

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1385 OF 2010

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 26.07.2010, in CrI.A.No.16 of 2006, on the file of the VI Additional Sessions Judge (Fast Track Court), East Godavari District, Rajahmundry, whereunder and whereby the conviction and sentence of the petitioner/accused to undergo Rigorous Imprisonment for a period of six (6) years and to pay a fine of Rs.1,000/-, in default to suffer Simple Imprisonment for a period of fifteen (15) days for the offence punishable under Section 376 IPC and Rigorous Imprisonment for a period of six (6) months for the offence punishable under Section 417 IPC and both sentences to run concurrently, recorded in judgment, dated 23.01.2006, in S.C.No.143 of 2003, by the Assistant Sessions Judge, Ramachandrapuram, was confirmed.

2. The brief facts, that are necessary for the disposal of the present Criminal Revision Case, may be stated as follows:

The Sub-Inspector of Police, Draksharama Police Station filed a charge sheet against the accused for the offences under Sections 417 and 376 IPC in Crime No.18 of 2003 alleging that P.W.1 is the resident of Unduru Village, the accused is neighbourer. The accused developed friendship with her and often he used to visit her house and the accused also informed that he fell in love and he would marry her and believing the words of the accused, she also fell in love and gave consent to have sexual intercourse and since four years, by putting P.W.1 on in the belief of marriage, the accused spoiled her chastity. On 23.02.2003, when P.W.1 asked

about the marriage, the accused denied to marry her. Her parents came to know her sexual contacts with him. The accused refused to marry P.W.1 and the matter was placed before the elders. He denied to marry her. Hence, they gave report to the police. After investigation, the police filed charge sheet against the accused.

3. The Additional Judicial Magistrate of First Class, Ramachandrapuram, committed the case to the Sessions Court, East Godavari District, and made over the same to the Assistant Sessions Judge, Ramachandrapuram.

4. The accused was examined under Section 239 Cr.P.C. and when the charges under Sections 417 & 376 IPC were framed, read over and explained to the accused, he pleaded not guilty and claimed to be tried.

5. To substantiate the charges, the prosecution examined P.Ws.1 to 13 and got marked Exs.P-1 to P-8.

6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence appearing against him in the evidence of P.Ws.1 to 13. He denied the same. On behalf of the accused, no witnesses were examined, but Exs.D-1 & D-2 were marked.

7. The trial Court, after considering the evidence on record, found the accused guilty of the offences punishable under Sections 417 & 376 IPC and sentenced him as stated above. On appeal, the said conviction and sentence was confirmed. Hence, the present Criminal Revision Case.

8. Now the point for determination is whether the judgment of the lower appellate Court is correct, legal and proper?

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

10. P.W.1 is the victim, P.W.2 is her mother, P.Ws.3 to 10 are independent witnesses, P.W.11 is doctor, P.W.12 is another doctor.

11. P.W.1, who is the victim girl, deposed that the accused promised to marry her and had sexual intercourse with her. P.W.1 categorically deposed that at the first instance, she refused to love the accused, but at the second instance, when the accused promised to marry her, she gave consent to have sexual intercourse with him. As per the school certificate under Ex.P-2, her date of birth is 03.05.1987. As per admissions in cross-examination, her parents came to know about their love affair prior to four days of the report regarding hacking. P.W.1 and the accused got physical contacts prior to two months of her first report regarding hacking. She has given complaint under Ex.D-1 regarding the incident of hacking and she gave statement under Ex.D-2. She did not mention about her love affair or physical contact in Exs.D-1 and D-2.

12. P.W.2 is the mother of the victim. She is not an eye witness to the incident. As per her evidence and admission, she do not know about the visiting terms of the accused till they lodged the first complaint regarding hacking and about the illegal intimacy. Prior to the first complaint, they placed the matter before the elders, the elders called and questioned the accused and parents and sister of the accused, who told that they are not concerned. After that, the incident of hacking happened. Therefore, she is not an eye witness either for the love affair or having intercourse between P.W.1 and

the accused. According to P.W.2, P.W.1 informed her that the accused promised her to marry. P.W.2 also deposed that prior to four years of filing of case, the accused promised to marry P.W.1 and had intercourse with her. P.Ws.2 to 9 deposed about the hacking injuries.

