

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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CRL.A.NOS.576, 586 AND 588 OF 2010

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COMMON JUDGMENT (Per the Hon'ble Sri Justice G.Chandraiah)

The accused are A-1 to A-14. A-1 to A-9 were charged for the offence punishable under Sections 366, 376(2) (g), 294(b), 292 IPC and Section 66 of the Information Technology Act, 2000. A-10 was charged for the offence punishable under Sections 366, 376 (2) (g) read with 109 of I.P.C. and A-11 to A-14 were charged for the offence punishable under Sections 66 and 67 of the Information Technology Act, 2000 and Section 6 of Indecent Representation of Women (Prohibition) Act, 1986. The trial court - II Additional Sessions Judge (FTC) Khammam, in S.C.No.483 of 2009, by judgment dated 15.4.2010, found A-1 to A-9 guilty for the offence punishable under Sections 366, 376(2)(g) and 292 IPC and Section 66 of the information Technology Act, 2000. For the offence punishable under Section 366 I.P.C., A-1 to A-9 were sentenced to suffer rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,000/- and in default to suffer simple imprisonment for one month each. For the offence punishable under Section 376(2)(g) IPC, A-1 to A-9 were sentenced to suffer imprisonment for life and to pay a fine of Rs.2,000/- and in default to suffer imprisonment for a period of two months each. For the offence punishable under Section 292 IPC, A-1 to A-9 were sentenced to suffer rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- and in default to suffer simple imprisonment for one month each. For the offence punishable under Section 66 of the Information Technology Act, A-1 to A-9 were sentenced to suffer rigorous imprisonment for a period of three years each. For the offence punishable under Section 366 IPC, A-10 was sentenced to suffer rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,000/- and in default to suffer simple imprisonment for one month. For the offence punishable under Section 376(2)(g) read with 109 IPC, A-10 was sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for two months. For the offence punishable under Section 66 of the Information Technology Act, 2000, A-11 to A-14 were sentenced to suffer rigorous imprisonment for a period of three years each. For the offence punishable under Section 67 of the Information Technology Act,

2000 A-11 to A-14 were sentenced to suffer rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/- and in default to suffer simple imprisonment for a period of five months each. For the offence punishable under Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986, A-11 to A-14 were sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- and in default to suffer simple imprisonment for a period of month. All the sentences imposed on the accused A-1 to A-14 were made to run concurrent and the accused A-11 to A-14 were given the benefit of set off under Section 428 IPC.

2. Aggrieved by the conviction and sentence, A-1 to A-9 filed CrI.A.No.588 of 2010. A-10 filed CrI.A.No.586 of 2010 and A-11 to A-14 filed CrI.A.No.576 of 2010.

3. The gravamen of the charge is that on 17.2.2007 at about 11-00 hours, A-1 to A-10, forcibly taken the de facto complainant in the auto to a forest area, and A-1 to A-9 committed rape on the de facto complainant P.W.1 forcibly, one after the other and behaved in an inhuman manner and A-10, having the knowledge that the other accused are going to commit the offence, abetted them by facilitating the other accused and further accused photographed the offence with the help of sony erric cell phone being used by A-1. The accused threatened the de facto complainant with dire consequences of repeating the offence and killing her, if she informs the incident to any one and out of fear she kept quiet. Subsequently over a period of about two years from the date of incident on 4.1.2009, when the de facto complainant was going to her friends house, the accused A-1 to A-9 required the de facto complainant to fulfill their sexual lust and threatened her that if she failed to do so, they will distribute the rape scenes video graphed by them during committing the offence, to the public and so saying, they threw one C.D. at her and went away. The de facto complainant on watching the said C.D., at her house, having found the offence committed on her, felt humiliated and informed to her parents, which lead to the filing of the complaint. A-11 to A-14 converted the obscene photographs of the victim girl into CDs and were circulating the same to the public and hence they were charged for the offences under Information Technology Act and Indecent Representation of Women (prohibition) Act, 1986. The trial court, as noted above, convicted and sentenced them.

4. Since all the appeals arise out of the judgment dated 15.4.2010 in S.C.No.483 of 2009 on

the file of II Additional Sessions Judge (FTC), Khammam, they are heard together and are being disposed of by this common judgment.

5. The case of the prosecution is that the victim girl/de facto complainant (P.W.1) was minor at the time of offence and she was studying intermediate 1st year. She got acquaintance with A-1, as she used to travel in his auto frequently to attend the college. About two years back i.e., on 17.2.2007, she left the college at about 11-00 hours as she was not feeling well and boarded the auto of A-1 near her college at Laxmidevipally, to go to her home. A-10 accompanied A-1 by sitting beside him at the driver's seat. When the auto reached at Ganesh Temple, A-3 boarded into the auto. A-1 drove the auto slowly making phone calls to the friends. A-8 boarded the auto when the auto reached near bridge. When she tried to get down the auto at her destination at S.C.CL., Head Office, the accused persons gagged her mouth and A-1 drove the auto in high speed and proceeded towards Ramavaram outskirts, near the hillock of Gareebpet. A-10 gave his rug (woolen blanket) from the auto to A-1 and went away. After sometime, the friends of A-1, who were A-2, A-4, A-5, A-6, A-7 and A-9 came there on receiving phone calls from A-1 and all of them removed the clothes of victim girl and committed rape on her one after other. While committing rape, the accused had photographed the rape scene with the mobile phone of A-1 and threatened her with dire consequences to commit rape on her again and kill her, if she would reveal the incident to police or her parents and left her there at about 15-00 hours. After completion of committing the offence, A-10 came to the scene of offence on being called by A-1 and he took A-1, A-2, A-3 and A-8 in his auto and dropped them at their destinations. Though A-10 very much knew that the accused were going to commit the sexual assault on P.W.1, abetted the accused in committing the offence, by facilitating them. Later P.W.1 went to her house in another auto and did not disclose the incident to anybody due to fear of the accused.

