

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**CRIMINAL APPEAL No.134 OF 2011**

**JUDGMENT:**

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed by the appellant/accused aggrieved over the judgment, dated 24.11.2010, rendered in S.C.No.468 of 2010 on the file of Assistant Sessions Judge, Jangaon, whereby and whereunder, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for one month for the offence punishable under Section 376 (2) (f) I.P.C. and to undergo rigorous imprisonment for a period of two years for the offence punishable under Section 506 I.P.C.

**2.** Heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor representing the respondent/State. Perused the record.

**3.** Learned counsel for the appellant/accused would contend that the appellant is an innocent person and was falsely implicated in this case due to the disputes between him and his in-laws; and, that the sentence of imprisonment imposed for the offences punishable under Sections 376 (2) (f) and 506 I.P.C. is harsh and ultimately prayed to set aside the impugned judgment and acquit the appellant/accused of the charges under Sections 376 (2) (f) and 506 I.P.C.

**4.** The learned Additional Public Prosecutor would contend that there is evidence of PW.2 – victim, who is 12 years seven months

old and daughter of the accused; and, that there is also other circumstantial evidence to substantiate the accusation against the appellant/accused of the offences under Sections 376 (2) (f) and 506 I.P.C. and ultimately, prayed to dismiss the appeal.

**5.** In view of the submissions made by the learned counsel for both sides, the following points have come up for determination:

“1. Whether the appellant/accused committed sexual intercourse against his daughter, who is 12 years four months old on the date of alleged offences?

2. Whether the prosecution proved the guilt of the appellant/accused beyond all reasonable doubt for the offences punishable under Sections 376 (2) (f) and 506 I.P.C.?

3. Whether the conviction and sentence imposed against the appellant/accused is liable to be set aside?”

**Points 1 to 3:**

**6.** To substantiate the accusation against the accused of the offences under Sections 376 (2) (f) and 506 I.P.C., the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P6. No evidence, either oral or documentary, was adduced on behalf of the accused.

**7.** PW.1, mother of the victim, is not an eye-witness to the alleged offences. However, she is a circumstantial witness. PWs.3 and 4, who are the father and mother of PW.1, are also not eye-witnesses to the alleged offences. But, there is circumstantial evidence to substantiate the accusation. PW.2, who is the daughter of the accused, is the victim in this case. On the date of alleged offences, she was 12 years four months old. She has specifically stated in her evidence that in the absence of her

mother, on few occasions, her father had sexual intercourse with her under threat. Thereafter, when she developed pain in the stomach, she got examined by a doctor, Karunakar Raju, who noticed that she was three months pregnant. PW.2 denied that she was deposing false against her father. She did not state about any disputes between her father and maternal grand parents. The accused having sexual intercourse with PW.2, in the absence of PW.1, is substantiated by examining PWs.1 to 4. There is evidence of doctor (PW.9), who examined PW.2-victim and stated in her evidence that the victim was conscious and coherent, general condition is stable, external genetalia is normal, perspeculam examination: hymen absent, cervix long os-transverse slit blood stains discharged through os and per vaginal examination: Introitus admits two fingers, uterus 12-14 weeks cervix long os admitting one finger. She also admitted that on examination, positive results were found with regard to pregnancy. The specific evidence of PW.9 is that there was sexual intercourse, which led to four months pregnancy to the victim. She also stated that there was termination of pregnancy clinically. Ex.P5 is the Medical Examination Report substantiating the evidence of PW.9. There is also the evidence of PW.8 – Doctor, who examined the accused. PW.8 deposed that he examined the accused and found that the accused is capable of performing sexual intercourse. Ex.P4 is the Potency Test Report of the accused. Further, the investigation conducted by the police officials i.e., PWs.11 and 12 reveals that the accused had committed sexual acts forcibly on PW.2, his daughter, in the year 2010. There is ample evidence of termination of pregnancy. There is also specific evidence of PW.2 – victim that

prior to filing of the report before the police under Ex.P1, dated 11.06.2010, for about four months her father committed sexual intercourse against her. There is also specific mention that she was beaten by her father when she did not oblige him. There is no reason for PW.2 to depose against her father.

8. So, as seen from the entire evidence on record, the prosecution proved the guilt of the appellant/accused for the offences punishable under Sections 376 (2) (f) and 506 I.P.C. beyond all reasonable doubt. The trial Court has elaborately dealt with the entire evidence on record and rightly convicted and sentenced the appellant/accused of the said offences. There is no infirmity in the findings recorded by the trial Court and they are in consonance with the evidence on record. The appeal is devoid of merit and is liable to be dismissed.

9. Accordingly, the appeal is dismissed confirming the judgment, dated 24.11.2010, rendered in S.C.No.468 of 2010 on the file of Assistant Sessions Judge, Jangaon.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

**Dr. SHAMEEM AKTHER, J**

January 03, 2019.  
MD