

**THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

**CRIMINAL REVISION CASE No.877 OF 2009**

**ORDER:**

This Criminal Revision Case, under Sections 397 & 401 of Cr.P.C., is filed by the petitioner/accused No.2, challenging the judgment, dated 24.04.2009, passed in Criminal Appeal No.178 of 2017 by the learned IV Additional District and Sessions Judge (Fast Track Court) at Mahabubnagar, whereby, the conviction and sentence of rigorous imprisonment for a period of three years and also sentence to pay a fine of Rs.2,000/- for the offence punishable under Section 376 of IPC imposed against the petitioner / Accused No.2 by the learned Assistant Sessions Judge, Nagarkurnool, vide judgment, dated 07.11.2007, passed in S.C.No.640 of 2005, was partly allowed and the sentence of imprisonment imposed by the Trial Court is confirmed and the fine imposed by the trial Court has been modified as compensation of Rs.25,000-00 instead of fine of Rs.2,000-00.

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

On 08-10-2004 at about 6.30 p.m. LW-1 Sevakula Utharaiah lodged a report at Bijinapally Police Station stating that his daughter Sevakula Chamantha, 12 years old, who was working as a maid servant in the house of one Thumma Salman Reddy, was

found to be pregnant. On enquiry, she revealed that one Kune Shekar resident of Velgonda Colony was responsible for her pregnancy. Hence, requested for action.

Basing on the complaint, LW-14 Sub Inspector of Police, Bijinapally registered a case in Crime No.93 of 2004 for the offence punishable under Section 376 IPC and investigated into.

During the course of investigation, he examined and recorded the statements of LWs. 1 and 2. LW-2 stated that she was raped by her neighbour Chinthakayala Venkataiah and while she was working in the house of Salman Reddy another person by name Kuna Shekar raped her against her consent, resulting which, she became pregnant. Accordingly, she was referred to Government Area Hospital, Nagarkurnool for medical examination. The Doctor gave a report that the age of prosecutrix is between 14 to 16 years approximately and she was carrying 28 to 30 weeks pregnancy.

LW-15 took up further investigation and verified the investigation done by LW-14 and found it on correct lines. Later he examined and recorded the statements of LW-3 to LW-5 and visited the scene of offence situated behind the Church at Velgonda Colony, drawn the rough sketch before mediators LW-6

and LW-7 and conducted panchanama. He also visited the second scene of offence i.e. house of A-2 draw the rough sketch and also conducted scene of offence panchanama before mediators LW.8 and LW9. He also filed a requisition before LW10 Judicial Magistrate of First Class, Kollapur to record 164 Cr.P.C. statement of the prosecutrix.

On 10-11-2004 at about 3.00 p.m. on credible information, A-1 Kuna Shekar and A-2 Chinthakayala Venkataiah were arrested at Bijinapally Bus Stand and on interrogation, they admitted the offence. Hence, they were referred to Government Area Hospital, Nagarkurnool for potency test. LW-13 examined and opined that both A-1 and A-2 are potent and then they were remanded to judicial custody. Accordingly, after collecting all the material documents, charge sheet was filed against A-1 and A-2.

**3.** Charges under Sections 376 and 506 IPC were framed against the petitioner/accused. During the course of trial, prosecution examined P.Ws.1 to 15 and got marked Exs.P.1 to P.13. On behalf of the petitioner/accused, Ex.D1 and D2 were marked and no witnesses examined.

**4.** After a thoughtful consideration of the oral and documentary evidence available on record, the trial Court found the

petitioner/accused No.2 not guilty of the offence punishable under Section 506 IPC, however, found the petitioner/accused No.2 guilty of the offence punishable under Section 376 IPC and sentenced to undergo rigorous imprisonment for three years and also to pay a fine of Rs.2,000-00 and in default of payment of fine, petitioner/accused No.2 shall suffer further simple imprisonment for six months, by judgment dated 07.11.2007. Aggrieved thereby, the petitioner preferred Criminal Appeal No.178 of 2007 on the file of IV Additional District and Sessions Judge (Fast Track Court), at Mahabubnagar. However, the learned IV Additional District and Sessions Judge (Fast Track Court), after re-appreciating the entire material available on record, partly allowed the appeal and the judgment of the lower court is modified and the sentence of imprisonment imposed by the lower Court is confirmed and the fine imposed by the lower Court is modified as compensation of Rs.25,000-00. Hence, the present Criminal Revision Case.