6. On 4-1-2009 P.W.1 had been to Ramavaram to meet her friend. On the way, A-1 to A-9 approached her and demanded her to follow them stating that they had taken her photographs while committing the sexual assault on her, with the help of cell phone and converted the same obscene photos into the C.D. Further, they threatened her stating that they would circulate the same obscene photos in the CDs to the public and threw a CD at her person. She took the CD to her house and watched the obscene photographs of the incident, which occurred two years ago. Due to humiliation of the accused, she narrated the

incident to her parents. A-11 to A-14 converted the obscene photographs of the victim girl into CDs and were circulating the same to the public.

7. On receipt of the petition from P.W.1, the de facto complainant, M.Ramesh (L.W.22), SI of Police, Kothagudem II Town Police Station, registered a case in Cr.No.2/2009 under Sections 366 (A), 376(2)(g) IPC and issued express FIRs to all the concerned officers and took up investigation of the case. During the course of investigation, the SI (L.W.22) examined P.Ws.1, 2, Vavilala Shiva Rama Krishna Shastri (L.W.3), Salaka Maruthi Ram (L.W.4) and P.Ws.3 and 4 and recorded their statements, drafted crime details form depicting rough sketch of offence in the presence of mediators P.Ws.10 and 11, referred the victim to Government Area Hospital, Kothagudem, for medical examination and report, as the Circle Inspector was on other duty. Based on the facts of the case, Section 67 of Information Technology Act and Section 6 of Indecent Representation of Women (Prohibition) Act, 1986, were added and sent the additional memo to the concerned. On receiving the copy of additional memo from S.I. (L.W.22), Sub Divisional Police Officer (SDPO), Kothagudem - P.W.18, took up the investigation of the case after returning from Bhadrachalam Mukkoti Bandobust duty. During the course of investigation, he verified the investigation of S.I. and found it on correct lines. P.W.18 examined P.Ws.1,2, L.Ws3 and 4 and P.Ws.3 and 4 and they stated the same facts as recorded by L.W.22 and as such, their statements were not reduced into writing. P.W.18 subsequently examined Vavilala Satyavani (L.W.7), P.Ws.5, 6, 7, 8 and 9 and recorded their statements. Visited the scene of offence. Arrested A-1 to A-10 on 7.1.2009 and A-11 to A-14 on 13.1.2009. Seized cell phone from A-1, which was containing obscene photographs of the victim, which were taken while committing the rape on the victim. At the instance of A-1, P.W.18 seized, one CD each from A-7 to A-9, which were containing obscene photographs of victim and the accused, which were taken using mobile phone camera while committing rape on the victim, one CD containing obscene photos of the victim during the offence from A-12, one CD containing obscene photos of the victim during offence. P.W.18 also seized, computer hard disk from A-13, one CD containing obscene photos of the victim during offence, computer, hard disk from A-14 under a cover of confession and seizure panchanama and remanded them to judicial custody. Further seized the crime vehicle i.e., auto bearing no. AP 20 U 7262 which was used in the commission of offence in the house of P.W.9 under a cover of seizure panchanama.

8. The Lady Medical Officer Dr.K.Bindu Jyothi (L.W.21), examined the victim and issued report stating that 'there is no evidence of sexual intercourse at the time of the examination of the individual'. The First Additional Judicial Magistrate of First Class, Kothagudem recorded the statement of the victim P.W.1 under Section 164 Cr.P.C. The VI Additional Junior Civil Judge, Warangal conducted test identification parade of A-1 to A-9 with P.W.1, in which she has identified A-1 to A-9. The seized material objects were sent to FSL, Hyderabad for analysis and report. Thus, it is alleged that A-1 to A-9 committed an offence punishable under Sections 366, 376(2)(g), 294(b), 292 IPC, Section 66 of the Information Technology Act, 2000, A-10 committed an offence punishable under Sections 366, 376(2)(g) read with 109 IPC and A-11 to A-14 committed an offence punishable under Sections 366, 376 (2)(g) read with 109 IPC and A-11 to A-14 committed an offence punishable under Sections 66 and 67 of the Information Technology Act, 2000 and Section 6 of Indecent Representation of Women (Prohibition) Act, 1986. After completion of investigation, the Sub-Divisional Police Officer, Kothagudem laid the charge sheet.

9. The plea of the accused is of total denial.

10. To prove its case, the prosecution examined P.Ws.1 to 19 and Exs.P-1 to P-36 and M.Os. 1 to 14 were got marked and on behalf of the defence, no witness was examined, but Exs.D-1 and D-2 were marked.

