

*** THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

+ CRL.R.C.No.471 OF 2008

% 09.03.2016

Kaadashi Mallesh

Petitioner

VERSUS

\$ State of A.P. rep. by Public Prosecutor

Respondent

! Counsel for Petitioner : Smt. A. Gayathri Reddy

^ Counsel for the respondent : Public Prosecutor

<GIST:

> HEAD NOTE:

? Cases referred

[1] AIR 1962 SC 1788

² (2011) 14 SCC 326

³ (2015) 4 SCC 762

⁴ (2001) 2 SCC 205

⁵ (1976) 1 SCC 389

⁶ (1976) 4 SCC 233

⁷ AIR 1952 SC 54

⁸ AIR 1990 SC 658

⁹ AIR 1952 SC 54

¹⁰ (1993) SCC 2 622

¹¹ AIR 1996 SC 1393

¹² AIR 2002 SC 1963

¹³ AIR 2005 SC 1248

¹⁴ (2010) 2 SCC 9

¹⁵ (2010) 8 SCC 191

¹⁶ AIR 1990 SC 658

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THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.471 of 2008

ORDER:

1 This Criminal Revision Case is filed under Section 397 and 401 Cr.P.C. assailing the judgment dated 21.11.2007 passed in Criminal Appeal No.36 of 2006 on the file of the Court of the District and Sessions Judge, Karimnagar, wherein and whereby the conviction and sentence imposed on the petitioner by the learned Assistant Sessions Judge, Peddapalli in S.C.No.918 of 2001, dated 16.02.2006, was confirmed.

2 The contention of the learned counsel for the petitioner is three fold.

1) The Courts below failed to appreciate the delay in lodging the complaint which is fatal to the case of prosecution, 2) The Courts below ought not to have convicted the petitioner basing on the sole testimony of P.W.2 who is an interested witness, and 3) The findings recorded by the Courts below are perverse as the same are based on material which is not legally admissible.

3 *Per contra*, the learned Public Prosecutor submitted that the Court can convict a person basing on the sole testimony of the prosecutrix if the same inspires the confidence of the court. She further submitted that the prosecution has assigned cogent and valid reasons for the delay in lodging the complaint. She further submitted that the findings recorded by the Courts below are fully supported by oral and documentary evidence available on record.

4 The case of the prosecution in nutshell is as follows:

5 On 22.02.2001 the petitioner went to the house of Kaadasi Babu (P.W.1) to invite his family members for the cradle ceremony of his daughter. Taking advantage of the loneliness of Rajeswari (P.W.2) i.e.

the wife of P.W.1, the petitioner caught hold of her hand with an intention to commit rape on her. P.W.2 sprinkled chilli powder on the face of the petitioner and escaped from his clutches. The incident was witnessed by P.Ws.3 to 5. On 23.02.2001 P.W.1 lodged a complaint to the police who in turn registered a case in Cr.No.12 of 2001 for the offence punishable under Section 354 of IPC. During the course of investigation, the section of law was altered to 376 r/w 511 of IPC and after completion of investigation, the investigating officer laid charge sheet against the petitioner for the offence punishable under Section 376 r/w 511 of IPC before the learned Judicial Magistrate of First Class, Peddapalli. After the case being committed, the learned District and Sessions Judge, Karimnagar has taken the case on file under Section 376 r/w 511 IPC and numbered it as S.C.No.918 of 2001 and made over the same to the Assistant Sessions Judge, Peddapalli. The learned Assistant Sessions Judge, Peddapalli heard the version of the prosecution as well as the defence and framed charge under Section 376 r/w 511 of IPC against the petitioner for which the petitioner pleaded not guilty and claimed to be tried.

6 To bring home the guilt of the petitioner for the offence punishable under section 376 r/w 511 of IPC, on behalf of the prosecution P.Ws.1 to 7 were examined and Exs.P.1 to P.7 and M.O.1 were marked. On behalf of the defence, no oral or documentary evidence was adduced.

