

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.914 of 2005

ORDER:

Heard the learned counsel for the petitioner as well as the 1st respondent.

The present revision case is filed questioning the judgment dated 18.08.2004 passed in CrI.A.No.43 of 2003 on the file of the IV Additional District and Sessions Judge, Visakhapatnam, setting aside the judgment dated 21.07.2003 passed in S.C.No.75 of 2002 on the file of the Assistant Sessions Judge, Chodavaram, convicting the petitioner for the offence under Sections 417, 506 and 323 IPC.

The facts in brief are that the petitioner/defacto complainant, who is the victim and resident of Mallampallem Village of K. Kotapadu Mandal, used to visit the house of the 1st respondent for the purpose of watching cinemas in television. The house of the 1st respondent is situated opposite to her house. The 1st respondent is a married person and he got wife and children. Nine months prior to registration of the crime, the petitioner went to the 1st respondent's house to watch television. When she went to his house, there are some other school children, who are watching the television. When PW.1 was watching the T.V., the other children went away and thereafter the 1st respondent raised the volume of the T.V., closed the door and forcibly had sexual intercourse with her. When the petitioner was weeping, the 1st respondent pacified that he will marry her and he threatened her that he will kill her and her father if she reveals the same to any other person. On such threatening, the petitioner got frightened and did not inform the same to her father. However, taking

advantage of the same, the 1st respondent used to call her and by threatening her had sexual intercourse with her forcibly and continued the same for about one month. Unable to bear with the same, one day the petitioner informed her father. Immediately, her father sent her to his brother's house at Thatichotipalem of Visakhapatnam. Thereafter, the 1st respondent sent PW.3, wife of one Talayari, to the house where the petitioner was residing. When PW.3 informed her that the 1st respondent is asking her to come, she refused to meet him, the 1st respondent went to the said house and informed the petitioner that he would marry her at Annavaram. The petitioner along with PW.3 and the 1st respondent went to Annavaram where at the 1st respondent asked PW.3 to go to her village. From there, the 1st respondent took the petitioner to Peramari Village in West Godavari District and joined her in a prawn company and sent Rs.500/- for her well being. Fifteen days thereafter, the 1st respondent brought her to Gulipalli Village and kept her in her elder sister's house and he used to visit her house in the night and informed the petitioner's sister that he married her in Nookalamma Temple. From Gulipalli, the 1st respondent took the petitioner to Anakapalli. Meanwhile, the petitioner became pregnant and when she questioned him regarding marriage, he informed her that unless she gets the pregnancy aborted, he would not marry her. The petitioner informed the same to her father and thereafter leading to a dispute before the elders. Even before the elders also, the 1st respondent stated that unless the pregnancy is aborted, he would not marry the petitioner. On the next day of the panchayat, the petitioner went to the stream to fetch water where at the 1st respondent

caught hold of her tuft and dragged her into the casuarina tope and abused her saying that he lost his prestige and reputation in the society because of her and trampled on her stomach with his leg. However, PW.4 rescued the petitioner and took her to her father's house. In that connection, a report was lodged with the police vide Ex.P1 leading to registration of crime vide Crime No.23 of 2001 for the offence under Sections 376, 417, 506 and 323 IPC. After investigation, a charge sheet was laid. The Court below, after taking cognizance of the offence against the 1st respondent, numbered the case as S.C.No.75 of 2002.

During the course of trial, the prosecution has examined as many as 13 witnesses and marked Exs.P1 to P10. The 1st respondent denied the incriminating evidence available against him in the prosecution evidence in Section 313 Cr.P.C., examination. No evidence was adduced on behalf of the 1st respondent. But, Exs.D1 and D2 contradictions in Section 161 Cr.P.C. statements of PWs.1 and 9 were marked.

After hearing, the learned Assistant Sessions Judge by judgment dated 21.07.2003 convicted the 1st respondent for the offence under Sections 417, 323 and 506 IPC. However, he was acquitted for the charge under Section 376 IPC. Aggrieved by the said judgment, the 1st respondent filed an appeal in CrI.A.No.43 of 2003 on the file of the IV Additional District and Sessions Judge, Visakapatnam. After hearing, the learned District and Sessions Judge allowed the appeal, setting aside the judgment and conviction dated 21.07.2003 passed against the 1st respondent in S.C.No.75 of 2002 and acquitted him of all the charges under

Sections 417, 506 and 323 IPC. Against the said judgment, the petitioner filed the present revision case.

Learned counsel appearing for the petitioner would contend that the learned IV Additional District and Sessions Judge committed an error in setting aside the conviction against the 1st respondent. The learned District Judge erred in allowing the appeal and he would have appreciated that at the time of the offence the age of the petitioner was 15 years and the 1st respondent had sexual intercourse with her on the premise of promising her to marry. The counsel also contended that the 1st respondent threatened the petitioner to kill her and her father and forced her to have sexual intercourse with him and demanded to get her pregnancy aborted. The 1st respondent also caught hold of the tuft of the petitioner and dragged her in to the casuarina tope and kicked in her stomach with legs. The lower appellate Court ought to have convicted the 1st respondent relying on the evidence of PWs.1 to 4 and convicted him for the offence under Sections 417, 506 and 323 IPC.

