

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.778 of 2006

ORDER:

This Criminal Revision Case by the petitioner-accused under Sections 397 and 401 Cr.P.C. is directed against the judgment dated 01.04.2004 in Criminal Appeal No.309 of 2003 on the file of the V Additional Sessions Judge, Guntur (hereinafter referred to as 'the appellate Court'), whereby the learned Sessions Judge dismissed the appeal confirming the conviction and sentence recorded in the Judgment dated 19.06.2003 in Sessions Case No.408 of 2001 on the file of the Assistant Sessions Judge, Gurazala (hereinafter referred to as 'the trial Court').

2. Case of the prosecution, in brief, is as follows:

Victim girl P.W.1 and the accused are residents Lenin Nagar, Pillutla road, Piduguralla, Guntur district. They used to attend cooli work. P.Ws.2 and 3 are parents of P.W.1. On 28.12.1999 at about 3.00 AM, P.W.2 along with his two sons went to cooli work in lime kiln of Chanti and asked P.Ws.1 and 2 to attend the cooli work by 5.00 AM. As P.W.3 was not doing well, she sent P.W.1 to cooli work by 5.00 AM and she attended the house work between 7.00 AM and 7.30 AM. She learnt that P.W.1 did not turn up to the work. At about 5.00 AM on that day, when P.W.1 was proceeding to cooli work, the accused attacked her on the way near Lime kilns, took her into an abandoned hut, committed rape on her, threatened her not to inform about the incident to anybody and promised to marry her. After the incident, the victim returned home and due to shock, she consumed kerosene and laid down. On noticing kerosene smell, she was taken to P.W.4, who treated her.

When she became conscious, P.W.2 and 3 came to know about the incident from P.W.1 and thereupon P.W.1 presented Ex.P1-report to police. Basing on the same, P.W.8 registered a case in crime No.415 of 1999 of Piduguralla police station for the offence punishable under Section 376 IPC. During the course of investigation, P.W.8 recorded statements of witnesses. He effected arrest of the accused, who confessed about commission of the offence. He seized material objects under cover of panchanama, prepared scene observation report and rough sketch. The victim was sent to medical examination. After completion of investigation and receipt of RFSL report and other documents, police laid the charge sheet.

3. The learned I Additional Judicial Magistrate of First Class, Gurazala took cognizance of the case as P.R.C. No.11 of 2011 and committed the same to the Court of Session. The learned Sessions Judge took the case as Sessions Case No.408 of 2001 and made over the same to the trial Court for disposal.

4. The trial Court framed a charge for the offence punishable under Section 376 IPC against the accused. When the charge was read over and explained to him in Telugu, he pleaded not guilty and claimed to be tried.

5. To substantiate the case of prosecution, P.Ws.1 to 10 were examined and Exs.P1 to P11 were got marked besides case property M.Os.1 to 3. Exs.D1 to D4-relevant portions in the statement of P.W.1 under Section 161 Cr.P.C. were marked on behalf of the defence.

6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to

the incriminating material found against him in the evidence of prosecution witnesses. He denied the same. No oral evidence was adduced on behalf of the defence.

7. The trial Court after considering the evidence on record, found the accused guilty of the offence punishable under Section 376 IPC, accordingly convicted him of the said offence and sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for a further period of six months. Challenging the said conviction and sentence, the accused preferred the appeal. The appellate Court, vide the impugned judgment, dismissed the appeal confirming the conviction and sentence recorded by the trial Court. Challenging the same, the present revision came to be filed by the accused.

8. Heard the learned counsel for the petitioner-accused, learned Assistant Public Prosecutor for respondent-State and perused the record.

9. Learned counsel for the petitioner-accused would contend that the Courts below erred in concluding that the petitioner committed the offence punishable under Section 376 IPC in the absence of any substantive evidence to prove his guilt; that the appellate Court did not formulate the point for consideration; that the Courts below did not discuss the *pros and cons* of the evidence on record and acted upon inadmissible evidence which resulted in failure of justice; that the appellate Court ought not to have considered the evidence of P.Ws.1 to 3, who are close relatives, for finding the accused guilty, and ultimately, prayed to set aside the conviction and sentence recorded

against the accused by the trial Court as confirmed by the appellate Court.

