

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NO. 1654 OF 2005

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State.

2. The present Criminal Revision Case is filed questioning the judgment in CrI.A.No.135 of 2002 dated 15.9.2005 on the file of the Court of the IV Additional Sessions Judge (F.T.C-III), Khammam, partly allowing the appeal, reducing the sentence imposed on the petitioner from three years to one year.

3. The facts in brief are that the petitioner has been charged for the offence under Section 366 IPC. The case of the prosecution is that the Sub-Inspector of Police, P.S. Wyra, filed a charge sheet against the petitioner for the above said offence alleging that on 25.3.2000 at 9.00 p.m., PW1 who is wife of PW2 came to Police Station, gave a complaint that her daughter PW4 who is aged about 13 years, left the house at about 6.00 p.m. on the pretext of bringing drinking water from the bore well, but she did not return home. Basing on the said complaint, a crime was registered vide FIR No.19 of 2000 under the head "girl missing". PW13 took up investigation and examined PWs 1 to 13. During the course of investigation, on 1.4.2000 at 11.00 hours, PW5 brought the petitioner and PW4

i.e., the victim girl to the Police Station and produced them before PW13. After completion of the investigation, a charge sheet has been filed. Learned Magistrate, after taking cognizance of the said offence, committed the case to Sessions Court, Khammam. Later it was numbered as S.C.No.280 of 2000 and was sent to the Assistant Sessions Judge, Sathupalli. The prosecution, in order to prove its case, examined PWs 1 to 13 and got marked Exs. P1 to P10. On behalf of the petitioner, he examined himself as DW1 and got marked Exs.D1 and D2. Learned Assistant Sessions Judge, after hearing and analyzing the evidence brought on record, convicted the petitioner by judgment dated 20.11.2002 sentencing him to undergo simple imprisonment for a period of three years and to pay a fine of Rs.100 and in default, to undergo simple imprisonment for a period of one week. Aggrieved by the said judgment, the petitioner filed appeal in CrI.A.No.135 of 2002 on the file of the Court of the IV Additional Sessions Judge (F.T.C-III), Khammam. After hearing, the lower appellate Court, allowed the appeal partly, reducing the conviction and sentence imposed by the trial Court to one year from three years by judgment dated 15.9.2005. Aggrieved by the same, the present Criminal Revision Case is filed.

4. Learned counsel appearing for the petitioner contended that both the Courts below erred in convicting the petitioner under Section 366 IPC since the basic ingredients of the said provision are not established. The lower appellate Court erred in placing reliance on the testimony of PWs 1, 2 and 4 who are highly interested witnesses. In fact, PWs 3, 5 and 6 did not support the case of the prosecution and they were declared hostile by the prosecution. Learned counsel also brought to the notice of this Court that if really PW4 was kidnapped, she had many opportunities to escape from the custody of the petitioner and his uncle's house, but she has not chosen to do so. In fact, this is one of the strong circumstances, which establishes that the offence charged against the petitioner, is not maintainable. Learned counsel also submitted that both the Courts below erred in holding that Ex.D1 is inadmissible. The earlier statement made by PW4 ought not to have been ignored and lastly, learned counsel submitted that kidnapping of PW4 by the petitioner from a public tap may not arise and is impossible as it is a public place and many persons will be around and there will be hue and cry if the petitioner resorted to the said offence.

5. Per contra, learned Public Prosecutor appearing for the respondent State supported the impugned judgment.

6. Having heard both the counsel and from a perusal of the material on record, the only question that arises for consideration is:

“Whether the charge under Section 366 IPC against the petitioner is proved beyond reasonable doubt?”

