

HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Appeal No.1555 of 2006

JUDGMENT :

The Criminal Appeal is preferred by Accused No.1 aggrieved by the Judgment dated 13.11.2006 in S.C. No.53 of 2005 on the file of learned Assistant Sessions Judge, at Nalgonda, convicting and sentencing him to undergo rigorous imprisonment for one year for the offence punishable under Section 417 I.P.C. and further sentencing him to undergo ten years rigorous imprisonment for the offence punishable under Section 376 I.P.C. and further sentencing him to pay fine of Rs.50,000/-, in default of payment of fine, he was directed to undergo simple imprisonment for one year.

2. The main contention of the appellant/Accused No.1 is that the trial Court should have seen that as per the prosecution case, P.W.3 is consenting party and aged about 19 years and this fact is known to P.Ws.4 and 5 before his (appellant) marriage and therefore, the ingredients of Section 415 I.P.C. do not attract. The trial Court erred in convicting him.

3. The case of the prosecution in brief is as follows :

Earlier to February, 2003, P.W.3 underwent heart operation. Six months prior to 17.8.2003, P.Ws.4 and 5 leaving their daughter P.W.3 – victim at their house, went to Vijayawada in search of their livelihood. Taking advantage of the fact that P.W.1 was alone

at the house, A1 started going to the house of P.Ws.3 to 5 in Indloor on saying that A1 intends to marry P.W.3 and promising to marry, he induced her and had sexual intercourse continuously.

4. P.W.3, believing the promise of A1, submitted herself to him. P.W.3, observing some changes to her body, informed the same to A1, who took her to a private hospital, Nakrekal, there, the Doctor declared that P.W.3 was pregnant. When P.W.3 insisted to marry, A1 reiterated the same promise of marrying her and later, threatened P.W.3 not to disclose the same to her parents or others. Due to the promise and threat of the accused, she did not disclose the same to her parents.

5. P.Ws.4 and 5 came down to Indloor from Vijayawada and having come to know that P.W.3 was pregnant, with the help of elders, approached the accused and requested for marriage. On that, A2 to A4 pleaded ignorance, whereas A1 denied the same. A1 married another girl.

6. A1 to A4 abused P.Ws.3 to 5 in filthy language and threatened them with dire consequences if they pressurise for marriage and asked them to report to whomsoever they wanted to report. On that, P.W.3 presented report on 17.8.2003, basing on which, P.W.10 registered a case in crime No.78 of 2003 for the offences under Sections 417, 376, 420 and 506 I.P.C. P.W.3 was referred to Government Hospital, Nalgonda for examination and report.

7. After filing the charge-sheet, the case was took on file for the offences punishable under Sections 376, 417, 420 and 506 I.P.C. against A1 and under Sections 417, 420, 506 read with Section 109 I.P.C. against A2 to A4, numbered it as PRC No.90 of 2004, later it was committed to the Court of Sessions and numbered as S.C. No.53 of 2005.

8. After appearance of the accused, charges under Sections 376, 417 and 420 I.P.C. against A1 and charge under Section 506 I.P.C. against A1 to A4 were framed, read over to them and they pleaded not guilty and claimed to be tried.

9. In support of the prosecution case, P.Ws.1 to 10 were examined and Exs.P1 to P5 were got marked.

10. Now, the point that arises for determination is :

“Whether the conviction and sentence imposed by the trial court suffer from any legal infirmities warranting interference?”

The learned counsel for the appellant/A1 contended that the victim-P.W.3 was a major and with her consent, the appellant had sexual intercourse, therefore, the ingredients under Sections 415 and 376 I.P.C. does not attract. The consistent prosecution case is that 6 months prior to 17.8.2003 P.Ws.4 and 5, who are parents of P.W.3, leaving P.W.3 lonely at home in Indloor, went to Vijayawada in search of livelihood and only after four months thereafter, they returned and came to know about the pregnancy and when enquired,

P.W.3 narrated that A1 promising to marry, induced her, had sexual intercourse and cheated her. Thereupon, a report under Ex.P3 was drafted and presented and P.W.10 received the same as a case in crime No.78 of 2003 under Ex.P5 for the offences under Sections 417, 376, 420 and 506 I.P.C. The undisputed facts spell out from the evidence of P.Ws.3 to 8 are that they are all belong to one village by Indloor. P.Ws.4 and 5 are the parents of P.W.3. P.W.6 is the brother of P.W.5, whereas P.W.8 is the neighbour of P.Ws.3 to 5 and P.W.7 is an elder of that village.