**5.** Heard Sri C.Sharan Reddy, the learned counsel for the petitioner/accused No.2 and the learned Assistant Public Prosecutor representing the respondent – State and perused the record.

6. The learned counsel for the petitioner contended that the FIR was lodged by PW-1, who is the father of PW-2, against A-1 alone and it is stated in the complaint-Ex.P1 that A-1 committed rape on the victim and he alone was responsible for the pregnancy. However, PW-1 deposed before the Court that when he went to the police station, the S.I. informed him that A-2 was responsible for the pregnancy and when he asked PW-2, she told that A-2 was responsible for the pregnancy and he does not speak about A-1 at all. In the cross examination he deposed that he does not know the contents of the complaint, hence the evidence of PW-1 is a complete turnaround and his evidence cannot be relied upon.

7. The learned counsel for the petitioner would further submit that PW-2 gave statement before PW-12 under Section 164 Cr.P.C. wherein she stated that about eight months before the report, A-2 took her to his house and committed rape and repeated the offence ten days later and she stated that PW-7, who is her sister, noticed the same and informed her parents and thereafter she was sent to work as a maid in the house of Salman Reddy and that A-1 also raped her and she became pregnant through A-2 and subsequently delivered a baby. However, PW-2 does not speak about A-1 in her evidence and she deposed that the present report was given as A-2 refused to marry her. She further deposed that

she went to the house of A-2 willingly as he promised to marry her and participated in sexual intercourse with him. Hence the entire evidence of PW-2 is full of material contradictions and omissions and her evidence is not trustworthy and it appears that A-2 has been implicated to shield A-1 from the offence. He would further submit that PW-3, who is the mother of PW-2, deposed that the report was lodged as the marriage between PW-2 and A-2 was not performed, however in her cross examination she deposed that though the mother of A-2 asked her to give PW-2 in marriage, they refused to do so. Hence the evidence of PW-3 shows that there was no forcible rape and A-2 was willing to marry PW-2 but it was the family of PW-2, who did not permit the same.

**8.** The learned counsel for the petitioner would further submit that PW-4, the grandmother of PW-1, deposed that the wife of Salman Reddy informed her that PW-2 had friendship with A-1, however A-1 denied the affair and later found out that A-2 committed the offence. She deposed that when she confronted the father of A-2 and demanded money for abortion, he gave her a silver kadiyam, however the doctor did not perform the abortion, as such the entire evidence of PW-4 is an improvement to the case of the prosecution and has absolutely no corroboration. PW-7, sister of PW-2 deposed that PW-2 did not inform her about the

illicit intimacy with A-2. Therefore, the learned counsel for the petitioner would submit that the petitioner is entitled to acquittal because the prosecution failed to prove the guilt of the accused beyond reasonable doubt and prayed to allow the Criminal Revision.

**9.** The learned Assistant Public Prosecutor representing the respondent – State supported the judgment passed by the appellate Court.

**10.** PW-1 stated in his evidence that he know both the accused persons who are residents of his village. About 3 or 4 years back, his daughter Chamantha at the age of 12 years worked as maid servant in the house of one Salman Reddy, after 3 months he observed his daughter's stomach was big and then he went to the SI of Police, then he informed the SI that his daughter Chamantha became pregnant. The SI informed that he wanted to enquire in Manganoor, then he came to the P.S. and called him. The SI informed that A2 had illicit intimacy with his daughter due to which she became pregnant. He further deposed that at the time of scribing the complaint one Auto Thirupathaiah also present. Both together scribed complaint while Auto Thirupathaiah dictated the complaint and Sreenu scribed complaint. PW-1 further deposed

that he does not know the contents of the complaint and whose names were mentioned in the complaint.

