

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.RC. NO.1598 OF 2005

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the judgment, dated 11.04.2005 in CrI.A.No.114 of 2004 passed by the VI Additional Sessions Judge (FTC), Ranga Reddy District whereby the appellate Court dismissed the appeal confirming the conviction and sentence passed by the Assistant Sessions Judge, Vikarabad in S.C.No.132 of 2002 dt.22.3.2004 whereunder the trial court convicted the petitioner for the offence punishable under Section 376 IPC and sentenced him to undergo rigorous imprisonment for a period of seven years and also pay fine of Rs.2,000/- with default sentence.

2. The case of the prosecution, in nutshell, is that on 4.02.2000 at about 7 p.m. PW-1-Kum.Pyata Santhosha left her house in Syed Malkapur village to the nearby chelka land belonging to PW-4-Sunkari Ramachandraiah to attend calls of nature. The petitioner/accused, who is neighbour of PW-1, followed PW-1, caught hold of her hand and gagged her mouth with cloth and forcibly laid her down in the land of PW-4 and raped her. Some of the green coloured bangles of PW-1 were broken, at the scene of offence. After commission of rape on PW-1, the petitioner fled away and PW-1 went to her house and informed her parents and PW-2 about the incident. The parents of PW-1 went to the house of parents of petitioner and informed that their son raped PW-1 and they told that their son is not in the house and fled away. On 5.2.2000 PW-1 and her parents went to the house of PW-3 who is elder in the village and reported the matter to him. Then PW-3 called the parents of the petitioner and also his paternal grandfather to his house and advised them to perform the marriage of PW-1 with the petitioner. The parents of the petitioner told them that the

petitioner was not in the house, they waited for some time and as there was no response from the parents of the petitioner, PW-1 and her parents went to the police station, Parigi and lodged complaint Ex.P-1 at 2.30 p.m. on 5.02.2000 and PW-9, Sub-Inspector of Police based on Ex.P-1 registered case for the offence punishable under Section 376 IPC against the petitioner and took up investigation.

3. During investigation, PW-9 recorded the statements of PWs.1, 2, Ramaiah, referred PW-1 to PW-6 Dr.Geethanjali for examination, before PW-1 was examined by the doctor, PW-9 seized M.O.2 petty-coat of PW-1 under cover of seizure panchanama in the presence of PW-5 and Pentaiah. PW-6 examined PW-1 and collected vaginal smears and pubic hair clippings and handed over to the investigating officer, in turn PW-9 visited the scene of offence along with PW-1, observed scene of offence and prepared observation report marked as Ex.P-5 in the presence of PW-7 and Vittalaiah and seized M.Os.1 and 2.

4. The vaginal smears and pubic hair clippings were sent to F.S.L and the Asst.Director of FSL after examining them, issued Ex.P-4 report stating that spermatozoa and semen were present and PW-1 later sent to Dr.Taquiddin Khan, Asst.Professor of Department of Forensic Medicine of Gandhi Medical College for age determination and after conducting physical, dental and radiological examination, he issued Ex.P-7 certificate opining that PW-1 was aged 15 years. PW-6 basing on the FSL report issued Ex.P-3 opining that there was indication of recent vaginal intercourse. PW-8 Inspector of Police took up investigation from PW-9 on 6.2.2000 and went to the scene of offence, verified it. On 7.2.2000 at 9 a.m. PW-8 arrested the accused at his residence in Syed.Malkapur village, produced him before Magistrate for judicial custody on the same day.

5. After collecting Exs.P-3 and P-4 and age determination certificate Ex.P-7 of PW-1, PW-8 filed charge sheet before the Judicial Magistrate of First Class, Parigi, cognizance was taken for the offence punishable under Section 376 IPC.

6. After following necessary procedure, having come to the conclusion that case is exclusively triable by the Court of Session, committed the case to the Court of Sessions Division, Ranga Reddy District under Section 209 Cr.P.C. and in turn the case was registered as SC.No.132 of 2002 and the Principal Sessions Judge made over the same to the Assistant Sessions Judge, Vikarabad for trial and decide the matter in accordance with law.

7. After securing presence of petitioner/accused, the Assistant Sessions Judge framed charge against the petitioner for the offence punishable under Section 376 IPC, read over and explained to him in Telugu and he pleaded not guilty and claimed to be tried.