11. After closure of the prosecution evidence, the accused A-1 to A-14 were examined under Section 313 Cr.P.C. All the incriminating material in the evidence of the prosecution witnesses was put to the accused and they denied the same and pleaded that one Purna by showing the photos black mailed them. A-3 had taken the plea of alibi stating that he was at Hyderabad doing job and further A-11 to A-14 stated that no recoveries were made from them, but police filed false case against them.

12. At this stage, it is to be noticed that it is brought to the notice of this court that against Udara Purna Chander Rao @ Purna, Cr.No.2/2009 on the file of II Town Police Station Kothagudem, was filed and registered as C.C.No.130/2009 on the file of II Additional Judicial Magistrate of I Class, Kothagudem, for the offence punishable under 384 IPC. The

allegations against the said Purna was that he had taken the photographs of the present de facto complainant in an obscene manner and converted them into CDs and showing the said CD, he has demanded an amount of Rs.50,000/- from the de facto complainant in Cr.No.2/2009, who is the brother of Shravanti/victim, and threatened that if the said amount is not paid, he would circulate the CD in the public. The II Additional Judicial Magistrate of I class, Kothagudem, by judgment dated 1.12.2010 in C.C.No.139/2009 found the accused therein not guilty for the offence punishable under Section 384 IPC and acquitted him of the said charge.

13. In the present case, the trial court based on the above material on record, framed the following issue for consideration:

“Whether the prosecution established the guilt for the offence u/s 366, 376(2)(g), 294 (b), 292 IPC and Section 66 of the Information Technology Act, 2000 against A-1 to A-9, u/sec. 366, 376(2)(g) read with 109 IPC against A-10 u/sec. 66 and 67 of the Information Technology Act, 2000 and Section 6 of Indecent Representation of Women (Prohibition) Act, 1986 against A-11 to A-14, beyond all reasonable doubt?”

14. Holding the accused guilty, as stated above, the trial court convicted and sentenced them. Aggrieved by the same, the present appeals are filed.

15. The learned counsel appearing for the appellants accused A-1 to A-10 Sri Nazeer Khan submitted that absolutely there is no legal evidence on record to convict the accused and the trial court relying on inadmissible portion of evidence, convicted the accused. He submitted that as per the version of the prosecution, the incident was alleged to have taken place on 17.2.2007 between 11-00 a.m. to 15-00 hours as per Ex.P-1 complaint. But the complaint was filed on 5.1.2009 and the explanation given was not convincing and hence the delay in lodging FIR is fatal to the case of the prosecution, since the delay may lead to introduction of exaggerated account or concocted story as a result of deliberations and consultations. In support of this contention, the learned counsel relied on the judgments reported in RONALD KIPRONO RAMKAT vs. STATE OF HARYANA, THUMMALA LOVA RAJU vs. STATE OF A.P. and STATE OF A.P. vs. M.MADHUSUDHAN RAO. He contended that as per the case of the prosecution A-10 had given the blanket to A-1, but the said blanket was not seized. Further, in the cross-examination of P.W.1, she stated that A-3

is not there in the C.D. and that she has no acquaintance with A-3. This circumstances shows that A-3 is entitled for benefit of doubt. Further the photos of A-7 to A-9 are also not seen in the CD, which is admitted by P.W.1. Therefore, they are entitled for benefit of doubt. With these submissions, the learned counsel sought to set aside the impugned judgment of the trial court.

16. The learned counsel Sri Narasimha Rao Gudiseva, appearing for A-11 to A-14 submitted that except the alleged confessions and the recoveries, which are not in fact recovered at the instance of these accused, there is no legal evidence on record to convict these accused. With these submissions, he sought to set aside the conviction and sentence imposed against A-11 to A-14.

17. On the other hand, the learned public prosecutor supporting the impugned judgment sought to dismiss the appeals.

18. To appreciate the rival contentions and to find whether the prosecution could prove the guilt of the accused, it is necessary to note the evidence available on record.

19. To prove the case of the prosecution, the de facto complainant – victim girl, was examined as P.W.1. She deposed that she is a resident of Kothagudem, but at present residing at Hyderabad; during the year 2006-07, she joined intermediate I year at Margadarsi Junior College, Kothagudem; that every day, she used to attend the college in an auto; that her father was working in printing press in Main Office, Singareni Collieries, Kothagudem; on 17.2.2007 at 8-00 a.m., she went to attend the college; as she was suffering with ill health, came out of the college at 11 a.m. to go home; that the road is in front of the college and she came on the road; that at that time, the auto driven by Amar i.e., A-1 came on the road at 11-00 a.m.; that she boarded the said auto of A-1; that at that time, in the said auto Ramjan i.e, A-10 was also there in the auto; that immediately, she boarded the auto and the auto was started; that after they reached Ganesh temple, A-3 Vamsi boarded the auto; that again the auto reached near under bridge, sultan i.e., A-8 boarded the auto; that they sat by her side in the back seat of the auto; that when the auto reached near head office, Singareni collieries, she asked the auto driver A-1, to stop the auto, as she want to get down from the auto, but he did not stop the auto; that at that time A-3 closed her mouth with his hands, then A-8 caught hold of her head and bent her head towards her front

