
(2004) 09 AP CK 0121

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 480 of 2002

Padamarthi Subrahmanyam

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 30-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 376, 376(1)

Citation : (2004) 09 AP CK 0121

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : C. Ramchandra Raju, for the Appellant; Additional Public Prosecutor, for the Respondent

Judgement

P.S. Narayana, J.—Pedamurthy Subramanyam, the sole accused in Sessions Case No.500 of 2001 on the file of the Assistant Sessions Judge. West Godavari, Kovvur, preferred the present criminal appeal aggrieved by the conviction and sentence imposed on him by the learned Judge u/s 376 IPC on the ground that the accused admitted the guilt. The prosecutrix - victim had sworn to an affidavit, wherein she had stated that she is the second daughter to her parents and the appellant- accused is her neighbour and she had studied up to 5th class, later she discontinued studies and attending to Coolie work. She also stated that she fell in love with the appellant-accused, which was against the will of her mother and hence, a report was given as against the appellant-accused that he committed rape on 22-3-2000 and the same was registered as a case in Crime No.36 of 2000 u/s 376 IPC of Samisragudem Police Station and while the matter pending trial, the appellant-accused was released on bail and the elders of both the families celebrated their marriage according to the caste customs on 29-08-2000 and due to the wedlock, they begot a daughter aged about two years by name Ramya. It is also stated in the affidavit that in the year 2002, when the case came for trial in the Court of Assistant Sessions Judge, Kovvur,

due to innocence her husband, admitted the offence and without conducting any trial, the Court convicted him and sentenced him to undergo Rigorous Imprisonment for a period of 10 years on 05-03-2002. It is also further stated that initially her husband was in jail for more than three months and subsequent thereto, he had been in jail for about three years. There is no dispute or controversy with her husband and his family members and she is facing some trouble in maintaining her daughter and this problem arose only due to her mother.

2. Apart from the affidavit sworn to by the deponent-prosecutrix- victim - wife of appellant- accused, she also made a representation to the Hon''ble the Chief Justice, in substance, narrating the same and requesting for early disposal of the matter. In the light of the material placed before this Court, there cannot be any doubt or controversy relating to the fact that the appellant-accused married the prosecutrix-victim and hence the other details relating to the alleged offence need not be seriously gone into. At any rate, in view of the admission made by the appellant-accused, the learned Judge had recorded the conviction and sentenced him as referred to supra.

3. Sri Ramachander Raju placed reliance in B.S.Joshi Vs. State of Haryana, 1 and would contend that no doubt, the offence u/s 376 IPC is non-compoundable, but, however, Section 320 Cr P C does not limit or affect the powers of High Court u/s 482 Cr P C .The learned counsel also submitted that in matrimonial offences, it is the duty of the Court to see that there be genuine settlement of matrimonial disputes.

4. The learned Additional Public Prosecutor in all force would submit that in the interest of the Society also, it would be just and necessary to keep up the matrimonial tie and if there is an amicable settlement, it would be just and proper to permit such a couple to live in peace and happiness.

5. Heard the counsel for either side.

6. The divergent views in penology relating to punishment of deterrent theory and reformatory theory are sufficiently good old and no doubt, despite sweeping changes in the modern times, there is an element of criticism that the reformatory theory had met a failure at least in checking up the crime rate in the society. The genuine reforms and certain methods introduced to reform the prisoners had proved to be fruitful. The crime is against the society and no doubt, they are generally classified as trivial crimes and grave crimes. The deterrent method of punishment may make the criminals more hardened and such criminals ultimately even after serving sentence may not join the mainstream of the society. It cannot be said that the reformatory theory in criminal jurisprudence is only a futile exercise. There are several reported cases and statistics, which reflect the achievement of the desired results in the implementation of theory of reformation. Too lenient punishments in grave crimes also may not be in the interest of the Society at large.

7. In matters of matrimonial problems, always Courts may have lean in favour of protecting the matrimonial ties, not only in the interest of couple, but, also in the interest of society at large. Even, if it is taken that a person had perpetrated a sexual offence of the nature, if such a person repents, reconciles with social conditions and enters into a matrimonial tie with the prosecutrix - victim, Courts may have to raise up to the occasion and see that such a couple may lead a happy matrimonial life, this will definitely in consonance with justice, equity and good conscience and also in accordance with the concept of reformatory policy. In such a case, in the interest of keeping up the matrimonial ties, the rigour of law may have to be relaxed, taking into consideration the facts of a given case. Modern penology well recognizes the reformatory theory.

8. In *B.S. Joshi and Others Vs. State of Haryana*, the Apex Court while dealing with the powers to be exercised u/s 482 Cr.P.C. in relation to matrimonial offences observed that it is the duty to encourage genuine settlements of matrimonial disputes. The Apex Court also observed.

"It is thus clear that *Madhu Limaye's* case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary. Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.

In *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, It was held that while exercising inherent power of quashing u/s 482. it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceedings.

In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers u/s 482 of the Code."

9. The proviso to Section 376 IPC deals with punishment for rape. Section 376(1) proviso specifies :

" Provided that the Court may adequate and special reasons to be mentioned in the judgment imposed a sentence of imprisonment for a term of less than seven years."

10. In the light of the proviso to Section 376(1) IPC, taking into consideration

the peculiar facts and circumstances of the present case, this Court is of the considered opinion that the sentence, which had already been undergone by the appellant-accused would meet the ends of justice, and hence for the reasons recorded above, the appellant-accused shall be set at liberty forthwith.

11. The Criminal Appeal is, accordingly, ordered.