

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.671 of 2005

ORDER:

This criminal revision case is filed under Sections 397 and 401 Cr.P.C., challenging the judgment dated 25.8.2003 in Criminal Appeal No.164 of 1999 on the file of the Court of I Additional District & Sessions Judge, West Godavari, at Eluru, wherein and whereby the conviction and sentence imposed against the petitioner under Section 376 IPC directing him to undergo rigorous imprisonment for a period of seven years and also to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month, vide judgment dated 08.10.1997, in S.C. No.430 of 1995 on the file of the Court of the Assistant Sessions Judge, Bhimavaram, West Godavari District, was confirmed.

2. The petitioner appeared before this court on 28.10.2016, in pursuance of non bailable warrant issued against him, reported that he has no means to pursue the criminal revision case and therefore, this court appointed Sri C.Saran Reddy, learned counsel as State Brief to defend the petitioner.

3. The learned counsel for the petitioner submitted that the finding of the courts below that the petitioner committed rape on Kalidasu Durga (P.W.1) is not supported by the medical evidence. He further submitted that there is no iota of evidence to establish that the accused committed rape on P.W.1. The courts below failed to consider the possibility of false implication of the petitioner by the P.W.1 for the reasons best known to her. He also submitted that the findings recorded by the courts below are not

sustainable either on facts or in law. **Per contra**, learned Public Prosecutor submitted that the testimony of the prosecutrix is sufficient to convict a person for the offence under Section 376 IPC. Merely because the medical evidence is not supported the version of P.W.1, that itself is not a sufficient ground to disbelieve the version of P.W.1. He further submitted that the findings recorded by the Courts below are supported by material available on record.

4. The facts that lead to filing of this criminal revision case are as follows:

On 15.12.1994 at about 2.00 p.m., P.W.1 went to the house of the petitioner to get the clothes of her husband pressed. Taking advantage of loneliness of P.W.1, the accused caught-hold the hand of the victim, took her inside the house and committed rape on her. Basing on the complaint lodged by P.W.1, the Sub-Inspector of Police, Akividu Police Station registered a case in Crime No.99 of 1994 for the offence under Section 376 IPC. After completion of investigation, the Inspector of Police, Bhimavaram Rural, laid the charge sheet against the accused for the offence under Section 376 IPC. The learned II Additional Judicial Magistrate of First Class, Bhimavaram, has taken the case on file for the offence under Section 376 IPC, numbered it as P.R.C.No.33 of 1995, and committed the case to the Sessions Division, West Godavari at Eluru, as the offence is exclusively triable by the Court of Session. After numbering the case as S.C.No.430 of 1995, it was made over to the Court of Assistant Sessions Judge, Bhimavaram for trial and disposal in accordance with law.

5. On appearance of the petitioner, learned Assistant Sessions Judge framed the charge under Section 376 IPC against the petitioner, read over and explained to him in Telugu for which the petitioner pleaded not guilty and claimed to be tried. On behalf of the prosecution, P.Ws.1 to 15 were examined, Exs.P.1 to P.14 and M.Os.1 and 2 were marked. On behalf of the defence, nobody was examined but Exs.D1 and D2 were marked.

7. Basing on the oral and documentary evidence available on record, the trial court arrived at the conclusion that the petitioner committed the offence under Section 376 IPC, convicted him accordingly and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default of payment of fine, to undergo simple imprisonment for one month.

8. Feeling aggrieved by the conviction and sentence, the petitioner preferred appeal i.e., Criminal Appeal No.164 of 1999 on the file of the Court of I Additional District and Sessions Judge, West Godavari District, Eluru. The learned appellate Judge, on reappraising the oral and documentary evidence afresh, arrived at a conclusion that the petitioner committed the offence under Section 376 IPC and accordingly dismissed the appeal. Hence, the petitioner filed the present criminal revision case.

9. Kalidasu Durga, who is the de facto complainant, was examined as P.W.1. P.W.2 is the sister, P.W.3 is the husband and P.W.4 is the brother of P.W.1. P.Ws.2 to 4 are not eye witnesses to the incident. P.Ws.7 and 8 turned hostile and did not support the case of the prosecution. P.W.10 is the Lady Doctor, who examined

P.W.1 and found abrasions on the left wrist and left fore arm of P.W.1. As per Ex.P8 wound certificate dated 16.12.1994, the injuries received by P.W.1 are simple in nature. There is no doubt that the injuries spoken by P.W.1 are not tallied with the injuries mentioned in Ex.P8 wound certificate. As per the testimony of P.W.10, semen was present on the under-garment of P.W.1. P.W.1 was examined by P.W.10 nearly 24 hours after the incident. P.W.10, in unequivocal terms, deposed that attempt of rape might have occurred. If the evidence of P.W.10 is taken into consideration, the petitioner has not committed rape on the victim.

10. As per the Explanation to Section 375 IPC (which provision is applicable by the date of offence), mere penetration is sufficient to constitute the offence under Section 375 IPC. There is no positive evidence to establish the ingredients of Section 375 IPC. Both the Courts, after perusing the material available on record, independently came to conclusion that the petitioner might have committed rape on P.W.1. But, the courts below did not give a specific finding that the petitioner committed rape on P.W.1. Absolutely there is no evidence on record to establish that the petitioner had forcible sexual intercourse with P.W.1 against her will and without her consent. Except the self-served testimony of P.W.1, there is no convincing evidence to establish that the petitioner committed rape against P.W.1. But, the evidence of P.W.1 coupled with P.W.10 is sufficient to prove that the petitioner made an attempt to commit rape on P.W.1. The testimony of P.W.11-Doctor reveals that the petitioner is capable of performing sexual intercourse. Both the courts below, having arrived at the

conclusion that the petitioner might have committed rape on P.W.1, ought not to have convicted him for the offence under Section 376 IPC.

11. Having regard to the facts and circumstances of the face, I am of the considered view that the finding recorded by the courts below that the petitioner committed the offence of rape on P.W.1 is not sustainable. On the other hand, the material available on record clearly establishes that the petitioner made an attempt to commit rape on P.W.1. Therefore, he is liable for conviction under Section 376 read with 511 IPC and the conviction and sentence imposed against the petitioner for the offence under Section 376 IPC are hereby set aside.

12. Coming to the quantum of sentence to be imposed against the petitioner for the offence under Section 376 read with 511 IPC, the petitioner was aged about 18 years by the date of commission of offence, he has been attending before the courts since 1995, and he was undergone the imprisonment for a period of four (4) years, nine (9) months and three (3) days including the remand period. If the period of remission is also taken into consideration, the petitioner was in jail for about six years. Taking the above factual scenario and the socio-economic condition of the petitioner into consideration, the period of imprisonment already undergone by the petition is sufficient sentence for the offence under Section 376 read with 511 IPC and it would meet the ends of justice. Bail bonds executed by the petitioner shall stand cancelled.

13. Accordingly, the criminal revision case is allowed. Miscellaneous petitions, if any pending in this revision, shall stand closed.

T.SUNIL CHOWDARY, J

December 02, 2016.

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