

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE NO.1505 OF 2018

ORDER:

This revision is filed under Section 397 Cr.P.C. against the impugned judgment, dated 14.06.2018 passed in CrI.A.No.7 of 2016 on the file of the III Addl. Sessions Judge, Karimnagar, whereunder and whereby the convictions and sentences recorded against the petitioner-accused, vide judgment, dated 05.01.2016 passed in S.C.No.197 of 2015 on the file of the Addl. Sessions Judge, Karimnagar, were confirmed.

2. The brief facts of the prosecution case are that in the year 2012, the de facto complainant lodged a complaint stating that she stayed in a hotel for police recruitment post and practicing physical activities in Ambedkar Stadium. Thereafter, the accused got acquainted with her and they fell in love with each other. He made her believe that he would marry her and had sexual intercourse with her by taking her to his younger brother's house on 07.12.2012. Later, he invited her to Bellampalli to his residential quarters and had sexual intercourse with her. He had forcible sexual intercourse with her in the room of one Vinod and consequently, she became pregnant. He threatened her through his elder brother. On 27.07.2014, he asked her to come to bus stand, Karimnagar and tortured her keeping whole night at bus stand and damaged her mobile phone, SIM card and Memory card and left from that place refusing to marry her. On these allegations, she lodged a complaint to the police stating that the accused has cheated her and had sexual intercourse forcibly with her by deceitful means promising to marry her. Basing on the complaint, police registered a case in Cr.No.259 of 2014 for the offence

punishable under Section 376 IPC and took up investigation. On completion of investigation, police filed charge sheet against the accused alleging that he is liable for punishment for the offence punishable under Section 376 IPC.

3. The case was taken on file by the learned Addl. Judl. Magistrate of I Class, Karimnagar, for the offence punishable under Section 376 IPC and numbered it as PRC No.16 of 2015. On appearance of the accused, furnished copies of documents as contemplated under Section 207 Cr.P.C. As the offence punishable under Section 376 IPC is exclusively triable by a Court of Session, the learned Magistrate committed the case to the Court of Session under Section 209 Cr.P.C. Later the case was made over to the learned Assistant Sessions Judge, Karimnagar.

4. The learned Assistant Sessions Judge, Karimnagar, framed charges under Sections 417, 420 and 376 IPC against the accused, read over and explained to him in Telugu, for which, he pleaded not guilty and claimed to be tried.

5. In support of it's case, the prosecution examined P.Ws. 1 to 12 and got marked Exs.P1 to P11.

6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence appearing against him in the prosecution witnesses, for which, he denied the evidence as false. The accused has not adduced any defence evidence on his behalf.

7. The trial Court after considering the entire oral and documentary evidence available on record, convicted and sentenced the accused to undergo R.I. for one year for

the offence punishable under Section 417 IPC, to undergo R.I. for 4 years and to pay a fine of Rs.1,000/-, in default to suffer S.I. for 2 months for the offence punishable under Section 420 IPC and to undergo R.I. for 7 years and to pay a fine of Rs.3,000/-, in default to undergo S.I. for 6 months for the offence punishable under Section 376 IPC. Challenging the judgment, the accused preferred the appeal and the 1st appellate Court, vide impugned judgment, dismissed the appeal confirming the convictions and sentenced recorded against the accused. Aggrieved by the same, this revision has been preferred by the accused.

8. In this case, the prosecutrix has filed I.A.No.2 of 2018 under Section 320 (8) r/w 482 Cr.P.C. to permit her to file compromise petition in CrI.R.C.No.1505 of 2018 for compounding the offence. As per Section 320 (8) r/w 482 Cr.P.C, the offence under Section 376 IPC is not compoundable. Therefore, no permission can be granted for compounding the offence punishable under Section 376 IPC though there is consent between the parties for compounding the offence. Therefore, I.A.No.2 of 2018 is liable to be dismissed and hence, it is dismissed.

9. Heard, the learned counsel for the petitioner-accused and the learned Public Prosecutor representing the State advanced arguments on the merits of the case.

10. Now the point that arises for consideration in this revision is whether the prosecution has proved its case against the accused beyond all reasonable doubt for the offences punishable under Sections 417, 420 and 376 IPC?