8. During trial, PWs.1 to 9 were examined and Exs:P-1 to 7 and M.Os.1 and 2 were marked on behalf of prosecution. On behalf of the petitioner, Exs.D-1 to D-3 were marked. After closure of prosecution evidence, the petitioner was examined under Section 313 Cr.P.C. explaining the incriminating circumstances that appeared against him in the evidence of prosecution witnesses and he denied the same and reported no defence.

9. The Assistant Sessions Judge after hearing argument of both the counsel, found the petitioner guilty for the offence punishable under Section 376 IPC, convicted and sentenced him as stated supra.

10. Aggrieved by the conviction and sentence passed by the trial court, the petitioner preferred an appeal before the Sessions Judge which

ended in dismissal by judgment dt.11.04.2005 in CrI.A.No.114 of 2004 confirming the conviction and sentence passed by the trial Court.

11. Aggrieved by the judgment passed by the appellate Court, the present revision is filed mainly on the ground that there are discrepancies in the evidence of PWs.1, 2, 5 and 7 with regard to scene of offence and erred in accepting observation report by the trial court and it is also contended that there is delay of 9 ½ hours in lodging the complaint with the police and the delay was not properly explained by the prosecution. But, the trial and the appellate court found the petitioner guilty for the offence punishable under Section 376 IPC though there are chances of improvements and due to consultations to foist false case against the petitioner and that it is clear from the material on record that the parents of the victim girl proposed marriage of victim PW-1 with the petitioner for which he denied, therefore, a false case has been foisted against the petitioner for the offence punishable under Section 376 IPC and requested this court to set aside the conviction and sentence passed by the trial court and confirmed by the appellate Court.

12. During hearing learned counsel for the petitioner mainly contended that after conviction, the petitioner underwent substantial part of substantive sentence and out of seven years of substantive sentence, he underwent nearly four years imprisonment after disposal of the sessions case by the trial court and requested this court to reduce the same to the punishment already undergone by the petitioner. It is also further contended that when the delay was not explained properly which is fatal to the case of prosecution, and apart from that the material on record would clinchingly establish that when the petitioner refused to marry the victim girl PW-1, a false case is foisted against the petitioner for the offence punishable under Section 376 IPC and if all the circumstances are

taken into consideration, both the courts below would have acquitted the petitioner and prayed to set aside the conviction and sentence passed by the courts below after re-appreciation of entire material on record.

13. Learned Public Prosecutor for the State of Telangana would submit that there is no need to interfere with the findings of the courts below, that the discrepancies are minor which would not go to the root of the case and those discrepancies can be ignored by the courts while assessing the case of this nature and the delay is not fatal since the delay is only 9½ hours and that in view of stigma that will be attached not only to the victim but also entire family, such delay can be ignored if explained by the prosecution during trial.

14. Considering rival contentions and material on record, the point that arises for consideration is:

“Whether the petitioner had sexual intercourse with the victim girl against her will and consent? if so, the conviction and sentence passed by the courts below are liable to be set aside acquitting the petitioner for the offence punishable under Section 376 IPC?”

15. The present revision is filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

16. [Section 397](#) of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the

decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

17. The well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore-stated.

18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of Apex Court under [Article 136](#) of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

19. Section 401 confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or apparent harshness of treatment

which has on one hand resulted in some injury to the due maintenance of law and order or on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this section is discretionary power, has to be exercised in the aid of justice and this Court will not exercise jurisdiction under this Section if there has been no failure of justice even though the proceedings of the lower court suffer from irregularity or impropriety as held by Apex Court in *STATE OF WEST BENGAL v. TULSIDAS*¹. The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of relieving persons who have not had a fair trial or whose convictions have been arrived at by non-observance of material provisions of the law or by such mis-directions as must have occasioned a failure of justice as held in *PRAHLAD v. EMPORER*². Further, the High Court can, in exercise of its revisional powers, either suo motu on the basis of its own knowledge derived from any source whatsoever, or on an application by a complainant, exercise the powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;

Secondly, it cannot convert a finding of acquittal into one of conviction;

Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

¹ (1964) 1 Cr.L.J. 443 (SC)

² 48, Cr.L.J 173, 174 (Pat)

20. The jurisdiction of the Court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under [Section 397](#) is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under [Section 397](#) but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

21. Thus, the powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the courts below. As a general rule, the High Court will not in revision interfere with a finding of fact and this is specially so, where there are concurrent findings of facts of the lower Courts. But, in special and exceptional circumstances, the High Court is entitled to go into questions of fact and do justice, though the power should be rarely exercised, as held by Apex Court in *S.P.S. JAYAM & CO. v. NEHRUSADAN*³.