10. On the other hand, the learned Assistant Public Prosecutor would submit that both the Courts below considered the entire evidence on record in right perspective and rightly found the accused guilty of the offence punishable under Section 376 IPC; that the evidence prosecution witnesses is consistent and they have no grouse or enmity against the accused to speak falsehood against the accused; that there is no infirmity in the concurrent findings arrived at, by both the Courts below, and there are no grounds interfere with the same, and ultimately, prayed to dismiss the revision.

11. Now the point that arises for consideration is whether the findings of both the courts below are legal, proper and correct?

12. Revisional jurisdiction of this Court under Section 401 Cr.P.C. is a truncated one. Unless the findings are based upon no evidence or perverse, or that inadmissible evidence was taken into consideration in convicting the accused or that admissible evidence was overlooked, normally the revisional powers cannot be exercised to disturb the concurrent findings of the two courts below.

13. P.W.1 is the victim in this case. P.Ws.2 and 3 are her parents. The charge levelled against the accused is punishable under Section 376 IPC for committing rape of P.W.1 on 28.12.1999 at 5.00 AM in an abandoned hut near lime Kiln in pillutla road, Piduguralla when she was proceeding to attend cooli work. P.W.1 and the accused belong to same locality. They used to attend cooli work.

On 28.12.1999 at about 3.00 AM, P.W.2 along with his two sons went to cooli work. P.W.3, mother of P.W.1, was directed to attend the cooli work along with P.W.1 by 5.00 PM. As P.W.3 was not feeling well, she decided not to go to the work on that day. At about 5.00 AM, P.W.1 left her house to go to cooli work. On her way, near lime kiln, the accused alleged to have attacked P.W.1, took her to an abandoned place, committed rape on her by force, threatened her with knife and promised her that he would marry her. After the incident, P.W.1 returned to her house. Due to shock, she made an attempt to do away her life by consuming kerosene. On return from cooli work, P.Ws.2 and 3 along with their son, found P.W.1 at home and also smelt kerosene smell emanating from P.W.1. Immediately, P.W.1 was taken to a Dispensary and given treatment. Thereafter, P.W.1 revealed the incident to her parents P.Ws.2 and 3.

14. P.Ws.1 to 3 clearly and categorically stated in their evidence the above circumstances and commission of rape by the accused. There is clear evidence of P.W.1 that she did not consent for sex and it was a forcible sex. She also stated that the accused offered to marry her. P.W.1 also gave the details how the rape was committed on her. There is clear evidence of P.W.1 that rape was committed on her against her will. Further, she deposed that she was detained for two hours and threatened by the accused not to inform the incident to anybody. There is also evidence of P.W.1 that on that day, the accused offered her to marry. She has given the details of the accused and the other circumstances of the case. P.W.1 was subjected to a lengthy cross-examination wherein nothing has come on record that the sexual act was with her consent. There is

a clear and categorical evidence of P.W.1 that the sexual act was committed forcibly and against her will by the accused.

15. P.W.10-Doctor who examined the victim, stated in his evidence that hyman was not in-tact. He stated that there was no sexual intercourse. As per Ex.P11-RFSL report, it is clear that there is semen on the cut drawer and some turbid liquid. Further, there is also admission of the accused that he used to have sex with P.W.1 since long back. As per the prosecution evidence, the victim P.W.1 was a minor as on the date of the incident. Basing on the evidence adduced by the prosecution, both the Courts below recorded a concurrent finding that the victim was a minor as on the date of the incident. No suggestion is put to P.W.1 that she was a major or consenting party.

