

THE HON'BLE SMT JUSTICE JUVVADI SRIDEVI

CRIMINAL APPEAL No.873 of 2011

JUDGMENT :

This criminal appeal is directed against the judgment dated 19.07.2011, in S.C.No.29 of 2008, passed by the Special Judge for SC/ST (Prevention of Atrocities) Cases-cum-VII-Additional District Judge, Warangal, whereby the appellant-accused was convicted for the offence punishable under Section 417 of Indian Penal Code (for short "the IPC") and was sentenced to undergo simple imprisonment for six (6) months and also to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of one month.

2. Heard Sri A.Prabhakar Rao, learned counsel appearing for the appellant-accused and the learned Assistant Public Prosecutor, appearing for the respondent-State.

3. The appellant-accused faced trial before the learned Sessions Judge for the charges (1) under Section 417 I.P.C. (2) under Section 420 I.P.C and (3) under Section 3 (i) (xii) of the SC/ST (Prevention of Atrocities) Act, 1989.

4. The learned Sessions Judge acquitted the accused for the charges under Section 420 IPC and under Section 3 (i) (xii) of SC/ST (Prevention of Atrocities) Act, 1989, but, however, convicted him for the offence punishable under Section 417 I.P.C. and sentenced him as stated supra.

5. The case of the prosecution, in a nutshell, is as follows:

The *de facto* complainant-cum-victim by name Gade Anitha (P.W.1) belongs to Madiga caste which comes under SC category, whereas the accused Maduri Shyam @ Shyamkumar belongs to Gouda caste, which is other than SC/ST category. While PW 1 was studying 10th class and intermediate at Kondapur and Thorrur respectively, she used to attend volleyball tournaments. While so, about four years back she attended the sports competition at Jawaharlal Nehru Stadium, Hanamkonda. At that time, the accused also attended the sports competition and introduced himself to the complainant. Later, they became close friends and while so at the time of marriage of Busa Manjula (P.W.4) with Busa Suresh (P.W.5) at Kondapur, P.W.1 and accused attended the marriage and also reception at Panthini and chit chatted with each other and the same has been noticed by PWs.4 and 5. The accused also used to telephone to the house of

Bandaru Laxmaiah (P.W.6), one of the neighbours of P.W.1 and used to talk with P.W.1. About three months back, on seeing P.W.1 at Thorrur bus stand, he chit-chatted with her and took her on his motorcycle to Sannur Village and spent with her for few minutes and the same was noticed by one Gadipalli Yakaiah (P.W.10) and their love affair got spread in the village and also to their relatives. Upon that, the parents of the complainant scolded her. The complainant put a marriage proposal before the accused, who refused to marry her by saying that she belongs to Madiga Caste. Later, the accused was selected as RPF constable and underwent training at Moulali, Secunderabad. Even there also, the accused refused to marry her. The complainant felt insulted and informed the same to her parents about the attitude of the accused and upon that, a panchayat was held before Enagandula Murali (P.W.7), Munja Cheralu (P.W.8), Bandi Sudhakar (P.W. 9), Sankineni Venkat (P.W.17) and Jakki Gopal (P.W.18), where the accused admitted about his love affair with P.W.1 and openly refused to marry her, as she belongs to Madiga caste. Later, P.W.1 went to training centre of accused at Moulali on 17.08.2007 and questioned him for not marrying her and while she was weeping, Police, Malkajgiri took her and handed over to her parents and subsequently on 23.08.2007, she lodged a complaint under Ex.P1

against the accused and the same was registered for the offences stated above. Thereafter, the investigating officer, who took up investigation, examined the witnesses and recorded the statements of P.W.1 and also sent her for medical examination and also obtained caste certificates of the victim and the accused vide Ex.P12 and Ex.P10 respectively, from the Tahsildars concerned and his successor. After receiving the relevant reports and after completion of investigation, he laid charge sheet before the Magistrate concerned.

6. The prosecution, in order to establish the guilt of the accused, examined P.Ws.1 to 19 and marked Exs.P-1 to P-18. On behalf of defence, none was examined, but Exs.D-1 to D-3 were marked.

7. On consideration of the entire evidence on record, the trial Court convicted and sentenced the appellant-accused for the offence punishable under Section 417 I.P.C., as stated supra and acquitted him of the remaining charges. Assailing the said judgment, the present criminal appeal is filed by the appellant-accused.

8. Learned counsel for the appellant submits that there are contradictions and omissions in the evidence of PW1/victim and the trial court erred in relying on her evidence. The trial court ought to have seen neither the petitioner made any promise to marry P.W.1 nor had he developed physical relationship with her. The evidence on record does not satisfy the ingredients of the offence under Section 417 IPC. The conviction of the appellant-accused cannot be legally sustained and ultimately prayed to set aside the Judgment of the trial Court and allow the Criminal Appeal as prayed for.

9. *Per contra*, the learned Assistant Public Prosecutor representing the State submitted that the prosecution successfully proved the guilt of the accused by leading cogent and convincing evidence. There is nothing to interfere with the judgment of the trial court and ultimately prayed to dismiss the appeal.

