

## **THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

### **CRIMINAL REVISION CASE No.890 of 2007**

#### **ORDER:**

The Criminal Revision Case is filed against the Judgment dated 02.07.2007 in Criminal Appeal No.125 of 2005 on the file of the IX Additional District & Sessions Judge (FTC), Krishna, Machilipatnam, by and under which the conviction and sentence imposed against the petitioner/accused by the learned Assistant Sessions Judge, Nandigama in SC.No.214/2005, dated 18.11.2005, was modified.

2. Heard the learned counsel appearing for the petitioner/accused and the learned Additional Public Prosecutor, representing the State.

3. The case of the prosecution in brief is that the son of PW 1, by name Manda Nageswara Rao was working as servant in the house of one Lagadapati Srinivasa Rao. On 02.04.2005 when her son did not return till night time, at about 9 p.m. PW 1 started to go to the house of Lagadapati Srinivasa Rao to bring her son and when she reached near the vacant site of Lagadapati Srinivasarao, the petitioner/accused came behind her, embraced her and took her into the nearby bushes, laid her down and attempted to commit rape on her. When she raised cries, PWs 2 to 4 came there and on seeing them, the petitioner/accused fled away. On 04.04.2005 at 4 p.m. PW 1 accompanied by PWs 2 & 3 went to the police station and lodged a complaint against the petitioner/accused and basing on the said report, the concerned police registered a case in Cr.No.100/2005 under section 376 r/w.511 IPC and after investigation, filed the charge sheet.

4. Before the trial Court, the accused was examined and charge under section 376 r/w.511 IPC was framed against the accused, for which he pleaded not guilty.

5. During the course of trial, the prosecution examined PWs 1 to 5 and produced Exs.P1 to P3. The accused denied the evidence on record. No oral or documentary evidence is adduced on behalf of the petitioner/accused.

6. On appreciation of oral and documentary evidence, the trial Court found the petitioner/accused guilty of the offence under Section 376 r/w.511 IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for a period of one month.

7. Challenging the conviction and sentence passed by the trial Court, the petitioner/accused preferred appeal Crl.A.125/2005 before the IX Additional District & Sessions Judge, Krishna, Machilipatnam. The learned Sessions Judge on re-appreciation of oral and documentary evidence, set aside the conviction and sentence recorded by the trial Court under Section 376 r/w.511 IPC, and convicted the petitioner/accused for the offence under Section 354 IPC and sentenced him to undergo rigorous imprisonment for a period of 2 (two) years and to pay a fine of Rs.500/- and the fine amount of Rs.500/- paid by the petitioner/accused for the offence under Sec.376 r/w.511 IPC is adjusted. Aggrieved by the same the petitioner/accused filed the present criminal revision case.

8. Now the point that arises for consideration in this revision is whether the conviction and sentence imposed by the Court below against the revision petitioner/accused is legal and sustainable.

9. The petitioner/accused is charged with an offence punishable under Section 376 r/w 511 IPC., but he is ultimately found to be liable for punishment under Section 354 IPC.

10. The allegations in brief are that PW.1/the victim while she was coming from the house of Srinivasarao, at about 09.00 p.m., the petitioner/accused came there, embraced her, took her into the nearby bushes and laid her down and when the victim/PW.1 raised cries,

PW.3 came there and on seeing him, the accused ran away there from. It is also on record that PW.1 returned home and informed her father-in-law (PW.2) who was present in the house, and next day i.e., on 03-04-2005, the matter was placed before the elder (PW.3) and thereafter, on 04-04-2005, at about 04.00 p.m., the complaint-Ex.P.1 is lodged.

11. The plea of the accused is one of denial and according to him, due to political and other disputes, the petitioner/accused is implicated. According to the petitioner/accused, PW.3 who is the husband of the sarpanch of the village, had a political rivalry with the grandfather of the accused during the presidential election and due to that he has been implicated by PW.1 at the instance of PW.3.

