
(1993) 08 AP CK 0004

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 320 of 1993 and Criminal Revision Petition No. 298 of 1993

Addepalli Settibabu

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 375(6), 376, 417

Citation : (1994) CriLJ 1420

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : K. Sesharajyam and K. Chaitanya, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. This revision case is filed against the judgment of the learned II Additional Sessions Judge, East Godavari at Rajahmundry in Criminal Appeal No. 292 of 1991, modifying the Judgment of the learned Assitance Sessions Judge, Ramachandrapuram in Sessions Case No. 331 of 1990.

2. The case of the prosecution is that the accused was working as "Saruku Master" in a hotel by name "Sri Kanya Hotel" at Mandapeta. He was unmarried. One Gubbala Manga-PW 1 joined in the said hotel alongwith Gubbala Durga-PW 4 as cleaner. The accused, who was already working by then in the said hotel, developed intimacy with PW 1 and he used to give lift to her on his cycle from the hotel to her house now and then. PW 2, the mother of PW 1 also knew it. The accused promised PW 1 to marry her. Two or three days later, the accused took her to the rear side of the hotel at about 9.00 p.m. and taking advantage of the absence of anybody in the hotel by that time, the accused had sexual intercourse with PW 1. When PW 1 informed the same to PW 2, she asked PW 1 to bring the accused to their house, and when the accused went to the house of PW 1, he also promised PW 2 that he would marry PW 1 Later, he shifted his residence to the house of PW 1 and stayed there for about 15 days and he used to sleep

along with PW 1 separately in one room, for which PW 2 also did not object. The accused enjoyed all these days with PW 1. He also decided to marry PW 1 in Registrar's Office. The accused and PW 1 slept on that night also inside the room as usual and had intercourse on that night also along with PW 1. On the next day, when all of them started to go to Kakinada, the father and brother of the accused came to the house of PW 1 at 9.00 or 10.00 a.m., and took away the accused, on the pretext that his mother was seriously ill. The accused promised to come again and left the house of PW 1. But he did not return, and later when the mother of PW 1 went to the house of the accused and asked him, the accused stated that he had no connection with her daughter-PW 1 and that he did not even know her daughter. Thereupon, PW 2 filed a complaint before police, which was investigated by the police and charge sheet was filed against the accused.

3. The learned Assistant Sessions Judge, on consideration of the entire evidence adduced by the prosecution to prove the charge u/s 376, IPC, and u/s 417, IPC, held that the prosecution failed to prove the charge u/s 417, IPC and acquitted the accused under the said charge. But he found the accused guilty for the offence u/s 376, IPC, and sentenced him to undergo RI for a period of five years and to pay a fine of Rs. 5,000/-.

4. Aggrieved by the said Judgment, the accused filed Criminal Appeal No. 292 of 1991, and the learned Sessions Judge, while confirming the conviction of the trial court for the offence u/s 376, IPC, and the sentence of imprisonment of five years for the said charge, reduced the sentence of fine of Rs. 5,000/- to Rs. 1,000/-. Against the said Judgment, the present revision is filed by the accused.

5. The evidence of PWs 1 and 2, supported by medical evidence, shows that PW 1 is aged about 13 and half years by the date of offence, and that she is not a virgin lady by that time.

6. It is contended by the learned counsel for the revision petitioner that the prosecution failed to prove that the complainant was aged below 16 years by the time of offence, in order to show that her consent was no consent in law. In order to prove the age of the complaint, the prosecution examined PW 8, the Head Master of the school and got marked Ex. P4 certificate through him. In Ex. P 4, the date of birth of complainant was shown as 22-6-1974. On a perusal of the record, it is apparent that the offence took place in or about the month of December, 1987. So, it is clear that the prosecutrix was aged below 16 years by the time of offence, and in view of the above, it must be held that consent given by PW 1 is no consent under law. Since the consent was obtained by misrepresentation, it can be said that the accused committed rape without her consent. Even on a threat if a rape is committed and if the lady surrenders to such threat, it cannot be said that she is consenting the party. In the circumstances, it can be held that the accused committed rape within the meaning of section 375(6) of IPC. Hence, the concurrent findings of both the Courts below need not be disturbed. I do not see any merit in this revision. But

however, the sentence of imprisonment is reduced to three years.

7. In the result, the Judgment of conviction and sentence of fine of the lower appellate court is confirmed, but the sentence of imprisonment is reduced to three years. With the above modification in sentence, the appeal is dismissed.

8. Petition dismissed.