side; then the auto proceeded towards Ramavaram side; the auto was taken towards Garibpeta where Peddamma temple is there and it is a forest area; that after the auto was stopped, A-1, A-3 and A-8 dragged her from the auto and taken her towards the trees; that A-10 had given rug (woolen blanket) to A-1 Amar; then Raju (A-2), Sudhakar (A-5), Mahmood (A-6), Raj Kamal (A-4), Baba (A-9), Muktyal (A-7), all of them came to that spot; that all the above said persons kissed her and embraced her; that A-3 forced her to take the drink in the glass and made her to drink, but it is not cool drink, but it is a different taste; that she was made to drink the said drink and all of them removed her dress in spite of her resistance and they threatened her, stating that if she raised cries, they would kill her; then A-2 and A-3 by force made her to smoke the cigarette and when she resisted, they beat her; then at first A-2 Raju raped her without her consent and forced her; then all the above said accused persons A-1 to A-9 raped her forcibly one after another; that after they raped her, left her at that place alone and all of them went away; by that time, she was feeling so weak and not able to move from that place, but some how, she wore her dress and slowly came on the road; that she boarded another auto, which came there and went to her house; that when the accused left her at the scene of offence, they threatened to kill her, if she informed the incident to her parents or to anyone and also threatened to commit rape on her again; that due to fear of that, she did not inform the incident either to her parents or to any one; that on 4.1.2009 evening, while she was going to the house of her friend Reshma, she got down from the auto to go to the house of her friend at auto stand; that while she was going to the house of her friend, all the above said accused were present at the auto stand; that on seeing them, she was afraid of them and was going fast, to reach the house of her friend, again all the above said accused came to her and asked her whether she would go with them; that she did not reply to them and tried to go fast; then all of them came to her and A-3 Vamsi threw a CD towards her and then all the accused told her that on the day when they raped her, they had taken the photos, which are available in the said CD and they told her that in the said C.D., there are photos when they raped her and while she was taking drink and smoking cigarette; that if she did not agree to go with them, again they will take the photos from the CD and will distribute to all; then she brought the said CD along with her and reached home and the accused persons left from there; that after coming to house, she had seen the CD, which contained the photos stated by the accused persons; then she informed about the said incident to her father, to her brother and to her cousin brothers; that thereafter, on 5.1.2009, she gave complaint to police; that she came to know the names of the accused persons, because A-1 was talking in cell phone with them and they were calling each other with their names at the scene of offence; that after she gave

the complaint to the police, she had seen the news in the TV and their photos shown in the TV; that thereafter, she identified the accused persons at Central Prison, Warangal in the identification parade; that her Section 164 Cr.P.C. statement was recorded by Magistrate at Kothagudem; that P.W.4, friend of her brother was the scribe of the complaint given by her to the police; that Ex.P-1 is the report signed by her to the police and contains her signature; that Ex.P-2 is her Section 164 Cr.P.C. statement recorded by the Magistrate at Kothagudem; that Ex.P-3 is the Xerox (Photostat) attested copy of her secondary school certificate; that her date of birth was 17.11.1990; that after she gave the complaint to the police, she was sent to Area Hospital, Kothagudem, wherein the lady medical officer examined her; that she had shown the scene of offence to the police; that police examined her and recorded her statement; that the accused also threatened her and asked her to take the copies of CD given to her and sell the same in the bazaar and; that she was not aware regarding the photos taken at the time of committing rape on her by the accused persons.

20. P.W.1 was cross-examined at length, but no inconsistencies could be elicited by the defense. In her further re-examination P.W.1 deposed that along with P.W.1, she handedover the C.D. to the police which was thrown by A-3 towards her; that M.O.12 is the said C.D. handed over by her to the police. In her further cross-examination, she denied the suggestion that no rape was committed on her by the accused persons and it is a story created by her.

21. P.W.2 is the father of P.W.1. He deposed as per the version of P.W.1. P.W.3 is the cousin brother of P.W.1 and he also deposed as narrated by P.W.1. P.W.4 is the scribe of Ex.P-1 complaint. P.W.5's husband was the owner of the crime auto M.O.1 bearing No.AP 20U 7262 and after his death, she sold the auto to P.W.6 and in turn, he sold it to A-10 and A-10 sold the auto to P.W.7 and he sold it to P.W.8 and finally it was sold P.W.9, from whom P.W.18, investigating officer seized it under M.O.1.

22. P.Ws.10 and 11 are the panch witnesses for conducting of crime details form at the scene of offence, marked as Ex.P-5, in which they put their signatures. Out of these panch witnesses, P.W.10 turned hostile and P.W.11 supported the case of the prosecution.

23. P.W.12 is the panch witness for confession cum seizure of A-11 to A-14.

24. P.W.13 is the panch witness for confession-cum-seizure of properties of A-1 to A-10 and he put his signature on the panchanamas.

25. P.W.14 is the panch witness for confession and seizure panchanama of A-10 and on his confession M.O.1 auto was seized.

26. P.W.15 is the Magistrate, who conducted test identification parade at Central Prison, Warangal and during the parade, P.W.1 identified A-1 to A-9.

27. L.W.21 Dr. K.Bindu Jyothi initially examined P.W.1 and issued Ex.P-18 medical certificate. As she was residing at America, the police examined P.W.16, who was then working as Civil Surgeon (Specialist) in Government Area Hospital, Kothagudem, and he identified the certificate Ex.P-18 issued by L.W.21 Dr.K.Bindu Jyothi.

28. P.W.17 is the SI of Police, Kothagudem II Town Police Station. As per his evidence, he received Ex.P-1 from P.W.1 and registered a case in Cr.No.2/09 under Sections 366-A, 376(2)(g) IPC and issued FIR Ex.P-29 and he partly investigated the case and handed over the case dairy to the Sub Divisional Police Officer, Kothagudem for further investigation.

