

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C. NO.1476 OF 2005

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the order, dated 20.10.2004 in CrI.A.No.86 of 2002 passed by the II Additional Session Judge, East Godavari at Rajahmundry whereby the II Addl.Sessions Judge converted the conviction from 376 IPC to 354 IPC and reduced substantive sentence of imprisonment from 4 years to 3 years while confirming the fine amount of Rs.1,000/- finding the accused guilty for the offence under Section 354 IPC while setting aside the conviction of the accused for the offence under Section 376 IPC.

2. The deceased-Anantha Seshu, unmarried girl went to coolie work in tobacco garden. The revision petitioner along with other coolies also attended the work on 02.04.1999. At about 11 a.m. the other coolies went out either for taking lunch or for attending calls of nature, the victim girl who was giving numbers was found alone, the accused who had an eye over her, found her lonely and dragged her into the room where the waste tobacco was kept and raped her. The victim girl felt insulted and humiliated straightaway went to the house, poured kerosene on herself and set ablaze to her body to commit suicide. On coming to know about the same, the parents and others gathered and on enquiry she revealed that the revision petitioner raped her and she could not show her face to others, so she made an attempt to commit suicide, immediately she was shifted to Govt.Hospital, Rajahmundry and on the requisition of the doctor, the III Addl.J.F.C.M. recorded dying declaration of the victim girl and the police also recorded the statement of the victim girl and after completion of investigation filed the charge sheet.

3. In turn, the learned magistrate took cognizance of the case and after following necessary procedure, committed the case to the Court of Session as it is exclusively triable by the Court of Session and in turn the same was registered as sessions case and made over to the Principal Asst. Sessions Judge at Rajahmundry.

4. After securing the presence of the petitioner, the trial Court framed necessary charge under Sections 376 and 306 of IPC against the petitioner, read over and explained to him, he pleaded not guilty and claimed to be tried.

5. Upon hearing argument of both counsel, the trial court found the petitioner guilty for the offence punishable under Section 376 IPC, convicted and sentenced him to undergo R.I. for a period of 7 years and to pay fine of Rs.1000/- for the offence under Section 376 IPC and further sentenced him to undergo R.I. for 7 years and to pay fine of Rs.500/- for the offence under Section 306 IPC.

6. On appeal, the learned II Addl. Sessions Judge modified the sentence setting aside the conviction for the offence punishable under Section 376 IPC, while finding him guilty for the offence punishable under section 354 IPC and sentenced him to undergo R.I. for three years and reduced the substantive sentence of imprisonment for the offence under Section 306 IPC to four years.

7. Dissatisfied with the alteration of conviction of the accused for the offence punishable under Section 354 IPC instead of Section 376 IPC and reduction of sentence, the accused-petitioner preferred the present revision on various grounds, mainly contending that the trial court and the appellate court while deciding the complicity of the accused did not consider Ex:23 dying declaration recorded by the magistrate and also the

inconsistency in the statement of PW-1 was not taken into consideration and recorded conviction of the accused for the offence punishable under sections mentioned above. Moreover, there is no material to suggest that the victim was subjected to rape and therefore, based on dying declaration, the conviction of the accused for the offences under Sections 354 and 306 IPC and sentencing the accused as stated above by the appellate court is an apparent error and prayed to set aside the conviction and sentence imposed by the trial court and the findings of the appellate court in CrI.A.No.86 of 2002.

8. The jurisdiction of this court under Section 397 and 401 Cr.P.C. is limited. 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 failure to take proper precaution 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,

¹ (1964) 1 CrI.L.J. 443 (SC)

² 48, CrI.LJ 173, 174 (Pat)

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.

9. Thus, the powers of the High Court are limited, but such power cannot be exercised. 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.

10. 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.

11. In the present case on hand, the trial court though found the petitioner guilty for the offence under Sections 376 and 306 IPC, the

³ 1977 Cr.L.J. 1101

⁴ (1986) 3 SCC 445

appellate Court having found that there is no material that the victim was subjected to forcible sexual intercourse, the conviction was converted into Section 354 IPC from Section 376 IPC and such finding is based on material on record. Apart from that, the dying declaration recorded by the magistrate marked as Ex.P-23 is suffice to conclude that the petitioner outraged the modesty of the victim girl who later committed suicide on account of the alleged act of outraging modesty having felt ashamed. Therefore, the findings of the appellate court does not call interference by this court as I find no manifest perversity in the finding or apparent error in it while exercising power under Section 397 and 401 IPC. When the trial court reversed the finding holding the petitioner guilty for the offence punishable under Section 354 IPC, nothing is shown by the petitioner to know the perversity in the finding recorded by the appellate court. In the absence of any perversity or error apparently or when the conviction was recorded by the appellate court based on material, this court would not interfere with the concurrent fact findings recorded by both trial court and appellate court. Therefore, I am unable to interfere with the concurrent fact findings with regard to the offence punishable under Section 354 IPC.

12. The other charge framed against the petitioner is for the offence punishable under Section 306 IPC. The cause for the act of the petitioner who outraged the modesty of the victim girl and she having felt ashamed, poured kerosene and set ablaze to her body and succumbed to burn injuries while undergoing treatment, the evidence of magistrate who recorded Ex.P-23 dying declaration is consistent with the findings recorded by the trial Court as confirmed by the appellate court.

13. Therefore, the finding recorded by the trial Court against the petitioner for the offence under Section 306 IPC is based on material on

record and it does not call for any interference by this court while exercising power under Section 397 and 401 Cr.P.C.

14. With regard to punishment, the appellate court took lenient view in reducing the sentence imposed by the trial court and even to impose sentence, the Court has to take into consideration the mitigating and aggravating circumstances which are mentioned below:

The defense may put on evidence of mitigating factors that would support leniency in sentencing. Criminal statutes devote far less attention to factors that might mitigate a defendant's punishment, but courts have held that evidence relating to a defendant's character may be introduced provided that it is relevant to the sentencing process.

Common mitigating factors include:

- Lack of a prior criminal record
- Minor role in the offense;
- Culpability of the victim;
- Past circumstances, such as abuse that resulted in criminal activity;
- Circumstances at the time of the offense, such as provocation, stress, or emotional problems that might not excuse the crime but might offer an explanation;
- Mental or physical illness; and
- Genuine remorse."

15. If those mitigating or aggravating circumstances which made the petitioner to outrage the modesty which ultimately led to committal of suicide would show that the petitioner committed the offence, and in such condition, the imposition of sentence taking into consideration the aggravating and mitigating circumstances, the sentence imposed by the appellate court cannot be interfered with by this court exercising power under Section 397 and 401 Cr.P.C. since the sentence imposed on the petitioner commensurate with the gravity and seriousness of the crime. Consequently, the revision deserves to be dismissed.

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

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

M.SATYANARAYANA MURTHY,J

DATE:10-08-2017
ccm



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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