12. Ex.P.1 is the complaint which admittedly is lodged at 04.00 p.m., on 04-04-2005 i.e., nearly 42 hours after the alleged incident. The incident is said to have taken place adjacent to the house of one L.Srinivasa Rao who though listed has not been examined. In Ex.P.1, the victim stated that the accused took her into the cattle-shed of the said L.Srinivasa Rao and attempted to commit the crime. Contrary to that, there is no evidence of PWs.1, 2 and 4 who say that the victim was taken into the bushes by the accused and an attempt was made to outrage her modesty. There is material discrepancy in between the complaint-Ex.P.1 and the claim made by PW.1. It is also mentioned in Ex.P.1 that the accused has forcibly lifted her and took her into the cattle-shed. The incident is said to have taken place very close to the house of L.Srinivasa Rao and there are houses around there. The victim did not raise any shouts or cries to alert the neighbouring residents when she was physically being lifted from the road towards the cattle-shed. Further more, when the victim claims to have forcibly laid on the ground where there were bushes, she did not sustain any injury of whatsoever nature as is admitted in the evidence. According to PW.1, only after she was made to lay down, she raised cries,

hearing which PW.4 came there. PW.4 deposed that at the time of incident, he was watching the red-gram callem of one Challa Rama Rao and at that time he heard cries of PW.1 from the bushes adjacent to the site of L.Srinivasa Rao , he went there and by that time, he saw the accused and PW.1 and seeing him, the accused ran away. What is noticed from the evidence of PW.4 which makes it doubtful to believe that the time of the incident was 09.00 p.m., and there were houses around but still PW.4 who is a person aged about 45 years has not done anything to attract the attention of the neighbouring residents or even to apprehend the accused. After the incident, he claims to have not even visited the house of PW.1 at any point of time.

13. The evidence of PW.3, who is said to be an elder of the village, and also the husband of the Village Sarpanch, deposed that on 04-04-2005 at about 09.00 p.m., PW.1 and her husband, who has not been examined, came and informed him that on 02-04-2005 at 09.00 p.m., the accused committed the offence alleged. He further deposed that on the next day he took them to the police station. That means, PW.3 took PW.1/the victim and her husband to the police station on 05-04-2005 but not 04-04-2005 i.e, the date on which the complaint Ex.P.1 came to be lodged. However, PW.3 corrected subsequently and stated that PW.1 and her husband came to him in the night of 03-04-2005 but not on 04-04-2005 as stated earlier.

14. Even if what PW.3 says is believed, he being the village elder and the *de facto* sarpanch of the village since he himself claims that people refer him as sarpanch of the village, even though, the matter was informed to him in the night of 03-04-2005, the complaint was lodged only at 04.00 p.m., on 04.04.2005.

15. Not only there are discrepancies in the evidence of PW.1 *vis-à-vis* the complaint, the abnormal delay in lodging the complaint is not satisfactorily explained. PW.2 is the father-in-law of the victim/PW.1. He was informed about the incident immediately at about

09.00 p.m., on 02-04-2005. Even though the non-filing of the complaint in the night of 02-04-2005 can be explained, there is absolutely no reason, whatsoever, for PWs.1 and 2 in not lodging the complaint till 04.00 p.m., on 04.04.2005. In case of this nature, where there is no corroboration, neither medical or otherwise to the claim of PW.1 that she was forcibly lifted from the road into the bushes and an attempt was made to outrage her modesty, this delay of nearly 42 hours in lodging the complaint affects the credibility of the case of the prosecution. Promptitude in lodging the complaint is required to rule out the possibility of manipulation, confabulation or false implication after due deliberations. This delay of 42 hours in lodging the complaint in the facts and circumstances of the case affects the case of the prosecution and the benefit thereof should invariably go to the accused whose specific contention is that he has been falsely implicated at the instance of PW.3 who is the husband of the Sarpanch who is having certain disputes with the family of the accused.

16. Learned Counsel appearing for the petitioner/accused submits that due to lodging of the false complaint, the petitioner/accused has suffered imprisonment for more than two months.

17. Keeping in view the foregoing facts and circumstances, it is held that the accused is entitled to an acquittal setting aside the Judgments of both the Courts below.

18. For the reasons stated above, the Criminal Revision Case is allowed. Consequently, the judgment of the appellate Court dated 02.07.2007 in CrI.A.No.125 of 2005 as well as the judgment of the trial Court dated 18.11.2005 in S.C.No.214 of 2005 are set aside and the petitioner/accused is acquitted of the offence for which he was found guilty and convicted. The bail bonds of the petitioner/accused shall stand cancelled. The fine amount, if any paid, shall be refunded to the petitioner/accused.

Pending miscellaneous applications, if any, shall stand closed  
in consequence.

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**M.S.K.JAISWAL,J**

Date: .01.2016

Dsr/Smr