29. P.W.18 is the Sub Divisional Police Officer, worked at Kothagudem at the relevant period and he deposed about the further investigation done by him with regard to arrest of the accused, interrogation and recording of their confessional statements and seizure of material objects under cover of panchanamas.

30. P.W.19 is the scientific officer in Andhra Pradesh Forensic Science Laboratory, Hyderabad. P.W.18 sent requisition to him along with letter of II Additional Judicial First Class Magistrate, one CD and four hard disk drivers for examination. He examined the said C.D. and four hard disk drivers and issued Ex.P-31 report.

31. From the above evidence available on record, it is necessary to examine whether the prosecution could prove the guilt of the accused beyond reasonable doubt.

32. The case of the prosecution is that the de facto complainant P.W.1 was studying intermediate 1st year at the relevant time and she got acquaintance with A-1 as she used to travel in his auto frequently to attend the college. While so, on 17.2.2007, as she was not feeling well, at about 11-00 hours, left the college and boarded the auto of A-1 near her college at Laxmidevipally to go to her home. At that time, A-10 was accompanying A-1, by sitting beside him in the driver's seat. When the auto reached Ganesh Temple, A-3 boarded into the auto and A-1 drove the auto slowly, making phone calls to his friends. A-8 boarded the auto when it reached near bridge. When P.W.1 tried to get down the auto at her destination at S.C.CL. Head Office, the accused persons gagged her mouth and A-1 drove the auto in high speed and proceeded towards Ramavaram outskirts near the Hillock of Gareebpet and A-10 who is with A-1, gave his rug (woolen blanket) from the auto to A-1 and went away. After some time, the friends of A-1 i.e., A-2, A-4, A-5, A-6, A-7 and A-9 came there on receiving phone calls from A-1. All of them removed the clothes of P.W.1 and committed the rape on her one after another and while committing the rape, the accused have photographed the rape scenes with the mobile phone of A-1 and threatened her with dire consequences to commit rape on her again and kill her, if she reveals the incident to police or to her parents and left the place of incident at 15-00 hours. After completion of offence, A-10 came to the scene of offence on being called by A-1 and he took A-1, A-2, A-3 and A-8 in his auto and dropped at their destinations. Though A-10 very much knew that the accused were going to commit the sexual assault on P.W.1, abetted the accused by felicitating them and due to fear, P.W.1 did not disclose the incident to anybody. On 4.1.2009 when P.W.1 was going to Ramavaram to meet her friend, A-1 to A-9 on the way, approached her and demanded her to follow them stating that they have photographed while committing the sexual assault on her with the help of cell phone and converted the same obscene photos into CD and threatened her that they would circulate the said C.Ds. to public and threw a CD at her person. P.W.1 took the CD to her house and watched the obscene photographs of the incident which occurred two years ago and due to humiliation of the accused, narrated the incident to her parents. The case of the prosecution is that A-11 to A-14 converted the obscene photographs of P.W.1 in the CD and circulated the same in the public. On receipt of complaint from P.W.1, the SI of Police Kothagudem II Town

Police Station registered the case in Cr.No.2/2009 under the offences referred to above and eventually after investigation, filed the charge sheet.

33. The de facto complainant who was examined as P.W.1, in her evidence, which is already noted above, has categorically deposed about the acts committed by each of the accused A-1 to A-10. She deposed that on 17.2.2007 as she was un-well, came out of the college and at that time the auto driven by A-1 came on the road at 11-00 am. She boarded the said auto and in the said auto A-10 was also there and after they reached Ganesh temple, A-3 Vamishi boarded the auto and again when the auto reached near under bridge, A-8 boarded the auto and they sat by her side in the back seat of the auto and when the auto reached near head office, Singareni Collieries, she asked the driver A-1 to stop the auto to get down, but he did not stop and at that time A-3 closed her mouth with his hands, A-8 caught hold of her head and bend her head towards the front side and then the auto proceeded towards Ramavaram side. The auto was taken towards Gareebpet, where Peddamma temple is there and it is a forest area and the auto was taken towards forest and it was stopped. Then A-1, A-3 and A-8 dragged her from the auto and taken her towards the trees. A-10 had given the rug (Blanket) to A-1 Amar and then A-2, A-5, A-6, A-4, A-9 all of them came to that spot. All the above said persons kissed her and embraced her and A-3 forced her to drink, which is not a cool drink and all of them removed her dress in spite of her resistance and they threatened her to kill if she raises cries. A-2 and A-3 forced her to smoke cigarette when she resisted, they beat her. That A-2 raped her without her consent and forced her and then all the accused persons raped her forcibly one after another. In her further evidence, she deposed that on 4.1.2009 evening while she was going to the house of her friend Reshma and when she got down the auto at auto stand and going to her friend's house, the accused persons came and asked her to go with them and at that A-3 vamsi had thrown CD towards her and the accused stated that on the day when they raped her, they have taken the photos which are available in the CD and that if she did not agree to go with them, they will take the photos from the CD and will distribute to all. Though P.W.1 was cross-examined at length, no inconsistencies could be pointed out by the defence.