7 After having a thoughtful consideration to the oral and documentary evidence available on record, the learned Assistant Sessions Judge, Peddapalli arrived at a conclusion that the petitioner was found guilty for the offence punishable under Section 376 r/w 511 IPC and accordingly convicted and sentenced him to suffer rigorous imprisonment for a period of five years and also to pay a fine of Rs.2,000/- in default, to suffer simple imprisonment for a period of six months. Feeling aggrieved by the said conviction and sentence imposed by the trial Court, the petitioner preferred Criminal Appeal No.36 of 2006 on the file of the Court of the District and Sessions Judge, Karimnagar. The learned District and

Sessions Judge, after re-appreciating the oral and documentary evidence, came to the conclusion that the petitioner committed the offence punishable under Section 376 r/w 511 IPC and confirmed the conviction and sentence imposed by the trial Court. Hence the present Criminal Revision Case.

8 Now the point for determination in the Criminal Revision Case is **“Whether the concurrent finding of fact recorded by the Courts below is perverse and not sustainable in law?”**

POINT:

9 In order to appreciate the rival contentions, I feel it apposite to refer the case law on this aspect.

K. Chinnaswamy Reddy v. State of A.P.^[1],

7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.

In **State of Haryana Vs. Rajmal and Another^[2]** the apex Court

held as under:

14. In State of A.P. v. Pituhuk Sreeinvasa Rao {(2000) 9 SCC 537} this Court held that the exercise of the revisional jurisdiction of the High Court in upsetting concurrent finding of the facts cannot be accepted when it was without any reference, to the evidence on record or to the finding entered by the trial court and appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.

15. It has been also held by this Court in Amar Chand Agarwala v. Shanti Bose and Anr. {(1973) 4 SCC 10} that the revisional jurisdiction of the High Court under Section 439 Code of Criminal Procedure is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice.

10 As per the principle enunciated in the cases cited supra, it has not been open for the High Court to interfere with the concurrent findings of the courts below especially by re-appreciating the evidence in its revisional jurisdiction.

11 Let me consider whether there is any legal flaw in the findings recorded by the courts below.

12 As per the version of the prosecution, the alleged incident took place on 22.02.2001 at the house of P.W.1. As seen from the testimony of P.W.1, he lodged the complaint (Ex.P.1) on 23.02.2001. As seen from the testimony of P.W.7, basing on the complaint lodged by P.W.1, he registered a case in Cr.No.12 of 2001 and issued Ex.P.6 - First Information Report.

13 As per the prosecution version the alleged incident took place at 2.00 PM on 22.01.2001 whereas P.W.1 set the criminal law into motion on 23.02.2001. As pointed out by the learned counsel for the petitioner there is a delay of nearly 22 hours in lodging the complaint. Mere delay in lodging complaint, more particularly, in cases of this nature, cannot be used as a ritualistic formula for doubting the case of the prosecution. It is needless to say that the prosecution has to assign reasons much less cogent and convincing reasons for the delay. According to the victim, on the date of incident her husband was out of station and he returned home only on 23.02.2001 and after she narrated the said incident to her husband, they both went to the police station and gave report, which is

marked as Ex.P.1. It cannot be expected from any woman to go to the police station straight away from the place of incident. In cases of this nature it is not uncommon for the victims to discuss the details with their kith and kin like husband, son etc., keeping in view their family reputation. No house wife will lodge a complaint to the police without consulting her family members. The possibility of lodging of complaint after arriving at the consensus with the family members is quite natural and probable. In those circumstances, delay in lodging complaint by itself is not a valid ground to vitiate the case of the prosecution. The Court has to take into consideration whether the prosecution has put forth cogent and convincing reasons for the delay in lodging the complaint. The Court has to consider the delay in lodging the complaint basing on the nature of the offence and the circumstances under which it was committed. At this juncture, this Court places reliance on the ratio laid down by the Hon'ble apex Court in **Deepak Vs. State of Haryana**^[3] wherein it was held at Para No.16, which reads as follows:

16. The Courts cannot overlook the fact that in sexual offences and, in particular, the offence of rape and that too on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons. One of the reasons is the reluctance of the prosecutrix or her family members to go to the police station and to make a complaint about the incident, which concerns the reputation of the prosecutrix and the honour of the entire family. In such cases, after giving very cool thought and considering all pros and cons arising out of an unfortunate incident, a complaint of sexual offence is generally lodged either by victim or by any member of her family. Indeed, this has been the consistent view of this Court as has been held in **State of Punjab v. Gurmit Singh and Ors.** (1996) 2 SCC 384.