22. In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly perverse or patently erroneous in view of the law declared by the Apex Court in *BANSILAL v. LAXMAN*⁴.

³ 1977 Cr.L.J. 1101

⁴ (1986) 3 SCC 445

23. In the absence of any perversity in appreciation of evidence or patent error, this Court cannot interfere with the findings of the trial Court. On the other hand, in view of Sub Section 3 of Section 401 Cr.P.C, this Court while exercising power under Section 397 and 401 Cr.P.C. cannot convert a finding of acquittal into one of conviction, as held by the Apex Court in *Logendranathjha v. Shri Polailala*⁵

24. At the same time, the High Court must see that it does not convert a finding of acquittal into that of conviction by ordering retrial, as held in *Chinnaswamy v. State of AP*⁶.

25. It is the case of the prosecution from the beginning that when PW-1 went to the scene of offence to answer calls of nature in the village, the petitioner-accused who is neighbour followed her and had forcible sexual intercourse against her will and consent. Therefore, the same was informed by her to her parents who in turn approached PW-3, the village elder and the village elder called the parents of the petitioner and requested them to perform the marriage of the victim girl, but they refused ultimately. Moreover, it is the case of the prosecution that the petitioner had sexual intercourse with the victim girl against her will and consent and in the struggle to protect herself from the hands of the petitioner, her bangles were broken and bangle pieces were recovered under cover of panchanama during investigation in the presence of mediators.

26. Ex.P-1 is the complaint. To substantiate prosecution case, the prosecutrix was examined as PW-1 and she testified about the

⁵ 1951 SC 316

⁶ 1962 SC 1788.

commission of rape on her by the petitioner and breakage of bangles which were recovered from the scene of offence under observation report Ex.P-5 dt.5.2.2000, M.O.1 is three green coloured bangle pieces. The seizure of M.O.1 under cover of Ex.P-5 is supported by PW-4 and in the evidence of PW-4 there is minor discrepancy with regard to seizure, but such minor discrepancy would not go to the root of the case. Therefore, seizure of M.O.1 is accepted by trial court and confirmed by the appellate Court. The evidence of prosecutrix is clear that the petitioner had sexual intercourse against her consent and will. Therefore, such penetration of penis into the vagina of victim against her will amounts to an offence punishable under Section 376 IPC as defined under Section 375 IPC. In the evidence of PW-1 nothing was elicited to disprove the sexual intercourse against her will. The medical evidence of PW-6 who issued Ex.P-3 certificate shows that the victim had sexual intercourse and based on F.S.L. report human semen and spermatozoa were detected on the clothes and indicates recent vaginal intercourse. But, whether it is against her will or not is a question to be decided by the court. PW-1 testified that against her will and consent, the petitioner had sexual intercourse and during struggle her bangles were broken which were marked as M.O.1 and recovered under Ex.P-5 on 5.2.2000. The said factum of struggle to rescue herself from the hands of the petitioner is substantiated by circumstantial evidence of seizure of M.O.1 under cover of Ex.P-5. Apart from that the victim was minor by the date of alleged incident and she was referred to the hospital for age determination and the doctor who examined her issued a

certificate Ex.P-7 certifying that she might be aged 15 years by the date of her examination. Therefore, Ex.P-7 established that she was aged 15 years by the date of incident.

27. According to Explanation 2 to Section 375 of IPC, consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act; provided that a woman who does not physically resist to the act of penetration shall not by the reason of that fact, be regarded as consenting to the sexual activity. As per clause 6 of Section 375 IPC, with or without the consent of woman when she is under sixteen years of age is not free consent. Therefore, the victim girl who is aged 15 years though, gave consent assuming for a moment for participation in sexual intercourse, that is not free consent in view of Clause 6 of Section 375 IPC.

28. In view of Clause 6 of Section 375 IPC when the prosecution is able to establish that the victim is aged less than 16 years, the consent pleaded by the accused cannot be a free consent. Therefore, the clinching evidence on record, more particularly, the evidence of prosecutrix victim girl coupled with medical evidence and circumstantial evidence of absconding of petitioner from his residence established that the petitioner had deliberate sexual intercourse on PW-1 against her will and consent.