34. Further, the evidence is consistent with the contents in Ex.P-1 complaint and her statement Ex.P-2 before the Magistrate under Section 164 Cr.P.C. In the test identification parade conducted by P.W.15, P.W.1 has identified the accused A-1 to A-9. No

contradictions could be pointed out by the defence from the previous statements of P.W.1, to disprove her case.

35. The learned counsel for A-1 to A-10 submitted that in the present case, Ex.P-1 was filed after a period of about two years and there is possibility of exaggerations and hence delay in filing the FIR is fatal to the case of the case of the prosecution.

36. The de facto complainant has given the explanation for lodging the complaint after a period of about two years. At the relevant time on 17.2.2007 she was studying intermediate. As per her evidence, after committing of the offence by the named accused forcibly, they have threatened her with dire consequences and due to fear, she has kept quiet without informing the incident even to her parents and on 4.1.2009 when she was going to the house of her friend at Ramavaram, on the way, the accused A-1 to A-9 approached her and demanded her to follow them to meet their sexual desire and stated that they had taken the photographs while committing sexual assault on her and converted the same into CDs and threatened her stating that if she does not follow them, they would circulate the CDs and they threw one CD at her and she has taken the CD and watched the same in her house and having found the obscene photographs, due to humiliation of accused, she narrated the incident to her parents and it lead to filing of Ex.P-1 along with the said C.D. M.O.12. This explanation of the de facto complainant, in our considered view, is convincing. Because of fear, she kept quiet and as per her evidence, she is not aware about photographing of sexual assault in the cell phone belonging to A-1, which is seized under M.O.7. Only when the C.D. containing the sexual assault on her was seen by her, due to humiliation she informed to her parents.

37. There is no material on record to show that there is any enmity between P.W.1 and the accused A-1 to A-10 to falsely implicate them. As noted above, her evidence is consistent all through and inspiring confidence. The Apex Court in **HARBANS KAUR v. STATE OF HARYANA** (2005 CRI.L.J.2199) held that *“Even a long delay can be condoned if witnesses have no motive of implicating accused and have given plausible reason for delay.”* In the light of these circumstances, the ground of delay taken by the accused, cannot be countenanced.

38. The incident was photographed by the accused with the help of cell phone M.O.7 being used by A-1, which was converted into CD. The said C.D. was examined by P.W.19, who is working as Scientific Officer in APFSL, Hyderabad and issued Ex.P-31. He deposed that their laboratory received requisition from SDPO, Kothagudem P.W.18 along with forwarding letter from II Additional Judicial First Class Magistrate, Kothagudem for examination of one CD and four hard disk drivers. He analyzed all the above said items using forensic work station and based on the examination, found the C.D. item 1 of Ex.P-31 contains two video files with some names "AVESQO1. DAT", and " AVSEQ02.DAT" and these videos contains obscene images. While playing the above video files, some snapshots (containing male and female persons) were captured. These snapshots are given in a C.D. marked as annexure-1, COM/7/2009. Item No.2 is in damaged condition and it is not in working condition. No relevant date is found in item Nos.3 to 3. Ex.P-31 is the report issued by himself and Smt. B.Varalaxmi, Assistant Director, APSFL, Hyderabad and it was approved and forwarded by the Joint Director, APSFL, Hyderabad. He opined that there is was no morphing in the images found in item No.1 of Ex.P-31.

39. The trial court had taken the task of watching the C.D. M.O.12 and it is worth to note the observations of the trial court, as under:

"29. In this case M.O.12 is the CD which was handed over by P.W.1 to the police at the time of report Ex.P-1 given and by displaying C.D. it shows the photos which were taken while committing rape on P.W.1 by the accused and made her to smoke the cigarette and while they were kissing her and it shows the photos of the victim P.W.1 with bear body and also contains the rape scenes of victim with accused with bear bodies. M.O.9 is the another CD contains the same photos like M.O.12. The C.Ds. M.Os.8 and 10 are in the name of "RAJU MOVIES" and also shown as presented by Raju, Screen play, Direction and Producer by Raju. The said two C.Ds. contains the accused persons made P.W.1 to smoke cigarette, kissing her and made her to kiss them and bit the lips of P.W.1. It is also seen in the CD rape committed on P.W.1/victim by the accused persons and found the accused and P.W.1 with bear bodies. It also contains the photos of victim with bear body by removed her cloths by showing her private parties without clothes. It also contains the photos of some other persons. M.O.10 contains two C.D.S in both the C.Ds. some photos are kept. M.O.8 C.D. also in the name of "RAJU MOVIES" is like as M.O.10 and it contains same photos like M.O.10. M.O.14 is the C.D. received from FSL, Hyderabad and it contains the same photos like M.O.12. All the above said C.Ds. shows the accused removed the clothes of the victim and taken photos by lay down her with bear body by showing her private parts in the photos and the photos contains while committing rape by some of the accused, while kissing her and made her to kiss them and bite the lips of the victim/P.W.1.. .

30. On seeing the photos in the C.Ds. it shows the feelings of the victim/P.W.1, her

unwillingness to do the illegal acts with accused and in a sad mood in helpless condition. She has clearly stated in her evidence that they threatened to kill her and also threatened to commit rape on her again. Even after committing rape also they threatened to kill her if she inform to her parents or to anyone by stating they threatened to commit rape on her again and due to fear of that she did not inform the incident either to her parents or to anyone. The C.Ds. M.Os. 9 and 10 contains the photos and also video. As it was forest area, there was no possibility even to hear the cries of P.W.1 and even to know anyone about the incident. The accused Nos.1 to 9 removed clothes of victim/P.W.1 made her to stand before them and to lay down and taken the photos of her private parts by all of them. Which shows their inhuman behavior and they made her in front of 9 male persons with naked body that shows the nature of A-1 to A-9.