7. It is the case of the prosecution that on 25.3.2000, PW1 came to the Police Station and gave a complaint that her daughter PW4 went to fetch drinking water from a bore well, never returned home. The said complaint led to registration of Crime No. 19 of 2000 under the head “girl missing”. On 1.4.2000, PW5 produced the petitioner as well as the victim girl i.e., PW4. The concerned Police, after completion of investigation, filed a charge sheet against the petitioner for the offence under Section 366 IPC. Learned Magistrate, after taking cognizance of the same, committed the case to Sessions Court, Khammam. Later it was numbered as S.C.No.280 of 2000 and sent to the Assistant Sessions Judge, Sathupalli. The specific case of the prosecution is that PW4 was kidnapped by the petitioner. PWs 1 and 2 who are the parents of the victim girl, originally, lodged a complaint on 25.3.2000 that their daughter who went to fetch drinking water from the bore well, did not return home. It is relevant to mention that a complaint was lodged on 25.3.2000, but PW1 in her chief-examination

has categorically stated that she went to the police station and lodged a complaint ten days after the date of offence i.e., missing of PW4. On production, PW4 was sent to a lady Medical Officer for examination for determination of her age. PW11, Professor of Forensic Science Laboratory, Government Medical Hospital, Vijayawada, after examination of PW4, opined that the age of the victim girl is 15 years. Per contra, the evidence produced by the petitioner herein in the form of Ex.D1 and D2 i.e., true copy of Gram Panchayat voters list of the year 1999 of Paladugu village and true copy of Assembly Constituency voters list, establish that PW4 is a major and she cast her vote in the elections. In between 15.3.2000 and 1.4.2000, PW4 was with the petitioner. In fact, the petitioner as well as PW4 were in the house of the paternal uncle of the petitioner i.e., PW6 for a period of 15 days. Later on, they were produced before the concerned Police on 1.4.2000 by PW5. On producing before the Police when PW4 was sent for medical examination, PW12 who examined PW4, stated as under:

“PW-12 deposed that on 1.4.2000 he received requisition from JFCM, Madhira for the examination of PW4. She examined PW-4 and found she is normally built, on the basis of physical examination, she was aged about 13 years by the date of examination. Then she examined her private parts, pubic hair present Labio

majora and lebia menora are normal. Hymen not intact. Per vagina test was closed not found any injuries, cervix healthy Vagina no congestion, she opined that PW-4 was involved in sexual intercourse with the accused since two months. Ex.P-9 is the report given by her to the J.F.C.M.Madhira with the above said observation.”

8. That part, as contended by the learned counsel for the petitioner that if really PW4 was kidnapped by the petitioner, she was having ample opportunity to escape from the clutches of the petitioner. However, the same has not happened. On the other hand, the medical report given by PW12 clinchingly establishes that PW4 appears to have voluntarily gone with the petitioner and involved in sexual intercourse with the petitioner. In fact, from the observation of PW12 that even prior to the kidnapping also, both of them have got sexual intercourse. In these circumstances, the allegation made against the petitioner that he kidnapped PW4, may not be acceptable.

9. The basic ingredient for invoking Section 366 IPC is that the person who is abducted may be compelled to marry any person against her will or she may be forced or seduced to have illicit intercourse, or such abduction is knowingly that such person who is abducted is likely to be forced or seduced to illicit intercourse, shall be punished with imprisonment.

10. In the case on hand, the prosecution has miserably failed to establish the basic ingredient of Section 366 IPC. Be that as it may, the said incident appears to have happened in the year 2000 i.e., 18 years back. It is informed by the learned counsel for the petitioner and the learned Public prosecutor that the petitioner already underwent four months imprisonment prior to, during and after the convictions rendered by the trial Court as well as the lower appellate Court.

11. Learned counsel for the petitioner also submitted that since the basic ingredient of commission of the offence under Section 366 IPC is not established and the prosecution also miserably failed to prove the offence against the petitioner, this Court may consider modifying the Judgment of the lower appellate Court sentencing the petitioner for simple imprisonment for one year to the period already undergone is sufficient.

12. Learned Public Prosecutor appearing for the State has not opposed seriously for the said request.

13. Even on perusal of the evidence brought on record, this Court is not convinced that the prosecution has proved its case beyond reasonable doubt.

14. In the circumstances, this Court is of the opinion that the period undergone by the petitioner is sufficient compliance with the conviction given by both the Courts below.

15. Accordingly, the Criminal Revision Case is dismissed upholding the conviction and sentence awarded against the petitioner by both the Courts below but it is modified to the extent of the period of four months already undergone by the petitioner as sufficient to comply with the conviction.

Pending miscellaneous petitions, if any, shall also stand dismissed.

Date: 21.8.2018

KPM



P. KESHAVA RAO,J