13. P.W.3, who is alleged eye witness, simply deposed that he saw both the accused and P.W.1 in the house of P.W.1. When questioned, the accused told P.W.3 that he is in love with P.W.1 and he will marry her. According to the evidences of P.Ws.1 to 3, P.W.1 was injured by the accused family.

14. P.Ws.4 to 7 are the elders of that area before whom the matter was placed, who called the accused and their family members, who denied to marry P.W.1.

15. P.W.11 is the doctor, who examined P.W.1 and issued Ex.P-3 - Age certificate issued by Rangaraya Medical College, Kakinada. As per Ex.P-3, the age of the victim is 17 years.

16. P.W.12 is the doctor who examined the accused and gave potency certificate of the accused under Ex.P-4.

17. The evidence of the prosecutrix i.e., P.W.1 and the evidence of P.W.12 - doctor gains more importance to decide the issue. It is an admitted case to the extent that the accused and the prosecutrix were known to each other as they are living in the same village and they are neighbours. As per the evidence of P.W.1, she knows the accused from her 6th standard onwards and they were friendly and thereafter, they developed some love affair. On the date of occurrence, when the accused had sexual relation with P.W.1, the same was witnessed by the mother and sister of the appellant wherein she was caught red-handed and the mother and sister of the accused assaulted P.W.1 and she sustained injury also. The

said fact was reported to the police and a case is also registered. Thereafter, the victim girl lodged a complaint informing that since the petitioner herein promised to marry her, she subjected herself for sexual intercourse with the appellant herein.

18. As far as the offence under Section 376 IPC is concerned, the age of the girl is more than 15 years at the time of sexual intercourse with the appellant herein and it is also a case of consent according to the evidence of P.W.1. When it is a case of consent and the said consent was also given when she was above the age of 15 years, the offence under Section 376 IPC is not attracted and further, there is no evidence of P.W.12 - doctor to substantiate the fact that she was subjected to sexual intercourse. Except marking of Ex.P-3 - certificate, P.W.12 was not examined in the Court.

19. As far as the offence under Section 417 IPC is concerned, according to the evidence of P.W.1, since the appellant promised to marry her, she subjected herself for a sexual relation, but from the reading of the entire evidence, it shows that P.W.1 and the accused were in good relation from their childhood and when she lodged a complaint before the concerned Police Station also, she has not stated anything about the sexual relationship between the appellant and P.W.1 even though it is stated by P.W.1 that she subjected herself to sexual intercourse only on the promise made by the appellant. From the reading of the entire evidence on record and also from the facts and circumstances of the case, it is evident that with the consent of P.W.1 only, both P.W.1 and the accused used to have sexual intercourse, even prior to any promise for marriage by the appellant herein. Being an offence which is serious in nature, it is the bounden duty of the prosecution to prove the

case beyond reasonable doubt. As far as the evidence of P.W.1 is concerned, it does not inspire the confidence of the Court, in view of the discrepancies and the manner in which she has deposed before the Court concerned. It is highly unsafe to convict the accused on the basis of the evidence of the victim girl, which is highly based upon infirmities.

20. Considering the facts and circumstances of the case, the Criminal Revision Case is allowed and the judgment, dated 26.07.2010, passed in Crl.A.No.16 of 2006, by the VI Additional Sessions Judge (Fast Track Court), East Godavari District, Rajahmundry, confirming the judgment, dated 23.01.2006, in S.C.No.143 of 2003, passed by the Assistant Sessions Judge, Ramachandrapuram, is set aside and the petitioner/accused is acquitted of the offences under Sections 376 & 417 IPC. The fine amount, if any, paid by the petitioner/accused is directed to be refunded to him. Bail bonds, if any, shall stand cancelled.

21. Accordingly, the Criminal Revision Case is allowed. Consequently, the Miscellaneous Petitions, if any, pending in this criminal revision case shall stand closed.

RAJA ELANGO, J

Date: 20th September, 2016

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