11. The evidence of P.Ws.3 to 5 is consistent and corroborated with each other. The consistent evidence of P.Ws.4 and 5 corroborated with P.W.3 is that P.W.3 underwent heart surgery and because of poverty, P.Ws.4 and 5 left their village Indloor and went to Vijayawada in search of livelihood leaving P.W.3 alone at home, because she underwent heart surgery.

12. The consistent evidence of P.W.3 is that as she was alone at home, A1, who is related to P.Ws.3 to 6, taking advantage of loneliness of P.W.3, used to visit the house of P.W.3 and for the first time, he induced P.W.1 to marry and committed rape and when she complained that she will report to others, A1 requested not to tell anybody, as he intended to marry her. So, out of fear, she did not disclose the same to her parents, more so, since A1 promised to marry her, she herself submitted to A1.

13. It is also consistent evidence of P.W.3 – heart patient that as she was not doing well and some developments were taking place in the body, she informed the same to A1, then A1 took her to Doctor Cheruku Sudhakar of Nakrekal, who examined and told them that she was pregnant, then P.W.3 asked A1 to marry her, then A1 told her that he would marry her as second wife, because he was already married in the intervening period with another lady.

14. During the cross-examination, suggestion to P.W.3 is that she did not intimate either in the Ex.P3 report or statement to the police about herself and accused going to Doctor Cheruku Sudhakar of Nakrekal, who told them that she was pregnant. There is no dispute that she was pregnant as Doctor – P.W.2, when referred by the police on 17.8.2003, examined P.W.3 and certified that P.W.3 was carrying pregnancy of 16 to 18 weeks and certified the same in Ex.P2 report. Therefore, the suggestion to P.W.3, which was admitted, that she did not state in Ex.P3 or before the police when examined that she was taken to the Doctor Cheruku Sudhakar of Nakrekal is insignificant, because it is truth, which is proved by the consistent and corroborative evidence of P.Ws. 3 to 7 and the medical evidence of the Doctor P.W.2, supported by Ex.P2 – Medical report. The further suggestion to P.W.3, which was admitted, is that whenever A1 came to her house and had sexual intercourse with her, she submitted herself without any resistance, because she was promised to marry her, she also admits that their house is situated amidst of residential

houses and A1 used to visit their house during the day time even to the knowledge of neighbours.

15. P.W.8 is the neighbour whose evidence is corroborated with the admission of P.W.3 during cross-examination wherein he deposed that his house is separated by two houses from the house of P.Ws.3 to 5. He gave evidence on 11.7.2006. He deposed that about three years back he saw A1 coming to the house of P.Ws.3 to 5 in the absence of P.Ws.4 and 5 and when P.W.3 was present in the house alone. When he asked P.W.3, she replied that A1 promised to marry her, then P.W.8 personally enquired A1 regarding his promise to marry P.W.3, then A1 replied that he intends to marry P.W.3, subsequently, A1 married another lady and P.W.3 was found pregnant. The evidence of P.Ws.4 and 5 is that in search of livelihood, they left to Vijayawada, four months thereafter, they returned back to their house and suspecting that their daughter P.W.3 was pregnant, when they enquired, P.W.3 informed that in the absence of P.Ws.4 and 5 – parents, A1 came to their house and had sexual intercourse promising to marry her. On that, they went to the house of A1 to A4 and asked about the act and A1 to A4 denied the act of sexual intercourse. P.W.6 is a teacher in Koppolu High School, whose evidence is on 16.5.2003, he received telephonic call from her sister Venkatamma- P.W.5 informing that P.W.3 was found pregnant and A1 was responsible for the pregnancy. On that, he came out to the house of P.Ws.3 to 5 on the same day. P.W.5 informed him that in

the absence of herself and her husband-P.W.4, A1 came to their house and promising to marry, induced and sexually enjoyed P.W.3, due to which, she became pregnant. The same was confronted from P.W.3. P.W.3 also informed P.W.6 that A1 threatened to kill her if she discloses the same to any others. Then, P.W.6 consulted village elders of Indloor, they told that they have already enquired A1 and his family members and they told that A1 is not responsible for the pregnancy of Vasumathi – P.W.3. Thereafter, a report was given to the police in Ex.P3.