16. While dealing with the subject matter of revision the Courts below relied upon a decision in *Sidheswar Ganguly v. State of West Bengal*¹. It is apt to state that *actus reus* in a case of rape is linked with the consent of the victim. It is likely to be discovered by examining the witnesses on record. As per the evidence, there is no consensual sex in this case. It is against the will of the victim. There is clear evidence of P.W.1 on this aspect. As per the medical evidence, the hyman was not in-tact. There need not be any external injuries. There is also evidence of P.W.1 that she was threatened on the point of knife not to reveal the incident. Further, the evidence of P.Ws.2 and 3, to whom P.W.1 informed about the commission of the incident, cannot be discarded simply because they are parents of the victim. No grouse or enmity was attributed to them to

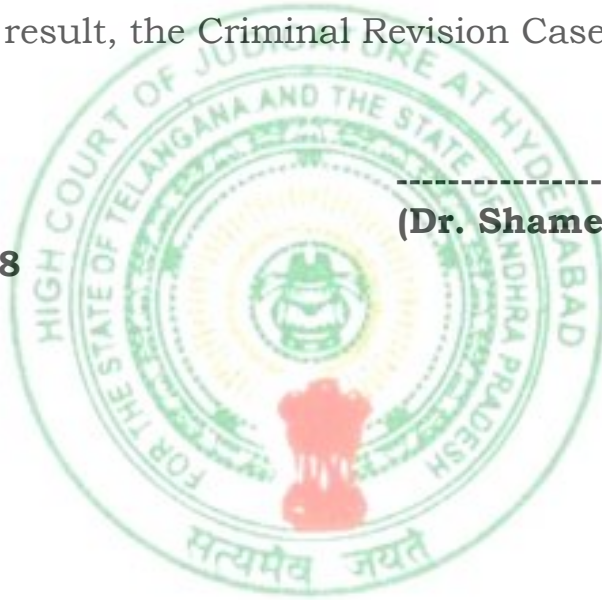
¹ AIR 1958 SC 143

speak false against the accused. There are no inconsistencies in the evidence of P.Ws.1 to 3. Their evidence is clear, cogent and convincing, and it is a material evidence. There is also evidence of investigating officer and other witnesses in support of the prosecution case. Both the Courts below rightly dealt with the contentions raised and negated the same. None of the findings of the Courts below is shown to be illegal, improper or incorrect. The submissions made on behalf of the accused merit no consideration. The revision case is devoid of merit and is liable to be dismissed.

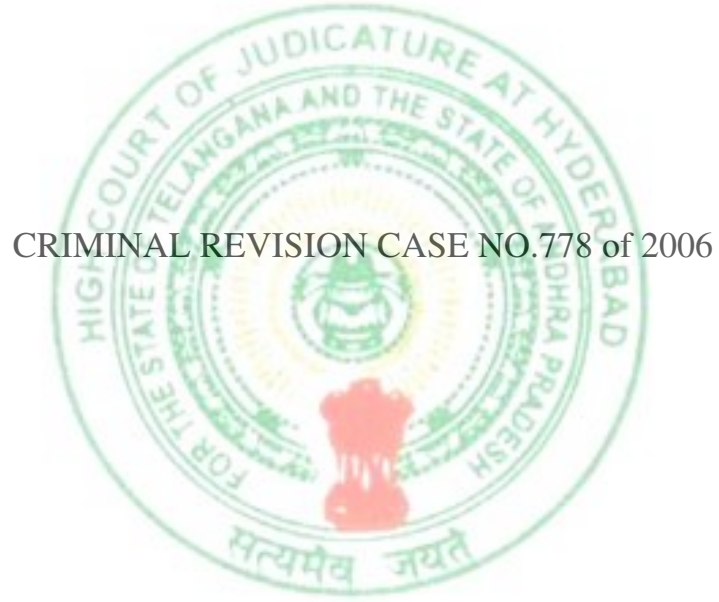
17. In the result, the Criminal Revision Case is dismissed.

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(Dr. Shameem Alther, J)



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