

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL APPEAL No.428 of 2016

JUDGMENT:

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This Criminal Appeal is filed under Section 378 (3) & (c) Cr.P.C. by the State, challenging the judgment dated 23.09.2006 passed in S.C.No.194 of 2006 on the file of the II Additional Assistant Sessions Judge (Fast Track Court), East Godavari, Rajahmundry, seeking enhancement of sentence awarded to the accused.

For the sake of convenience, the parties will hereinafter be referred to as arrayed in S.C.

The facts in issue are as under:

On 12.11.2005 at about 8.00 p.m. PW.1 after providing dinner to her husband and mother, PW.1 went to the back side of her house and removed her cloths for taking bath behind a fence. At that time, accused, who is passing by the side of the house, with an evil desire to enjoy PW.1 went near her, and touched her back with his hands. When PW.1 turned back, he caught hold of her hands, dragged into her room, made her fell on the cotton heap, pounced upon her, closed her mouth and had forcible sexual intercourse without her consent and also threatened her with dire consequences. Basing on those allegations a charge sheet came to be filed, which was taken on file as P.R.C.No.5 of 2006 and on committal it was numbered as S.C.No.194 of 2006.

On appearance of the accused, the material was

perused and on being satisfied, charge under Section 376 IPC was framed, read over and explained to the accused in telugu, to which he pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined PWs.1 to 9 and got marked Exs.P1 to P12 and M.O.s1 to 4. After closure of the prosecution evidence, the accused was examined U/s. 313 Cr.P.C. explaining the incriminating material available on record, but the same was denied by the accused. On behalf of the accused, DW.1 was examined.

After analyzing the evidence available on record, the trial Court found the accused guilty for the offence punishable under Section 376 IPC and was convicted and sentenced to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of RS.3,000/- in default of payment of fine he shall undergo simple imprisonment for three months. Challenging the same the State preferred the appeal seeking enhancement of sentence.

On 27.01.2015 this Court while posting the matter after four weeks directed the Public Prosecutor to ascertain the correct address of the accused and furnish the same to the Court within a period of four weeks. Till date neither the prosecution was able to serve notice on the accused nor furnished the correct address of the accused. The Public Prosecutor is not able to say as to whether they could furnish the correct address of the accused.

Having regard to the same and as the accused is already convicted and sentenced to undergo rigorous imprisonment for seven years for the offence punishable under Section 307 IPC, the appeal is dismissed for non-compliance of the order dated 27.01.2015.

Accordingly, the Criminal Appeal is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

04.04.2016
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