14 The Courts below have come to a conclusion that the prosecution has assigned cogent and convincing reasons for the delay in lodging the complaint. I am fully agreeing with the findings recorded by the Courts below while accepting the reasons put forth by the prosecution for the delay in lodging the complaint. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am unable to accede to the contention of the learned counsel for the petitioner that the delay in lodging the complaint by itself vitiates the case of the prosecution.

15 As per the testimony of P.W.2 on 22.02.2001 at 2.00 PM the petitioner came to her house and caught hold of her hand and made an attempt to commit rape on her. Her testimony further reveals that she informed the same to her husband (P.W.1) after he came from the village. As seen from the testimony of P.W.1, his wife (P.W.2) informed him that the accused came to their house and attempted to commit rape on her. The testimony of P.Ws.1 and 2 is corroborated with each other with regard to the manner of incident.

16 As per the testimony of P.W.3 on the date of incident P.W.2 made hue and cry. As per the testimony of P.W.5, P.W.2 informed him that on 22.02.2001 one person came to her house and caught hold of her hand. For one reason or the other P.Ws.3 and 5 did not support the case of prosecution in all respects, therefore, they were cross examined by the learned Additional Public Prosecutor with the permission of the Court. It is needless to say that the Court need not brush aside the evidence of the hostile witnesses in toto. The court can place reliance on the testimony of hostile witnesses also to the extent of their supporting the version of the prosecution case. If the testimony of P.Ws.3 and 5 is taken into consideration on 22.02.2001 some body entered the house of P.W.2 and caught hold of her hand. So the testimony of P.Ws.3 and 5 is not helpful to straightaway fix the guilt of the petitioner for the charged offence, yet their testimony establishes the occurrence of the incident. At this juncture, this Court places reliance on the ratio laid down by the Hon'ble apex

Court in **Gura Singh Vs. State of Rajasthan**^[4] wherein it was held as follows:

11. There appears to be misconception regarding the effect on the testimony of a witness declared hostile. It is a misconceived notion that merely because a witness is declared hostile his entire evidence should be excluded or rendered unworthy of consideration. This Court in

Bhagwan Singh v. State of Haryana^[5] held that merely because the Court gave permission to the Public Prosecutor to cross-examine his own witness describing him as hostile witness does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base conviction upon the testimony of such witness. In

Rabindra Kumar Dey v. State of Orissa^[6] it was observed that by giving permission to cross-examine nothing adverse to the credit of the witness is decided and the witness does not become unreliable only by his

declaration as hostile. Merely on this ground his whole testimony cannot be excluded from consideration. In a criminal trial where a prosecution witness is cross-examined and contradicted with the leave of the Court by the party calling him for evidence cannot, as a matter of general rule, be treated as washed off the record altogether. It is for the court of fact to consider in each case whether as a result of such cross-examination and contradiction the witness stands discredited or can still be believed in regard to any part of his testimony. In appropriate cases the court can rely upon the part of testimony of such witness if that part of the deposition is found to be creditworthy.

Having regard to the facts and circumstances of the case on hand and also the principle enunciated in the case cited supra, the Court can consider the testimony of these two witnesses to the extent of happening of the incident.

17 The testimony of P.W.6 clearly reveals that the police prepared scene of offence panchanama – Ex.P.5 in their presence. His testimony further reveals that the police seized wrist watch from the bath room of P.W.1. The testimony of P.W.7 also reveals that he prepared scene of offence panchanama in the presence of P.W.4 and 6 and seized M.O.1 wrist watch. Of course, P.W.4 did not support the prosecution version. In the cross-examination of P.Ws.6 and 7 nothing is elicited to disbelieve the prosecution version so far as the scene of offence is concerned. As seen from the testimony of P.W.1, the wrist watch of the petitioner fell down in the bath room during the scuffle. The testimony of P.W.1 is fully supported by PWs.6 and 7 so far as recovery of M.O.1 at the scene of offence.

18 As seen from the testimony of P.W.7, originally the case was registered under section 354 of IPC. But subsequently by filing Ex.P.7-Memo, the section of law was altered to 376 r/w 511 IPC.