29. The main grievance of the petitioner before this court is that there are discrepancies in the evidence of witnesses, but those discrepancies are insignificant since the testimony of prosecutrix is

consistent regarding the commission of rape on her, evidentiary value to her evidence is on par with injured. The recovery of M.Os.1 and 2 are only the corroborative piece of evidence to establish the guilt of the petitioner for the offence punishable under Section 376 IPC and they are only the circumstances which cumulatively proved the guilt of the petitioner. But, those minor discrepancies are insignificant.

30. The second contention raised before this court is that there is delay of 9 ½ hours in lodging the complaint to the police. In fact, the evidence of PWs.1 and 2 even from the beginning and it is also the case of the prosecution that the parents of the victim approached the parents of the petitioner, but they did not respond, thereupon the matter was referred to village elders and the village elders called both the parents of the petitioner and victim, requested to perform the marriage of the petitioner, but they refused on the next day, since the petitioner was absconding by that time. Therefore, the delay is only on account of proposed settlement of the matter before the elders for performing the marriage between the petitioner and the victim. That apart, in such serious offences, the family prestige is involved if creates a stigma on the victim and on the entire family, there is a possibility of discussion with the family members and thereby there will be delay in lodging the complaint. But, here the prosecution explained the delay in lodging the complaint. When the delay was substantiated by proper explanation, it is not fatal to the case of the prosecution.

31. On the other hand, the genuine efforts made by the parents of victim would show that they made an attempt to settle the matter amicably to wipe out the stigma on the victim and also the family members, but they could not succeed in their attempt, and therefore, they lodged complaint and thereafter, proceeded with trial.

32. Yet, another contention raised before this court is that the petitioner-accused refused to marry the victim PW-1, the parents of victim girl foisted a false case against him. But, this contention cannot be accepted for the simple reason that he had sexual intercourse forcibly on PW-1 against her will or consent and apart from that the consent even if given by PW-1, it is not free consent in view of Clause 6 of Section 375 IPC. Therefore, I find that refusal to marry the victim by the petitioner is not a ground to disbelieve the case of the prosecution. But, it is only an attempt made by the parents of the victim girl to wipe out the stigma on the minor girl aged 15 years on account of sexual assault on the victim girl by the petitioner. Therefore, refusal to marry the victim girl is not a ground to foist a false case and on this ground this court cannot interfere with the fact finding recorded by the Courts below.

33. On an overall consideration of the material on record, I find that there is satisfactory substantive evidence to establish that the petitioner had sexual intercourse against the consent of the victim girl PW-1 and the same is established by the prosecution adducing cogent and satisfactory evidence. Therefore, the concurrent findings recorded by the courts below do not call for interference of this Court.

34. As far as sentence is concerned, the trial Court imposed only seven years of rigorous imprisonment and the same is confirmed by the appellate Court. The sentence imposed by the trial Court is minimum and therefore, this Court cannot reduce the substantive sentence of imprisonment.

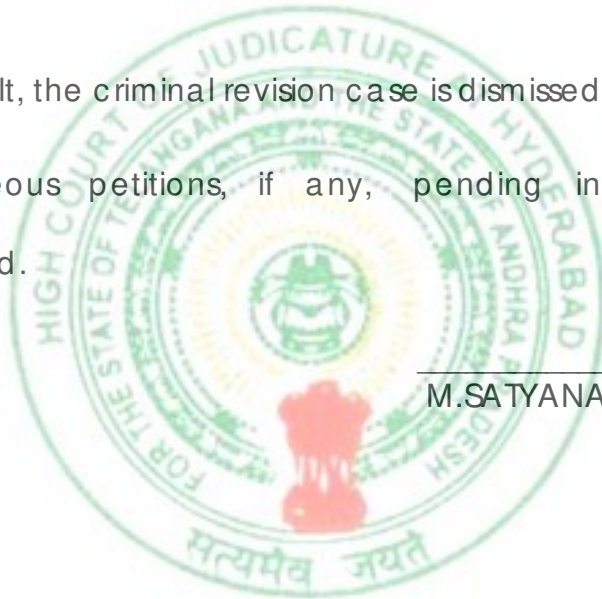
35. For the foregoing discussion, I find no grounds to reverse the finding of the appellate Court by setting aside the conviction and sentence passed by the trial Court and confirmed by the appellate Court. Therefore, the criminal revision case is liable to be dismissed.

36. In the result, the criminal revision case is dismissed.

Miscellaneous petitions, if any, pending in this case shall stand closed.

DATE: 12-09-2017
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M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRL.R.C. NO.1598 OF 2005

Date:12.09.2017

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