31. The evidence of P.W.1 alone is sufficient to prove the offence like the rape in this case. Apart from the evidence of P.W.1/victim, the C.Ds. M.O.8. M.O.9, M.O.10, M.O.12, M.O.14, which clearly shows the rape committed by the accused persons on the victim/P.W.1. Moreover they released the C.Ds. by taking photos in cell phone at the time of committing rape and at the time when they kissed the victim and made her to kiss them and made her to smoke the cigarette. She also stated that they made her to drink which is not cool drink. Even though it is not shown in the C.Ds. but her evidence clearly shows that she made to drink some thing given by them."

40. As per the evidence of P.W. 19 Scientific Officer, who issued Ex.P-31 opinion, there is no morphing. Hence, the contention of the learned counsel for the accused that there is morphing in the C.D., in the light of evidence of P.W.19 and in the absence of any motive on the part of P.W.1 to implicate them, is liable to be rejected.

41. Further the contention of the learned counsel for the accused A-1 to A-10 is that the evidence of C.D. and the evidence of P.W.19 are inadmissible in evidence under the provisions of Section 65-B of the Indian Evidence Act. He further contended that as there is no voice evidence on record to prove M.O.7 is used by A-1 calling the other accused and further there is no material on record to show that M.O.7 cell phone belongs to A-1, they cannot be convicted. In the present case, as noted above, the crime C.Ds. were sent to FSL and after scientific examination by P.W.19 with the assistance of other officers, opined that there is no morphing and issued Ex.P-31 and this circumstance corroborates the oral testimony of P.W.1. The seizure of M.o.7 from A-1 was made as per his confession in the presence of panch witness P.W.13, who supported the case of the prosecution. Apart from confession, the other circumstances, particularly the evidence of P.W.19, who issued Ex.P-31 report based on scientific examination and the consistence evidence of P.W.1, which is inspiring confidence and in the absence of any motive for P.W.1 to implicate the accused, the contention of the learned counsel for these accused, merits for rejection.

42. The learned counsel for the accused sought to contend that in the C.D. M.O.12, A-3, A-7 to A-9 are not seen and even P.W.1 in her cross-examined admitted this and hence, they shall be given benefit of doubt. The de facto complainant, in her evidence, which is noted above, has categorically deposed about the acts committed by each of the accused and the defence could not prove any motive for P.W.1, to falsely implicate these accused. Further, though A-3 sought to take the plea of alibi could to substantiate the same and the trial court at paragraph no.32 of the impugned judgment, has given cogent reasons to reject the plea of A-3 in this regard, which warrants no interference. In the light of the above facts and circumstances, the accused A-3, A-7 to A-9 cannot taken the benefit of not appearing in CDs. and the contention in this regard is rejected.

43. The learned counsel for the accused sought to contended that as per the evidence of the doctor Dr.K.Bindu Jyothi, who issued Ex.P-18 final opinion, there is no evidence of sexual inter course at the time of examination and hence, accused cannot be found guilty. It is to be noticed that the victim girl was subjected to medical examination after a period of about 22 ½ months and hence no evidence of sexual assault could be noted but it showed that the victim girl was not virgin, and the prosecution had subjected A-1 to A-10 to potency test and the reports Ex.P-19 to 28 show that they are potent and capable to carry out sexual intercourse. Therefore, this circumstances, in the light of the above clinching evidence, cannot be taken into consideration.

44. The other contention of the learned counsel for the accused A-1 to A-10 is that the as per the evidence of P.W.1 after she gave the complaint, she had seen the news in the T.V. and their photos were shown in the TV and thereafter she has identified the accused persons at Central Prison, Warangal in the test identification parade and her 164 Cr.P.C. statement was recorded by the police. Therefore, as the identification parade was conducted after de facto complainant watching the accused in the TV., the test identification parade has no evidentiary value and hence cannot be relied upon. This contention, cannot be accepted for more than one reason. As per the case of the prosecution, P.W.1 had acquaintance with A-1, as she used to travel in his auto to go to college. As per her evidence, on 17.2.2007 when she came out of the college at 11-00 a.m., the auto driven by Amar i.e., A-1 came on the road and she boarded the auto and at that A-10 was sitting