**11.** PW-2 who is the victim stated in her evidence that since the petitioner (A.2) promised to marry her she went to the house of A.2 and that he had intercourse with her for every two days. About 20 days she had intercourse with A.2. While she was with A.2 her sister caught hold of them red handedly and she did not reveal her sister about her pregnancy. She further deposed that since A.2 refused to marry her, they filed complaint before the police.

**12.** PW-3 stated in her evidence that her daughter PW2 some times used to go to one Gugilla Venkataiah without their knowledge, she became pregnant and her daughter did not reveal the name of the person, who was responsible for her pregnancy, and she does not know the accused. When they lodged a complaint before the DSP, no marriage was performed between P.W.2 and A.2. When all of them enquired with PW2, she revealed that she became pregnant through A2.

**13.** PW-4 stated in her evidence that finally they came to know that A2 had intercourse with PW2 and made her pregnant, they saw PW2 in the house of A2 and PW2 also revealed finally that

Venkataiah had intercourse with P.W.2 due to which she became pregnant and when she asked the father of A2 to give some money so that to get the pregnancy of PW2 abort but he did not give any amount stating that he had no amount but he gave silver kadiyam so she mortgaged silver kadiyam and got Rs.2,000-00 and went to Chennaikah hospital, Nagarkurnool to get abortion to PW2. But Dr.Chennaiah refused to do abortion as it would be danger to the life of PW2.

**14.** PW5 stated in his evidence that police called A.1 to the cattle shed at Velugonda village along with another person and A.1 admitted to have committed rape on PW2 at the scene of offence, whereas, PW6 also deposed in the same lines.

**15.** PW7, who is the sister of PW2, stated in her evidence that on their enquiry PW2 did not inform anything about illicit intimacy with Accused No.2.

**16.** A perusal of the evidence available on record would show that initially, P.W.1, who is the father of the victim, P.W.2, lodged complaint against accused No.1 only and that the name of the revision petitioner, A-2 was not shown in the complaint. Further, in the statements recorded by the Judicial First Class Magistrate, Kollapur, under Section 164 of Cr.P.C., P.W.1 and P.W2 (victim) both have categorically stated that accused No.1 committed rape

at first instance forcibly. P.W.9, A.S.I. of Police, Kollapur, who registered a case in Crime No.125 of 2004 and issued the F.I.R., has categorically stated in his evidence that both P.Ws.1 and 2 have stated before the Police that first A-1 raped and even before the Judicial Magistrate of First Class, Kollapur, P.W.2 has stated same in her statement recorded under Section 164 Cr.P.C. that first A-1 raped and thereafter A-2 raped her forcibly. The prosecution failed to take any steps for D.N.A. test of the male child born to P.W.2 to show whether the said male child was born through A-1 or A-2. In view of the admissions made by the P.W.2 and without conducting D.N.A. test, the trial Court as well as the appellate Court has acquitted A-1 and convicted only A-2. In the absence of any conclusive and positive evidence, the petitioner - A-2 can be acquitted by extending benefit of doubt.

**17.** For the aforesaid reasons, I am of the *prima facie* view that the prosecution failed to prove the guilt of the petitioner/A-2 for the offence under Section 376 of IPC beyond all reasonable doubt.

**18.** Accordingly, the Criminal Revision Case is allowed, setting aside the judgment, dated 24.04.2009, passed in Criminal Appeal No.178 of 2017 by the learned IV Additional District and Sessions Judge (Fast Track Court) at Mahabubnagar and also the judgment, dated 07.11.2007, passed in S.C.No.640 of 2005 by the learned

Assistant Sessions Judge, Nagarkurnool. The Bail bonds of the accused shall stand cancelled.

Miscellaneous applications, if any, pending in this Criminal Revision Case, shall stand closed.

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**JUVVADI SRIDEVI, J**

**4<sup>th</sup> November, 2022**  
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