Per contra, the learned counsel appearing for the 1st respondent supported the impugned judgment and submitted that the lower appellate Court appreciated all the aspects by framing the following points:

- “1. Whether the accused promised to marry Pw.1 and thereby induced her to have sexual intercourse with him, knowing that the said promise made by him, is false to his knowledge and subsequently resiled from the said promise, and cheated PW.1 and committed any offence as defined u/s.415 of IPC?
2. Whether the accused threatened Pw.1 to kill her and her father and thereby committed an offence of criminal intimidation punishable u/s.506 of IPC?
3. Whether the accused trampled on the stomach of PW.1 in the casuarinas tope causing bodily pain to her, and thereby committed any offence punishable u/s.323 of IPC?

4. Whether the prosecution has proved the guilt of the accused for the aforesaid offences with legal, cogent and convincing evidence, beyond all reasonable doubt?

5. Whether the judgment and conviction of the trial Court is sustainable under law, and

Whether it warrants interference by this Court, and

Whether the same is liable to be set aside.”

Having heard both the counsel and also from the perusal of the material on record, it is revealed that at the instance of the petitioner vide Ex.P1 a crime has been registered against the 1st respondent for the offence under Sections 417, 506, 323 and 376 IPC in Crime No.23 of 2001 of K.Kotapadu Police Station. After investigation, a charge sheet was filed. The trial Court, after taking cognizance of the offence, numbered the same as S.C.No.75 of 2002. After full-fledged trial, the learned Assistant Sessions Judge acquitted the 1st respondent for the offence under Section 376 IPC, but convicted him for the offence under Sections 417, 323 and 506 IPC by judgment dated 21.07.2003. Against the said judgment, the 1st respondent filed an appeal in CrI.A.No.43 of 2003 before the IV Additional District and Sessions Judge, Visakhapatnam. After hearing, the said appeal was allowed by judgment dated 18.08.2004, whereunder the 1st respondent has been acquitted for the above said offences.

The specific case of the petitioner is that the 1st respondent taking advantage of her innocence had sexual intercourse with her forcibly. When the petitioner questioned the same, he informed that he will marry her. Thereafter, the 1st respondent had sexual intercourse with the petitioner on several occasions at different places leading to the pregnancy of the petitioner. When the matter was brought before the elders, the 1st respondent pleaded that unless the pregnancy is aborted, he cannot marry her. The 1st

respondent even went to the extent of dragging the petitioner into casuarina tope when she went to stream for fetching water and kicked in her stomach with legs so as to cause miscarriage of pregnancy. At that stage, a complaint was lodged for the offence under Sections 417, 323, 506 and 376 IPC. The petitioner herself examined as PW.1. In her chief examination, the vital aspects relating to the 1st respondent threatened her to kill her and also her father and thereby had sexual intercourse for a period of one month and on the first occasion by closing the doors and raising the volume of the television was never stated before the Investigating Officer. In fact, PW.13, who is the Investigating Officer, in his cross-examination stated that the petitioner did not state before him as stated above. These are the two important omissions in the earlier version of the petitioner which go to the very root of the matter and improbabilise her version. Further, as far as the date of birth of the petitioner is concerned, as per the Births and Deaths Register, her date of birth is 25.11.1978. So, taking the same as her date of birth, she will be aged about 22 years at the time of commission of the alleged offence. When the petitioner herself has categorically deposed that she was going with the 1st respondent to Thatichotlapalem, Visakhapatnam, and there from to Anakapally, then to Annavaram and other villages, itself ifso facto evidence that she was not under threat of the 1st respondent. In fact, it is her further specific case that at every place the 1st respondent repeated the sexual intercourse with her. In these circumstances, her conduct and acts clearly tantamount to an act of promiscuity.

In fact, in **Hari Majhi vs. The State**¹ it is held as under:

“Even if the accused had sexual intercourse with the prosecutrix on the promise to marry her, and when she indulges in repeated sexual intercourse on the said promise, until she becomes pregnant, it is held that her acts amounts to promiscuity, and it cannot be said that she was cheated with any such promise to marry her.”

In fact, the ratio laid down in the above said decision squarely applies to the facts of the present case, since the petitioner was moving freely with the 1st respondent, who is a married person, knowing fully well that her marriage with him is impossible and still indulging in repeated sexual intercourse itself amounts to an act of promiscuity and it certainly in any circumstance and at any stretch of imagination amounts to cheating by the 1st respondent. When once the offence of cheating under Section 417 IPC is not established, the question of criminal intimidation as well as voluntarily causing hurt to the petitioner by the 1st respondent also has to be doubted.

In fact, the petitioner in her cross-examination has categorically deposed that the 1st respondent kicked in her stomach with legs and thereby committed an offence under Section 323 IPC, which happened nine months prior to lodging of the complaint i.e., Ex.P1. However, in the FIR, it is stated that at about 1100 o clock when she went to the stream to fetch water, the 1st respondent dragged her into the casuarina tope and trampled on her stomach. So, this inconsistent version of the petitioner in her evidence goes to show that she is not a trustworthy witness. PW.4, who alleged to have seen the said incident, gave different version in his evidence and the statement made before PW.13 i.e., Investigating Officer. In these circumstances, it is difficult to

¹ 1990 CrL.L.J. 650

believe the evidence of PW.1. In fact, the lower appellate Court pointing out these anomalies categorically held that the prosecution miserably failed to prove the basic ingredients of the offence against which the 1st respondent has been charged and thereby he has been acquitted of all the offences. Therefore, this Court does not find any merit in the revision case.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

Date: 13.08.2018.
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P. KESHAVA RAO, J