11. Learned counsel for the petitioner-accused submits that the ingredients of Section 376 IPC are not

present. The petitioner and the prosecutrix are majors and they loved each other and they participated in the sexual intercourse with full consent. Therefore, the ingredients of Section 376 IPC are not present in this case. He placed reliance on the judgment of the Hon'ble apex Court reported in **UDAY V STATE OF KARNATAKA** ¹, and submits that where there was consent between two parties and when the consent is given by the prosecutrix to sexual intercourse with the accused and when the accused was deeply in love with her on a promise that he would marry her on a later date and the prosecutrix continuing to meet the accused and often having sexual intercourse and becoming pregnant and in such circumstances, if the complaint is lodged on the failure of the accused to marry her, the consent cannot said to be given under a misconception of fact. It is further held that a promise is not a fact within the meaning of Penal Code. Where the consent given by the prosecutrix was voluntary or under a misconception of fact, there is no straitjacket formula and each case has to be decided considering the evidence and surrounding circumstances of that case. The Hon'ble apex Court ultimately held in paras 21 and 23 as follows:

“It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the

¹ (2003) 4 SCC 46

question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

Keeping in view the approach that the court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant and her consent was not in consequence of any misconception of fact."

12. As far as the facts of the case are concerned, it is an admitted case of the prosecution that the accused and the prosecutrix fell in love with each other. They both are aspiring to become constables and prosecutrix was practicing in a stadium where she got acquainted with the accused and fell in love with him. It is also not in dispute that the accused and the prosecutrix are majors. The complaint-Ex.P1 itself reveals that they had sexual intercourse now and then. The prosecutrix states that believing that he would marry her, she had sexual intercourse with him and subsequently, he did not marry her and therefore, she lodged a complaint before the police stating that he deceived her. It is also allegation of the prosecutrix that the accused making her believe that he would marry her, had sexual intercourse with her and later he failed to marry her. The facts of the present case are

almost similar to the facts of the case in *UDAY's* case (cited supra).

13. Learned Public Prosecutor submits that what P.W.1 has stated in her deposition is the same as she stated in her complaint-Ex.P1. The testimony of P.W.1 shows that under the guise of love that the accused intended to marry her, on 07.12.2012, he induced her and taken her to the house of his brother-in-law Vinod Kumar and forcibly committed rape on her in the said house. Thereafter, in the selections, the accused was selected and appointed as a constable and after getting the job, he was posted to Bellampally. There, he took her to room No.565 and committed rape several times on her forcibly under the guise that he would marry her and she became pregnant later. The entire evidence of the prosecutrix reveals that she was in love with him and she went to the room of the accused believing him that he would marry her and later he did not marry her. She states that she had forcible intercourse with him. It is the case of the prosecution that she lodged complaint 2 years after the alleged rape. In the facts and circumstances of the case, it can be safely understood that the prosecutrix had voluntarily participated in the sex with the accused. May be for the reason that he promised that he would marry her and subsequently, she became pregnant and when he did not marry her, she lodged complaint. Therefore, the offence under Section 376 IPC does not attract to the facts of this case. In the light of the judgment in *UDAY's* case, there are no ingredients of rape in this case. Therefore, the accused is entitled for acquittal.

14. As the very genesis of the case is based on the offence punishable under Section 376 IPC and the accused alluring that he would marry her and failed to marry her and

with deception, he fraudulently raped her are also not proved. Having regard to the facts and circumstances of the case, the prosecution miserably failed to bring home the guilt of the accused beyond all reasonable doubt for the offences punishable under Sections 376, 417 and 420 IPC.

15. It is also pertinent to note that the prosecutrix herself filed a petition stating that she intends to compromise the matter with the accused. No doubt, the offence punishable under Section 376 IPC is not compoundable as per Section 320 Cr.P.C.. However, in the light of the facts and circumstances of the case, it is a case of love affair between the two persons and subsequently, due to reasons beyond their control, the proposals were not materialized. Therefore, the acts between the parties cannot be said to have attracted the offences punishable under Sections 417, 420 and 376 IPC. The subsequent conduct of the parties also assumes importance in this case as it makes the case of the prosecution weak. The petitioner has placed reliance on the judgment of this Court in CrI.A.No.31 of 2013 wherein this Court compounded the offence. I am of the view that the statute has not provided any provision for compounding of the offence of Section 376 IPC as per the procedure under Section 320 Cr.P.C. Therefore, the learned counsel for the petitioner advanced arguments on merits. In the light of the judgment of the Hon'ble apex Court with the admitted similar facts, the accused in the present case can be acquitted of the charges under Sections 417, 420 and 376 IPC. In fact, some Courts are compounding the offence under Section 376 IPC in view of the compromise between the parties.

16. In the result, the Criminal Revision Case is allowed setting aside the judgments of both the Courts, i.e.,

the trial Court and the 1st appellate Court. The accused is found not guilty for the offences punishable under Sections 417, 420 and 376 IPC and accordingly, he is acquitted. Bail bonds of the accused shall stand cancelled. Miscellaneous petitions, if any pending, in this revision shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 01-11-2018

Hsd

