

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1918 of 2005

ORDER:

This Criminal Revision Case, under Sections 397 and 401 Cr.P.C., is filed questioning the propriety, legality and regularity of the Acquittal in Sessions Case No.329 of 2004 passed by the Principal Assistant Sessions Judge, Tenali, finding the accused not guilty for the offences under Sections 448 and 376 IPC.

The case of the prosecution in nutshell is that on 10/11.02.2004 at about 1200 hours while Pw.1 along with her grand son and grand daughter were sleeping in the varandah of her house at Kollur, the accused went to Pw.1, gagged her mouth forcibly and took her inside of the house and laid her on ground and forcibly had sexual intercourse as such raped her. In the meanwhile, her grand son woke up, the accused threatened Pw.1 that he will kill her in case she reveals the incident to her son and went away by throwing aside Pw.2 and thereupon, Pw.1 and 2 went to Choppara Chanti-LW.5 and informed the incident. Later, Choppara Chanti took Pw.1 to the Doctor in the cycle rickshaw of P. Venkata Swamy. While P. Chiranjeevi was taking Pw.1 to Police Station, Chappara Chanti, Choppara Atharao and Choppara Prasad stopped her with an intention to effect compromise and persuaded the accused, who admitted the offence before them and offered to pay a sum of Rs.5,000/- to PW.1 for compromise, and they collected the same from the accused and paid to Pw.1, though initially Pw.1 took it, later returned it to Choppara Atharao through Pydipamula Chiranjeevi, as her son Pw.3, who is the driver of the lorry, was on duty and therefore, she could not lodge the complaint to the police immediately.

On 22.03.2004 Pw.3 came to the village on coming to know about the offence, took Pw.1 to Government Hospital, Tenali and got her admitted. Thereafter, PW.7 recorded the Statement of Pw.1 in the hospital and sent the same to Kollur Police Station on point of jurisdiction. On the strength of statement of the victim-Pw.1, a case in Cr.No.22 of 2004 was registered for the offences under Section 448 and 376 IPC and issued FIR. Later, PW.9 Inspector of Police, Tenali Rural took up investigation, examined the witnesses and referred the victim for examination and after arrest of the accused on 07.03.2004, produced before Pw.6 for potency test and after completion of investigation and receipt of the certificate relating to Potency Test, the police filed charge sheet.

The case was taken on file by the Magistrate and after following the necessary procedure, committed the case to the Sessions Division, Guntur as the case is exclusively triable by the Court of Session and in turn, the Sessions Judge registered the same as sessions case and made over to Principal Assistant Sessions Judge for trial and disposal.

After securing the presence of the accused, the trial Court framed charges against the accused for the offences under Sections 448 and 376 IPC and read over and explained to him in Telugu, he pleaded not guilty and claimed to be tried.

During trial, on behalf of prosecution, Pws. 1 to 9 were examined and Exs. P.1 to P.10 were marked. On behalf of the accused, Exs. D.1 to D.6 were marked. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. explaining the incriminating material that appeared against him in the testimony of prosecution witnesses, he denied the same and reported no defence.

Upon hearing argument of Assistant Public Prosecutor and the defence counsel, the trial Court found the accused not guilty for the offences under Sections 376 and 448 IPC on the ground that there is a delay in lodging the report with the police concerned and the forcible sexual intercourse against the will of Pw.1 was not proved as there is any amount of discrepancy in the medical evidence and ocular evidence and that the mediators were not examined to prove the delay and acquitted for the said offences.

The petitioner being the victim-PW.1 filed the present revision raising several contentions, mainly on the ground that the evidence of Pws. 1 to 3 established the guilt of the accused beyond reasonable doubt, but the trial Court failed to appreciate the evidence in proper perspective and committed a grave error in finding the accused not guilty. Non examination of Lws. 5 to 8 is not fatal to the case of prosecution, even in the absence of their evidence, the delay was satisfactorily explained. Therefore, non explanation of the delay in lodging the complaint to the police is not fatal, but the trial Court did not appreciate the said contention in proper perspective and committed an error in finding the accused not guilty and acquitted for the offences under Sections 448 and 376 IPC, erroneously.