19 There are no omissions and contradictions in the testimony of prosecution witnesses to disbelieve the version put forth by the prosecution. The Court can convict a person basing on the solitary evidence of the prosecutrix if the same inspires the confidence of the Court. As per the defence version, due to family disputes P.W.1 lodged a false case against the petitioner. What prompted the petitioner to go to

the house of P.W.1 and invite them to the cradle ceremony of his daughter if really there were disputes between their families? It is a known fact that no one would invite his opponents to the family functions. Nothing is elicited in the cross examination of P.Ws.1 and 2 to substantiate the stand of the petitioner that due to family disputes P.W.1 lodged a false complaint against him. As per the principle laid down in **Rameshwar Vs. The State of Rajasthan**^[7], if the sole testimony of the prosecutrix inspires the confidence of the Court with regard to the manner of occurrence of the offence, then no corroboration is required. In **State of Maharashtra Vs. Chandraprakash Kewalchand Jain**^[8] the Hon'ble apex Court held at para No.16 as follows:

16. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no C more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage: It is only in the rarest of rare cases if the Court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary.

The same principle is reiterated in **Rameshwar Vs. The State of Rajasthan**^[9] **State of Himachal Pradesh Vs. Raghubir Singh**^[10],

State of Punjab v. Gurmit Singh and Ors.^[11], **State of Orissa v. Thakara Besra and Anr.**^[12], **State of U.P. v. Pappu @ Yunus and Anr.**^[13], **Wahid Khan v. State of Madhya Pradesh**^[14], **Vijay @ Chinees Vs. State of Madhya Pradesh**^[15], **State of Maharashtra v. Chandraprakash Kewalchand Jain**^[16].

20 As per the principle laid down in the cases cited supra, the statement of prosecutrix if found to be worthy of credence and reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix. There are no material contradictions or omissions in the testimony of P.Ws.1 and 2, which goes to the very root of the prosecution case. The testimony of P.Ws.1 and 2 is cogent and convincing and inspires the confidence of the Court. Both the Courts below have scrutinized the oral and documentary evidence meticulously and arrived at a conclusion that the petitioner was found guilty for the offence punishable under Section 376 r/w 511 of IPC. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the petitioner that the findings recorded by the Courts below are not based on evidence much less legally admissible evidence. There are no grounds much less valid grounds to interfere with the concurrent findings recorded by the Courts below.

21 The learned counsel for the petitioner submitted that since the offence is of the year 2001 and that inasmuch as the petitioner is roaming from one Court to another Court for all these years, it is a fit case to take lenient view in imposing the punishment against the petitioner.

22 A perusal of the record reveals that the petitioner faced trial before the trial Court and also appeared before the appellate court continuously for a period of six years i.e. from 2001 to 2007. Therefore, the petitioner might have undergone lot of mental agony for all these years due to the

pendency of the criminal case. Moreover, the petitioner has to look after the welfare of his family members.

23 Taking into consideration the family background of the petitioner and other attending circumstances, this Court is inclined to reduce the period of sentence imposed against the petitioner from five years to four years.

24 In the result, the Criminal Revision Case is allowed in part. However, the sentence of rigorous imprisonment for a period of five years as imposed by the Courts below against the petitioner is reduced to that of four years. The bail granted to the petitioner by order dated 27.03.2008 of this Court shall stand cancelled and the petitioner is directed to undergo the remaining period of sentence, if any. The trial Court is directed to take steps to see that the petitioner shall undergo the remaining period of sentence. As a sequel, miscellaneous petitions, pending in this Criminal Revision Case, if any, shall stand dismissed.

T. SUNIL CHOWDARY, J

Date: 9th March, 2016

L.R.Copy be marked

Kvsn

[\[1\]](#) AIR 1962 SC 1788

[\[2\]](#) (2011) 14 SCC 326

[\[3\]](#) (2015) 4 SCC 762

[\[4\]](#) (2001) 2 SCC 205

[\[5\]](#) (1976) 1 SCC 389

[\[6\]](#) (1976) 4 SCC 233

[\[7\]](#) AIR 1952 SC 54

[\[8\]](#) AIR 1990 SC 658

[\[9\]](#) AIR 1952 SC 54

[\[10\]](#) (1993) SCC 2 622

[\[11\]](#) AIR 1996 SC 1393

[\[12\]](#) AIR 2002 SC 1963

[\[13\]](#) AIR 2005 SC 1248

[\[14\]](#) (2010) 2 SCC 9

[\[15\]](#) (2010) 8 SCC 191

[\[16\]](#) AIR 1990 SC 658