16. Since A1 denying the paternity, there is the evidence of P.W.9, Deputy Superintendent of Police, who verified the investigation done by P.W.10 and found that the investigation was done on correct lines, recorded statements of P.Ws.4 to 8. He arrested A1 to A4 on different days and sent them for judicial custody. Thereafter, P.W.3 gave birth to a male child in the hospital and on the request of P.W.9, A1, P.W.3 and male child were sent for DNA test and the DNA test report is Ex.P4, wherein the scientific assistant extracted DNA from floor sample collected from P.W.3, A1 and male child and subjected to STR analysis and DNA profile obtained from the floor sample collected from male child is compared with the DNA profile obtained from P.W.3 and A1 and it is matched. Basing on that examination, he came to the conclusion that STR analysis conclusively proves that A1 (source of item No.3) is biological father of male child of P.W.3 (source of item No.2) whose biological mother

is P.W.3 (source of item No.1). Accordingly, DNA test proved that male child is born to P.W.3 through A1.

17. The defence counsel did not cross-examine P.Ws.1 and 2, who are doctors and P.W.1 is the doctor who conducted potency test on A1 and issued Ex.P1, wherein he opined that there was nothing to suggest that Sreenaiah (A1) was incapable of performing sex. P.W.2 is the doctor who examined P.W.3 – victim and she opined that P.W.3 was carrying pregnancy of 16 to 18 weeks and to that effect issued Ex.P2. Since there is no cross-examination of P.Ws.4 and 5, their evidence corroborates with the evidence of P.W.3 and established that P.Ws.4 and 5, leaving their daughter at home alone, as she undergone heart surgery, went to Vijayawada to eke out livelihood. Four months later returned and on suspicion, when questioned, P.W.3 narrated that A1 promising to marry her, had sexual intercourse and she became pregnant through him. DNA test Ex.P4 proved that A1 is responsible for the birth of male child. Further, the evidence on record clearly shows that during the cross-examination, P.W.3 stated that she studied up to 2nd or 3rd class, may be her date of birth was recorded in her school records as 12.7.1985 and in the voters list of 2002, her age might be recorded as 19 years. But as per medical evidence P.W.3 was aged about 16 years by the date of A1 having sexual intercourse inducing her to marry. The suggestion to P.Ws.6 and 7 that P.Ws.4 and 5 instigated P.W.3 to have a trap on A1 and accordingly P.W.3 trapped A1, permitted him for sexual intercourse and became

pregnant, coupled with the suggestion to P.W.3 that whenever A1 came to her house, she permitted for sexual intercourse without any resistance and she informed the name of A1 as her husband to the Nakrekal Doctor at the time of her examination, speaks volumes that A1 had sexual intercourse by inducing P.W.3, who is 16 years old by the date of the act of sexual assault.

18. In the facts and circumstances discussed above and findings therein, I am of the considered view that the trial Court having considered both oral, ocular and medical evidence, supported by documentary evidence, came to the conclusion that A1, promising to marry, induced P.W.3, who was alone at home without her parents – P.W.4 and 5, as they went to Vijayawada in search of livelihood, and frequently visited her house and had sexual intercourse and when she complained to report about the same, he threatened to kill her and due to fear, she did not inform the same to her parents and when she observed development in the body and suspected pregnancy, told the same to A1. A1 and P.W.3 went to Dr.Cheruku Sudhakar of Nakrekal, who certified that she was pregnant. After return of P.Ws.4 and 5, on suspicion when they enquired, P.W.3 informed them that A1 had sexual intercourse inducing her to marry and she was 16 years old by the date of the act of sexual intercourse and A1 married another lady, P.W.3 became pregnant and gave birth to male child. DNA report – Ex.P4 established that the male child is the son born to P.W.3 through A1. The findings of the trial Court and the conviction and

sentence imposed by the trial Court are legal, valid and do not suffer from any legal infirmities warranting interference in the appeal. Accordingly, the appeal fails.

19. In the result, Criminal Appeal is dismissed while confirming the conviction and sentence imposed by the trial Court in S.C. No.53 of 2005 on the file of learned Assistant Sessions Judge, at Nalgonda, dated 13.11.2006.

20. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

11th October, 2018

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