beside A-1 in the driver's seat and in her evidence she narrated the acts committed by each of A-1 to A-10. In her cross-examination on 14.12.2009 on behalf of A-3, A-7, A-8 and A-11 to A-14, she deposed that there is no change of physical features of her at the time of giving complaint to the police and at the time of incident. She further deposed that at first the accused persons left the scene of offence by leaving her there and after some time, she came from there. Up to 3 p.m. they were at the scene of offence and she reached home at about 3-45 p.m. For about three hours, the de facto complainant spent time with the accused and it is natural that there cannot be possibility of forgetting the faces of the accused, who committed rape on her. Further, in her prior cross-examination on behalf of A-1 to A-10, she denied the suggestion that only after seeing the photos of the accused persons in the TV, she identified accused persons. She stated that after the incident on 17.2.2007, she has seen the accused persons several times on the road and as such she can identify them. She also denied the suggestion that prior to conduct of identification parade, the police shown A-1 to A-10 to her at the police station. P.W.18 investigating officer also denied in her cross-examination that the obscene photographs of the victim P.W.1 in the company of A-1, A-2, A-4 to A-6, by way of morphing, were released to the public by way of electronic media and the TV channels and in the newspapers this case was foisted against the accused persons to safeguard the victim and her family and that his investigation was totally mislead by electronic media and press. Therefore, when de facto complainant had spent about three hours in their company while committing offence on her and that even after the incident, she had seen the accused and when she has specifically denied that only after seeing the accused A-1 to A-10, she has identified the accused in the test identification parade, and that the police have not shown the accused to her at the police station prior to the test identification parade, and in the light of the evidence of the investigation officer P.W.18, that he has not released the crime CD to the electronic media, the contention of the counsel for the accused that A-1 to A-9 were identified by de facto complainant in the test identification parade only after they have been shown in the TV and that the test identification parade, has no evidentiary value, cannot be countenanced and the police have taken every precaution to see that there shall not be any lapse on their part in investigating the case.

45. The trial court based on evidence, has found the Accused A-1 to A-9 have taken the de facto complainant forcibly to commit rape on her, which is an offence punishable

under Section 366 IPC and they have committed gang rape on her which is punishable under Section 376(2)(g) of IPC and further, while they have been committing the offence, have photographed the obscene acts of the accused in the cell phone M.O.7 of A-1 and converted them into CDs for distribution, and one of such CDs was thrown at the de facto complainant, which is the offence punishable under Section 292 IPC and further they have intended to cause wrong loss to her, which is the offence punishable under Section 66 of the I.T. Act, 2000. As the offence was committed in a forest area, which is not a public place, the trial court rightly acquitted the accused for the offence punishable under Section 294(b) of IPC.

46. Coming to the accused A-10, he was accompanying A-1 by sitting beside him in the driver's seat and he is having full knowledge that the offence is going to be committed and he facilitated the accused A-1 to A-9 in committing the offence and though he has not committed the rape, he has abetted the other accused A-1 to A-9 in committing the offence and hence the trial court rightly found him guilty for the offence punishable under Sections 366, 376(2)(g) read with 109 IPC.

47. For the foregoing reasons, we are of the opinion that the trial court rightly convicted the accused A-1 to A-10. With regard to sentence against A-1 to A-9, we are inclined to take certain facts into consideration. Among the accused A-1 to A-9, except A-7, the other accused are young men, in the age group of 19 to 28 years. The accused A-1 to A-9 are eking out their livelihood by doing menial jobs and there is no material on record to show that they are involved in any offence of similar nature and before the trial court, before sentencing, they pleaded mercy and their family responsibilities. Further, the trial court has imposed a sentence of ten years to A-10 for the offence punishable under Section 376(2)(g) of I.P.C. Therefore, in these facts and circumstances, we are inclined to interfere with the quantum of sentence imposed by the trial court under Section 376(2)(g) of I.P.C. Considering overall facts and circumstances and in view of these extenuating circumstances, the sentence imposed by the trial court against A-1 to A-9 for the offence punishable under Section 376(2)(g) IPC is reduced from life imprisonment to ten years rigorous imprisonment. The sentences imposed under other charges found guilty, against A-1 to A-9 and the fine amounts, needs no interference and they are confirmed. All the sentences shall run concurrently. The sentences against A-10 are confirmed.

48. With regard to charges against A-11 to A-14, except the alleged confession before the police officials in the presence of P.W.12, panch witness, no independent witness was examined to prove the ingredients of Sections 66 and 67 and Information Technology Act and Section 6 Indecent Representation of Women (Prohibition) Act, 1986. P.W.18, the Investigating Officer in the cross-examination on behalf of A-11 to A-14 deposed that *"It is true that A-11 to A-14 published the CDs and sold in open Market. No witness stated but it is the confession of A-11 to A-14, there is no other material to attract Section 6 of I.R.W. (Prohibition) Act. Because A-11 to A-14 are liable for punishment under Sections 66 and 67 of I.T. Act for the reason that they made CDs and taken copies and circulated the same. Except confession and recovery from A-11 to A-14 there is no evidence of any other witnesses regarding transmitting or selling or purchasing the CDs from A-11 to A-14."* In view of this piece of evidence and as there is no other independent evidence on record, we are of the considered opinion that based on confession before the police authorities, it is not safe to convict them and they cannot be found guilty and accordingly, they are entitled for acquittal of the charges leveled against them.

49. The conviction and sentence imposed by the trial court against A-11 to A-14 for the offence under Sections 66 and 67 of Information Technology Act, 2000 and Section 6 of Indecent Representation of Women(Prohibition) Act, 1986 is set aside and they are acquitted of the said charges and they shall be set at liberty forthwith, if not required in any case and fine amount paid, shall be refunded.

50. In the result, the CrI.A.No.588 of 2010 filed by A-1 to A-9 is partly allowed to the extent indicated above. CrI.A.No.586 of 2010 filed by A-10 is dismissed. CrI.A.No.576 of 2010 filed by A-11 to A-14 is allowed.

51. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

M.S.K.JAISWAL,J

DATE: 08.04.2015

AVS