Sri K. Suresh Reddy, learned counsel for the petitioner, while reiterating the contentions raised in the grounds of revision, drawn the attention of this Court to various paras of the judgment of the Court below, more particularly, para No.14 of the judgment and requested this Court to remand the matter to the trial Court for fresh disposal.

The trial Court found the accused not guilty for both the charges, the powers of this Court are limited and this Court would not normally interfere with the fact findings recorded by the Courts below,

unless, those findings are manifestly perverse or apparently erroneous and apart from that Clause 3 of Section 401 Cr.P.C create a direct interdict on the powers of this Court to convert the acquittal into conviction and therefore, this Court in normal course, would not convert the acquittal into conviction and this Court has no power to remand the matter, except ordering retrial, if the Court finds exceptional circumstances.

It is the case of the prosecution that when petitioner was sleeping in the varandah of her house along with her grand son and grand daughter, the accused came to Pw.1 and took her inside the house and laid her on floor and raped her. The petitioner is a grown up woman became grand mother by the date of alleged offence and she maintained silence for a period of 12 days after the alleged offence. If the petitioner was raped by the accused, there must be some evidence to establish the guilt of the accused for the grave offence punishable under Section 376 IPC. Curiously, the medical evidence did not support the case of prosecution. PW.5 is the Medical Officer, who examined Pw.1 and issued Wound Certificate vide Ex.P.3, and the trial Court referred the medical evidence in para No.14 of the Judgment and concluded that no spermatozoa is detected on item Nos. 1 to 8, blood found on Item Nos. 1 and 2 and Saliva on item No.9 is of human origin, but the blood group is not detected and basing on the Analyst Report, gave final opinion stating that there are no signs of recent sexual intercourse.

But, the case of the prosecution is that the accused raped Pw.1 against her will. If really, the accused raped Pw.1, it is for the prosecution to prove the offence of rape beyond reasonable doubt producing cogent and satisfactory evidence. The medical evidence assumes much importance in such sexual offences. But, the material

on record does not disclose anything that she was raped by the accused and if really, she was raped, there must be some signs of forcible intercourse on the body of Pw.1, the petitioner herein. In the absence of such signs of recent sexual intercourse, against her will by the accused, it is difficult to hold that the respondent/accused committed an offence punishable under Section 376 IPC. Therefore, there is absolutely no evidence on record to establish forcible sexual intercourse on the person of Pw.1, by the accused. The trial Court found certain inconsistencies in the evidence of prosecution witnesses. However, the accused is potent, in view of the Certificate, vide Ex.P.5 issued by the Doctor-PW.6, on examination of the accused. Merely because, he is potent, he cannot be roped with grave and serious offence punishable under Section 376 IPC and that too he was aged 35 years by the date of the alleged offence and whereas the victim was aged more than 63 years by the date of alleged offence. Therefore, it is improbable to believe the alleged offence on account of unexplained delay that caused in reporting the incident to the police and though a ground was invented that on account of intervention of Chappara Chanti, Choppara Atharao and Choppara Prasad, who alleged stopped or prevented her from lodging a complaint with the police, with a view to settle the dispute, was not examined to explain the delay satisfactorily in lodging the complaint. Therefore, there is any amount of possibility to foist a false case due to different reasons in the villages and consequently, the trial Court found the accused not guilty for the offences punishable under Sections 448 and 376 IPC disbelieving the prosecution story and such fact findings cannot be reversed by this Court ordering retrial of the case by exercising power under Section 401(3) Cr.P.C. since I find no exceptional circumstances to order retrial. Therefore, I find no merit in the revision and it is liable to be dismissed.

Accordingly, this Criminal Revision Case is dismissed.

Consequently, miscellaneous applications pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:13.10.2017
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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