10. The prosecution examined as many as 19 witnesses. Out of them, P.W.1 is the victim-cum-*de facto* complainant, who lodged Ex.P.1 complaint with the police. P.Ws.2 and 3 are the father and brother of P.W.1 and they have corroborated the evidence of P.W.1. P.Ws.4 and 5 were examined by the prosecution to show that the P.W.1 and accused attended their marriage on 06.04.2007

and also for reception on the following day, where, P.W.1 and the accused moved closely. P.W.6 was examined to prove that the accused used to telephone him to speak with P.W.1, being his neighbour and used to chit chat with her over telephone. P.W.s.7, 8, 9, 17 and 18 were examined to prove that they have conducted panchayath where the accused admitted that he and P.W.1 loved each other and refused to marry her on the ground that she belongs to Madiga caste. P.W.10 was examined to prove that he noticed P.W.1 and accused moving closely at Sannur Village on one day. P.Ws.11 and 13 were examined to prove that they also noticed P.W.1 and accused moving closely near toddy tope at their village. P.W.12 is the Tahsildar who issued caste certificate to accused and P.W.14 is Tahsildar who issued caste certificate to P.W.1. P.W.15 is the then S.I of Police, Parvathagiri, who registered the complaint given by P.W.1. P.W.16 is the doctor who examined P.W.1 and P.W.19 is the investigating officer.

11. Coming to the evidence of P.W.1, she stated that when she was studying 10th class and intermediate, she used to attend volleyball tournaments and the accused also used to attend those tournaments and as such, they introduced themselves and became close and moved together. The accused, by making false promise to marry her, enjoyed with her sexually and later refused to marry

her on the ground that she belongs to madiga community, whereas the accused belongs to goud community. In her cross-examination, P.W.1 stated that she participated in sexual intercourse with the accused on her own accord and that she does not remember the exact date when they performed the said act.

12. Except the sole testimony of victim-P.W.1, who is crucial witness in this case, there is no other evidence which corroborate her testimony. The panchayat elders have also not supported the case of the prosecution. It is the case of the prosecution that on 06.04.2007 at the time of marriage of P.Ws.4 and 5 at Kondapur Village, both P.W.1 and the accused attended their marriage, as P.W.1 is one of the friends of P.W.4 and accused is the friend of P.W.5. P.W.1 and the accused also attended their reception on the following day where P.W.1 and the accused moved closely. It is the further case of the prosecution that on the date of marriage of P.W.4 on 06.04.2007, the accused went to the house of P.W.1 and informed her parents i.e., P.W.2 and one G.Laxmi (L.W.3) that he is loving P.W.1 and going to marry her. On the same day, the accused and P.W.1 went to toddy tope near to the village of P.W.1, where, the accused promised that he would marry her and induced her and enjoyed sexually with her. When they were closely moving near toddy tope, P.Ws.11 and 13 witnessed them. Subsequently,

upon the telephone call given by the accused, P.W.1 went to Thorrur where he took her to Sannur village and there also they moved closely and the accused enjoyed with her sexually and the same was witnessed by P.W.10.

13. The circumstantial witnesses in this case turned hostile and did not support the case of the prosecution. Further, P.Ws.7 to 9, P.Ws.17 and 18 are the village elders, who participated in the panchayat and who belong to the same community of P.W.1. They also did not support the case of the prosecution. Further, as seen from the material placed on record, there is inconsistency in the evidence of the witnesses who have attended the panchayat and the witnesses who spoke regarding the affairs between PW1/ victim and the accused.

14. P.W.16 is the Doctor, who examined the victim-PW1 on 25.08.2007 at 3:00 p.m. He stated that there were no injuries on the person all over the body and he issued preliminary examination certificate-Ex.P-14 and he received Ex.P15 FSL report and found that no semen and spermatozoa detected on item Nos.1 to 4 of Ex.P15. He issued final opinion under Ex.P-16 stating that there is no evidence of recent sexual intercourse.

15. P.W.19, who is the investigating officer, also categorically stated that P.W.17 had not stated to him that a panchayat was held at Wardhannapet at the instance of Manda Krishna Madiga. He further stated that P.W.17 did not state to him with regard to the panchayat that took place at Wardhannapet, wherein, the accused refused to marry P.W.1, who belongs to Madiga caste and offered to pay money to her and P.W.1 refused to take money and insisted for marriage and also that P.W.18 did not state the same to him.

16. From the oral and documentary evidence available on record, the prosecution failed to establish the case regarding the allegation of the PW1/victim that the accused had sexual intercourse with her, so also convening of panchayat with regard to their love affair and that the accused had cheated P.W.1. Further, there is also no evidence to show that panchayats were held in the presence of P.Ws.10, 11 and 13, who turned hostile and did not support the case of prosecution. The only evidence relied on by the prosecution with regard to holding of panchayat is that of P.Ws.17 and 18, who did not state before P.W.19 that panchayat was conducted at Wardhannapet. Further, the evidence of PW16 doctor, whose evidence is the very crucial in

this case, lends no credence to the case of the prosecution. According to PW.16, there is no evidence of recent sexual intercourse as per Ex.P16-Final Opinion and he also stated that no semen and spermatozoa detected on item Nos.1 to 4 as per the Ex.P-15 FSL report.

17. In view of the above discussion, I am of the considered opinion that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. The prosecution has also failed to prove the ingredients of offence under Section 417 IPC against the appellant/accused. The trial Court, without there being any cogent and convincing evidence on record, had erroneously convicted the appellant/accused of the offence under Section 417 IPC and the same is unsustainable. In view of the evidence placed on record, the judgment of the trial Court is liable to be set aside and appellant/accused is entitled for acquittal.

18. In the result, the criminal appeal is allowed by setting aside the Judgment dated 19.07.2011, passed in S.C.No.29 of 2008 by the Special Judge for SC/ST (Prevention of Atrocities) Cases-cum-VII Additional District Judge, Warangal. Consequently, the appellant/accused is acquitted of the offence under Section 417 of IPC. The bail bonds of the appellant/accused, shall stand

discharged. Fine amount, if any, paid by the appellant/accused shall be refunded to him.

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

JUVVADI SRIDEVI, J.

Date: 26.09.2022

Yvk/Lpd