

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.614 OF 2012
AND
CRIMINAL REVISION CASE No.219 OF 2010

COMMON JUDGMENT:

Criminal Appeal No.614 of 2012, under Section 378(3) & (1) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the State against the judgment, dated 7.12.2009, in Sessions Case No.639 of 2007 on the file of the Additional Assistant Sessions Judge, Anantapur whereunder and whereby, respondent Nos.1 to 5/A-1 to A-5 were found not guilty for the offence under Section 366-A I.P.C. and acquitted for the said offence under Section 235(1) Cr.P.C. Challenging the very same judgment, the *de facto* complainant filed Criminal Revision Case No.219 of 2010. Hence, both the cases are heard together and disposed of by way of this common judgment.

2. Case of the prosecution, in brief, is as follows:

A-1 to A-4 are residents of Yellutla Village of Gurramkonda Mandal of Chittoor District and A-5 is the native of Araveedu Village of Kadapa District and residing at Kadapa Town during the time of this incident. A-1 and A-2 are wife and husband, A-3 and A-4 are the children of A-1 and A-2, and A-5 is the son of A-1's brother. L.W.1 – Kumari A.Neerajakshi is the victim girl aged about 17 years. L.W.2 - A.Ramamohan is the father of L.W.1. L.W.3 – A.Venkataramaiah is the brother of L.W.1. L.W.4 – Y.Reddappa and L.W.5 – Ganesh Naidu are the eye witnesses to the incident. L.W.6 – P.Rasool, was the Assistant Sub-Inspector, I Town Police Station, Anantapur at the relevant time, who received the complaint of L.W.2, registered the same and started investigation and L.W.7 is B.Subhakar, Sub Inspector of Police, I Town Police Station at the relevant time, who completed the investigation

and filed charge sheet.

L.W.2 is the native of Yellutla Village. A-1 is a relative of L.W.2. L.W.3 is the brother of L.W.2, who was residing at Anantapur. L.W.1 was studying at Anantapur Town and residing in the house of L.W.3. There were some ill-feelings in between the families of L.W.2 and A-1 at Yellutla Village. Prior to this incident, A-1 made proposal to perform the marriage of L.W.1 with A-5, who is the son of her brother for which, L.W.2 and his family members did not agree. So A-1, with an intention to do harm to L.W.2, on 12.4.2006, A-1 to A-5 came to Anantapur Town, went to Government Arts College at about 11:00 A.M., and noticed L.W.1 at the college to attend examinations, kidnapped her with an intention to perform her marriage with A-5. The accused took L.W.1 forcibly in an auto and took her to Kadapa Town via Rayachoti. L.Ws.4 and 5 witnessed the victim girl present with A-1 to A-5 weeping at Rayachoti Bus Stand. The accused kept the victim girl in a lodge at Kadapa and changed several lodges and subsequently, after coming to know about the complaint by L.W.2 at Anantapur I Town Police Station and sent the victim girl to Anantapur. On 14.4.2006, at 2:00 P.M., L.W.2 lodged a complaint with L.W.6, who registered the same in the above said crime under Section 365 I.P.C. and during the course of investigation, L.W.1 appeared before L.W.7 and narrated the incident.

3. The charge sheet was taken cognizance by the Additional Judicial First Class Magistrate, Anantapur as case in P.R.CNo.69 of 2007 against the accused for the offence under Section 366-A I.P.C.

4. The learned Magistrate committed the case under Section 209(a) Cr.P.C. to the Court of Sessions, Sessions Division, Anantapur. After receipt of case material, the learned Sessions Judge has taken the matter on file as S.C.No.639 of 2007 and made over the same to the Court of the Additional Assistant Sessions Judge, Anantapur for

disposal according to law.

5. After appearance of the accused, the learned Additional Assistant Sessions Judge, Anantapur examined them under Section 228(1)(b) Cr.P.C. for which, they pleaded not guilty. On hearing both sides, charge under Section 366-A I.P.C. was framed, read over and explained to them in Telugu for which, they denied the charge and claimed to be tried.

6. To substantiate the case of the prosecution, P.Ws.1 to 8 were examined and Exs.P-1 to P-7 were marked.

7. After closure of the evidence on the prosecution side, the accused were examined under Section 313 Cr.P.C. They denied the evidence on the side of the prosecution. On behalf of the accused, none was examined and Ex.D-1 was marked. Ex.C-1 – Handwriting of P.W.2 taken in the open Court was also marked.

8. The learned trial Judge, basing on the evidence adduced and after elaborate discussion, found the accused not guilty for the offence under Section 366-A I.P.C. and accordingly, acquitted them. Challenging the same, the State filed the present Criminal Appeal and the *de facto* complainant filed the present Criminal Revision Case.

9. Being this is a case wherein P.W.2 is the victim in the hands of the accused, the evidence of P.W.2 gains more importance to decide the issue. The trial Court elaborately considered all the evidence more particularly, the evidence of P.W.2. It is an admitted fact by P.W.2 that she went along with A-5 on 12.4.2006 and was dropped near the Police Station, Anantapur on 8.5.2006. During the said period, she travelled along with A-5 to various places and stayed in different lodges. Further, it is not her case that she was subjected to sexual assault. The learned trial Judge has observed that the act of the victim clearly indicates that she is a consenting party and further, the

evidence does not show that the victim is a minor. Apart from that, the categorical statement of the said victim disclose that she was neither subjected to any harassment nor was forcibly taken away by A-5 through his deceitful words. Hence, the trial Court is of the view that the prosecution failed to connect the accused with the crime concerned and accordingly, acquitted them.

10. Heard and perused the material available on record.

11. The trial Court, mainly relying on the evidence of the victim girl, has rightly recorded its findings. The said findings are neither perverse nor illegal. Hence, this Court is of the view that the said findings are in accordance with law and therefore, the impugned judgment warrants no interference of this Court.

12. Further, in a case of acquittal, if the trial Court consists of two views and basing on one of the views, which is in favour of the accused, acquits the accused, normally, the appellate 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. In the present case, the learned trial Judge has considered all aspects and acquitted the accused. Hence, this Court is not inclined to interfere with the judgment of acquittal of the trial Court and the appeal as well as the revision fail and are liable to be dismissed.

13. Accordingly, both the Criminal Appeal and the Criminal Revision Case are dismissed confirming the judgment, dated 7.12.2009, in Sessions Case No.639 of 2007 on the file of the Additional Assistant Sessions Judge, Anantapur.

14. Miscellaneous petitions pending, if any, in these cases shall stand closed.

JUSTICE RAJA ELANGO

27.7.2016

AMD

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