

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1196 OF 2007

JUDGMENT:

This criminal appeal is preferred by the State by invoking the provision under Section 378 (3) & (1) of the Code of Criminal Procedure being aggrieved by the judgment, dated 16.03.2006, rendered in S.C. No.768 of 2004, by the Assistant Sessions Judge, Sricilla, whereby and whereunder the learned Judge found the respondent –accused not guilty of offences under Sections 376 & 506 IPC and accordingly, acquitted him of the said offences.

The brief facts of the case are that the respondent – accused and PW.2-victim girl are residents of Pothuru village. On 22.01.2004, at about 12.00 noon, when the victim girl went out of her house to attend the call of nature near bubble bushes, the accused saw the victim and took advantage of her loneliness and took her deep into the bushes by gagging her mouth, and committed rape upon her and thereafter, threatened her to kill if she reveals the same to anyone. The victim came to the house of PW.9 and informed him and PW.10 about the incident. She also informed the same to PW.3 and her sister-in-law and to her brother-PW.1, after his return to the house in late hours from his work. Due to the threat by the accused, they did not approach the police immediately. On 27.01.2004, PW.1 along with the victim went to the Police Station and presented a report. Basing on the same, the police registered a case against the accused and investigated into. The clothes of the victim were seized under panchanama. During the course of investigation, the victim was sent to the hospital for examination. On 03.02.2004, the accused was arrested at his house and he voluntarily confessed to have committed the offence. After

completion of investigation, the police filed charge sheet for the offences under Sections 376 and 506 IPC.

The case was taken on file by the Judicial Magistrate of First Class, Sricilla for the offences under Sections 376 and 506 IPC against the petitioner and the case was committed to the District & Sessions Court, Karimnagar, since the case is exclusively triable by the Court of Sessions. Thereafter, the learned Sessions Judge took the case on file and numbered it as SC No.768 of 2004 and made over the same to the trial Court for trial and disposal in accordance with law. On appearance of the accused, charges under Sections 376 and 506 IPC were read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

To prove its case, the prosecution examined PWs.1 to 18 and marked Exs.P.1 to P.14 besides MOs.1 to 5. No oral or documentary evidence was adduced on behalf of the accused.

After evaluating the oral and documentary evidence adduced by the prosecution witnesses, the trial Court found the respondent – accused not guilty of the offences under Sections 376 and 506 IPC and accordingly acquitted him. Aggrieved by the same, State preferred the present appeal.

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

A perusal of the judgment of the trial Court discloses that the learned trial Judge, while acquitting the respondent has observed as follows:

There is an inordinate delay in lodging the complaint and the cause of delay explained by PW.1 is unbelievable. If it is the case of the

prosecution that due to fear of the accused, the victim and her family members did not approach the police, the same should have been proved by the prosecution by adducing positive evidence. Further, the victim was treated by PW.4 two days after the incident and thereafter, after two days, they lodged the present complaint. The doctor, who examined the victim, did not find any injuries on the body of the victim even though it was stated by the victim that the accused committed rape upon her in thorny bushes.

By observing as above, the learned Sessions Judge came to the conclusion that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt and accordingly, acquitted the accused.

In a case of acquittal, if the trial Court considered two views and basing on one of the views, which is in favour of the accused, acquits the accused and normally this Court will not interfere with the judgment of the trial Court unless and otherwise, the evidence adduced by the prosecution clinchingly points towards the guilt of the accused. Hence, as rightly pointed out by the learned trial Judge, the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt and this Court is of the view that the trial Court has rightly acquitted the accused disbelieving the case of the prosecution. This Court is not inclined to interfere with the judgment of the trial Court and hence, the appeal is liable to be dismissed.

Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 16.03.2006, passed in S.C. No.768 of 2004 by the Assistant Sessions Judge, Sricilla. The miscellaneous petitions pending, if any, shall also stand dismissed.

RAJA ELANGO, J

September 21, 2016.
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