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**(1997) 10 AP CK 0060**

**In the Andhra Pradesh High Court**

**Case No :** Criminal RC No. 345 and Criminal RP 342 OF 1996

Lingam Govindarao

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

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**Date of Decision :** 01-10-1997

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 376  
Penal Code, 1860 (IPC) — Section 109, 366, 375, 420

**Citation :** (1998) 1 ALD 525 : (1998) 1 ALD(Cri) 48 : (1998) 1 ALT(Cri) 206

**Hon'ble Judges :** A. Hanumanthu, J

**Bench :** Single Bench

**Advocate :** Mr. K.R. Prabhakar, for the Appellant; Public Prosecutor, for the Respondent

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## **Judgement**

1. This Criminal Revision case is directed against the judgment dated 8-3-1996 of the learned Sessions Judge, Srikakulam in CrI. Appeal No.83 of 1992 on his file, wherein he had confirmed the conviction and sentence imposed on the revision petitioner/accused in S.C.No.24 of 1992 on the file of the Principal Assistant Sessions Judge, Srikakulam. The revision petitioner/accused No. 1 was sentenced to undergo rigorous imprisonment for three years and also to pay a fine of Rs.200/- and in default to pay the fine to suffer simple imprisonment for one month for the offence u/s 366 of 1PC and the revision petitioner was also sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.200/- and in default to pay the fine to suffer simple imprisonment for one month for the offence u/s 376 of IPC.

2. The facts, in brief, are as under:

The complainant - PW1, Sri Simhadri Annajirao is a resident of Srikakulam. PW2, Simhadri Ramanamma is his eldest daughter. She is aged more than 18 years. The revision petitioner Lingam Govindarao is also a resident of Fazulbegpet, Srikakulam. Lingam Kamalamma (A2) is (he mother of A1. PWs. 1 and 2 and the accused belong to different communities. PW2 and A1 are unmarried. They fell in

love with each other. On 5-5-1991 at 8 p.m. the revision petitioner and PW2 left the village and they went to Vishakhapatnam and stayed in the township near the Steel Plant. They resided in a house under construction along with other workers for about one and a half months and during that period they lived as wife and husband. PW2 had sexual intercourse on the promise of the accused that he will marry her. A2 the mother of A1 went there and took away A1. Thereafter PW2 wrote a letter to her father PW1 and he went along with PW3 and brought her to his house and thereafter he preferred the complaint, Ex. P1, to the police on 23-7-1991. PWS registered Ex. P1, as Crime No. 83/91 under Sections 366 and 109 of I.P.C. and issued the F.I.R. The prosecution examined PWs. 1 to 5 and marked Ex. P1 to P3. After completing the investigation, charge-sheet was filed against the revision petitioner and his mother (A2). The plea of the accused is one of denial. The prosecution examined PWs. 1 to 5 and marked Exs. P1 to P3. On a consideration of the evidence on record the learned Assistant Sessions Judge found A1 guilty of the offences under Sections 366, 376 and 420 of I.P.C. and convicted him for the said offences and sentenced him as stated supra. The learned Assistant Sessions Judge found A2, mother of A1, not guilty for the offences u/s 420, read with 109 IPC and acquitted her of the said charge. Aggrieved of it A1 preferred the appeal in CrI. Appeal No.83/92. The learned Sessions Judge on re-appraisal of the evidence on record, confirmed the conviction and sentence imposed on A1 for the offences u/s 366 and 376 of IPC, but acquitted him of the offence u/s 420 IPC. The accused has come up with this revision challenging the said order of the learned Sessions Judge.

3. The learned Counsel for the revision petitioner is absent and there is no representation on behalf of the revision petitioner. Heard the learned Public Prosecutor. The learned Public Prosecutor took me through the entire evidence on record including the impugned judgment.

4. On a perusal of the evidence on record, it is crystal clear that the revision petitioner/accused had sexual intercourse with PW2 with her consent, though she gave that consent on the promise that he will marry her. PW2 categorically admitted in her cross-examination that she had acquaintance with A1 since one year prior to the incident and then they met each other and that she liked A1. She further stated that A1 belonged to a different community. Even in her examination-in-chief she stated that they lived happily as wife and husband for about one and a half months at Vishakhapatnam and the accused also introduced her to other workers in township as his wife; therefore, the revision petitioner/accused had sexual intercourse with PW2 only with the consent of PW2. She had stated in her examination-in-chief that the accused forcibly had sexual intercourse with her. But this statement of PW2 cannot be accepted in the light of other circumstances in this case and her admissions in her cross-examination. It may be true that she gave such a consent to the accused on the promise made by him that he will marry her. But this does not cover any of the circumstances as mentioned in Section 375 of IPC defining the offence of rape. It has been held by the Apex Court in "Hari Majhi v. State", 1990 CrI. L.J. 650 as under:

"5. It appears to us that the petitioner fell in love with the accused and, accordingly, she allowed him to have sexual intercourse with her.

6. It would be evident from the said evidence that the accused had sexual intercourse with the girl with her consent which she, being above the age of 16 years, was competent to give. The prosecution case is that she agreed to sexual intercourse because the accused promised to marry her. But on this ground he cannot be held guilty of rape. The prosecution case does not cover any of the circumstances in Section 375 of the Penal Code. In our view, the accused cannot be held guilty of rape for having sexual intercourse with PW1 after having promised to marry her."

The facts of the above case are also similar to the facts in this case and therefore the revision petitioner cannot be said to be guilty of the offence u/s 376 IPC. Both the trial Court as well as the appellate Court committed error in holding the accused guilty of offence u/s 376 IPC by observing that" "had the accused not promised PW2 to marry her, PW2 would not have agreed to have sexual intercourse with him"". This reasoning of the appellate Court is contrary to the decision of the Apex Court quoted above. Hence, the conviction of the revision petitioner for the offence u/s 376 IPC is liable to be set aside.

5. Now, coming to the charge u/s 366 IPC, there is ample evidence on record to show that the accused/revision petitioner induced PW2 to go along with him to Vishakhapatnam, on the promise that he will marry her and he had illicit intercourse with her at Visakhapatnam. It is in the evidence of PW2 that the accused promising that he will marry her took her to Vishakhapatnam and there he had sexual intercourse with her, but subsequently he left the place leaving her behind. The offence u/s 366 IPC is attracted and the revision petitioner is liable for the same. On a perusal of the entire evidence on record, I am satisfied with the reasoning given by the appellate Court and also the trial Court for convicting and sentencing the accused for the offence u/s 366 IPC, which is in conformity with the evidence on record. Hence, I do not find any reason to interfere with the said finding.

6. In the result, the revision is allowed partly. The conviction and sentence imposed against the revision petitioner A1 for the offence u/s 376 IPC is set aside. The conviction and sentence imposed against the revision petitioner A1 for the offence u/s 366 IPC is confirmed. The revision petitioner, who is enlarged on bail, is directed to surrender to undergo the remaining period of sentence of imprisonment u/s 366 JPC. The fine imposed for the offence u/s 376 IPC is ordered to be returned to the revision petitioner.