on record, dismissed the appeal by confirming the sentence and conviction recorded by the trial Court, vide judgment impugned. Challenging the same, the present revision case is filed.

Learned counsel for the petitioner submitted that the victim girl is a minor and she is a consenting party to the said offence and that the DNA report disproves the case of the case of the prosecution and

therefore, the conviction and sentence imposed against the petitioner be set aside.

On the other hand, learned Additional Public Prosecutor submitted that the findings of the Courts below need not be interfered with, inasmuch as the findings are based upon proper appreciation of evidence and therefore, he prays to dismiss the revision.

Being it is a case of forcible sexual intercourse against the victim by the petitioner, appreciation of the evidence of the victim and the evidence of doctor as well as the scientific analysis by the scientific expert is more important. PW.2 is the victim. From her evidence, it is clear that she has acquaintance with the petitioner and the petitioner used to visit the house of LW.4 situated opposite to the house of the victim. PW.2-victim categorically stated that the petitioner is the person who committed rape upon her while she was returning to her house from the fields. She informed the same to her mother and on the next day they went to the police station and lodged a complaint. She was sent to the Government Hospital, Addanki for medical examination and there she handed over her Pyzama to the doctor, which was sent for chemical analysis to substantiate that she was subjected to sexual intercourse and further the investigation agency took efforts to prove that the semen available on the pyzama is that of the petitioner.

PW.12, who conducted DNA test, categorically stated before the Court that the semen found on the pyzama worn by the victim and the blood samples of the accused are not tallied. Even though the suggestion given by the prosecution that due to lapse of time there is chance of degradation of the blood samples, the same was denied by the said witness and further he confirmed in the cross-examination that the semen available on the pyzama is intact and it can be taken into consideration for chemical examination. The said answer runs as follows:

“I have found semen stains on the pyzama which are suitable for conducting DNA test and further there was no possibility of degradation of blood samples taken by me.”

The evidence of P.W.12 is not clear and his opinion raises a doubt as to the case of the prosecution.

P.W.11 is the Medical Officer, who examined the victim. She issued Ex.P.9 Medical certificate. She opined that she found two small abrasions, one the right elbow joint and the other over the face below the nose and above the upper lip and both the injuries are possible at the time of committing rape. She further opined that PW.2 is accustomed to sexual intercourse. The said evidence runs as follows:

“In my opinion, PW.2 is accustomed to sexual intercourse.”

From the evidence of P.W.2 and the evidence of P.W.11-Doctor, it is evident that the victim-girl has got acquaintance with the petitioner and she is habituated to sexual intercourse.

According to P.W.9, who examined the victim for age determination, the victim is aged about 14 to 16 years. The margin of error in age ascertained by radiological examination is two years on either side. If the evidence of the doctor is taken into consideration as 16 years, which can be assessed by adding two years on higher side, it is of 18 years.

In view of the above evidence coupled with the medical evidence, the contention of the learned Counsel for the petitioner that the victim is a minor and she is a consenting party to the occurrence, cannot be brushed aside. In the circumstances, this Court is of the view that the petitioner is entitled for benefit of doubt. Hence, the conviction and sentence imposed by the trial Court, as confirmed by the appellate Court, are liable to be set aside.

Accordingly, the Criminal Revision Case is allowed setting aside the conviction and sentence imposed by the Assistant Sessions Judge, Darsi, in S.C.No.66 of 2004, vide judgment, dated 21.09.2006,

as confirmed by the VI Additional District & Sessions Judge (FTC), Markapur in Crl.A. No.81 of 2006. The petitioner - accused is found not guilty of the offence under Section 376 IPC and he is acquitted for the said charge. The fine amount, paid if any, shall be refunded to the petitioner. Bail bonds shall stand cancelled and the sureties are discharged.

Miscellaneous petitions, pending if any, shall stand closed.

RAJA ELANGO, J

**July 18, 2016.**  
KTL