

RAMACHANDRA RAO CrI.A.No.1821 of 2005 JUDGMENT This Criminal Appeal is filed challenging the judgmentdt.08-09-2005 in S.C.No.1 of 2005 of the Special Sessions Judge for Trial of Offences under S.Cs. & S.Ts. (POA) Act, Kadapa convicting the appellant herein under Sections 366-A and 376 (2) (g) IPC but acquitting him for the offence under Section 3 (1) (xi) of S.Cs. & S.Ts. (POA) Act, 1989. The case of the prosecution is that P.W.1 is the daughter of P.Ws.2 and 3. She is partially dumb and mentally insane and can pronounce only the words "akka akka" "anna anna". P.W.2 is living by doing hamali work in a solvent factory. P.W.3, the wife of P.W.2, and P.W.1 are working as coolies in a cotton mill. While so on 10-01-2000, P.W.2 was at his house as there was no work. P.W.3 and P.W.1 left their house around 6 a.m. to Ganesh Mill for coolie work. Around 11.30 a.m. P.W.3 alone returned to the house, had meals and again went to the mill at 11.45 a.m. While she was returning back, P.W.1 came in opposite direction. P.W.2 instructed P.W.1 to take lunch and return to the said mill. It is alleged that at about 11.50 a.m. while P.W.1 was about to reach her house, A-1 and A-2 came in an auto, caught hold of P.W.1 forcibly, dragged her into the auto and took her towards Gopavaram side. P.W.4, who was proceeding to her house near polytechnic college at Korrapadu road, witnessed the same. Meanwhile, P.W.1 cried 'akka akka'. It is alleged by the prosecution that P.W.4 tried to stop auto but in vain and the auto went in high speed towards Gopavaram side. Immediately P.W.4 informed the same to P.W.2. P.W.2 and P.W.11 went to trace P.W.1. P.Ws.7 and 5 also proceeded on a scooter for tracing P.W.1. At about 1 p.m., while P.Ws.1 and 2 were in search of P.W.1 at Bhagatsingh Colony, it is alleged that the accused brought P.W.1 in the said auto from Gopavaram side, dropped her at Bhagatsingh colony and went away in the auto. When P.W.2 and P.W.11 tried to catch the accused, it is alleged that they escaped in the said auto speedily towards Proddatur side. Meanwhile, P.Ws.7 and 5 also reached there and chased the auto on their scooter. They were able to stop the auto near III Town police station, Proddatur. It is alleged that the accused abandoned the auto and escaped. P.Ws.3 and 11 took the victim to III Town Police Station. They were instructed to report the matter to the Rural Police Station. As the victim was partially dumb and mentally unsound, P.W.3 being natural guardian, informed the same to the Assistant Sub-Inspector who recorded his statement and transferred the same to Proddatur II Town Police Station on the point of jurisdiction. During investigation, A-1 was arrested on 30-01-2000 at YMR colony, Proddatur and A-2 was arrested on 13-02-2000 at Vijaya Kumar Junction, Proddatur. The case was taken on file under Sections 366, 376 (2) (g) read with Section 34 IPC and Section 3 (1) (xi) of S.Cs. and S.Ts. (POA) Act, Kadapa against the accused by the First Additional Judicial First Class Magistrate, Proddatur. It was then committed to the I Additional Sessions Judge -cum- Special Sessions Judge for Trial of Offences under S.Cs. and S.Ts. (POA) Act, Kadapa, who registered it as Special Sessions Case No.78 of 2000. Charges under Sections 366-A, 376 (2) (g) IPC and Section 3 (1) (xi) of the S.Cs. and S.Ts. (POA) Act, were framed against both the accused. The charges were read over and explained to them in Telugu. Both pleaded not guilty and claimed to be tried. By judgment dt.02-05-2002, I Additional Sessions Judge, Kadapa convicted both the accused. The accused then preferred Criminal Appeal Nos.947 of 2002 and 990 of 2002 before the High Court. By common judgment dt.26-09-2003, the High Court set aside the judgment of the I Additional Sessions Judge, Kadapa as also the conviction and sentence passed by him and remanded the matter for retrial with a direction to restore the case, examine the witnesses once again and also record the evidence of the victim by taking assistance of the Principal, Deaf and Dumb School, Hyderabad or any other expert who is having knowledge in understanding the signs given by deaf and dumb persons. After remand, the case was transferred to Special Sessions Judge for Trial of Offences under S.Cs. and S.Ts. (POA) Act, Kadapa and registered as Sessions Case No.1 of 2005. The case against A-2 was split up after it's remand by the High Court and it was registered as S.C.No.42 of 2005 on the file of the Court against him as he jumped bail. Prosecution examined P.Ws.1 to 16 and marked Exs.P-1 to P-15 and M.O.1. After closure of the prosecution evidence, A-1 was examined under Section 313 Cr.P.C. The incriminating material appearing against him in the evidence of prosecution witnesses was put to him. He denied the same. He marked Ex.D-1. By Judgment dt.08-09-2005, the Court below convicted the appellant/A-1. Challenging the same, this Criminal Appeal is filed. The learned counsel for the appellant contended that the Court below had erred in convicting the appellant of the offences punishable under Sections 366-A and 376 (2) (g) IPC. He contended that P.Ws.2 and 3 had stated that they did not know the accused prior to the commission of the offence and so in Ex.P-1 complaint, allegedly given by P.W.2 on 10-01-2000, the names of the accused could not have been mentioned. He also contended that P.W.4 had not stated that she saw the accused in the auto along with P.W.1 and she had only stated that she saw two persons in the auto along with P.W.1 and therefore, her evidence also cannot be taken into account. He pointed out that P.Ws.5 and 6 also stated that they did not know the accused prior to the incident and in fact, P.W.5 had stated that he had seen the accused in the police station one month after the incident. Therefore, his identification of the accused in the Test Identification Parade conducted by P.W.16 has to be ignored. He also pointed out P.W.7's evidence that he saw the accused getting down from the auto and escaping from the auto cannot be accepted since said witness had no prior acquaintance with the accused and did not know their names. He further contended that there were no external injuries over the face, neck, breast, abdomen and inner parts of the thighs of PW1 according to P.W.8; that no blood stains were found in the garments, there is no bleeding from the external genitalia according to P.W.8; that P.W.8 admitted that she had written in Ex.P-2 originally that P.W.1 was attempted to be raped and later corrected it that P.W.1 was raped; so her evidence also cannot be believed; since examination by P.W.8 was within four hours of the alleged incident and that medical evidence does not support the same, the accused is entitled for acquittal. He also contended that P.W.11's evidence cannot be relied upon regarding the identity of the accused since he had stated before the Magistrate in Ex.D-1 on 19-07-2000 during the Test Identification Parade conducted by P.W.16 that he had never seen the accused earlier. He therefore prayed that the Criminal Appeal be allowed and the judgment of the Court below be set aside. The learned Public Prosecutor on the other hand contended that the Court below has correctly considered the evidence on record and convicted the accused of the above charges and that the evidence of prosecution witnesses- in particular P.Ws.1, 4 and 11 was sufficient to prove the guilt of the accused and any minor discrepancies in the evidence of the prosecution witnesses cannot be given much credence. He also relied upon State of Maharashtra Vs. Prakash and Another, Santhosh Moolya and Another Vs. State of Karnataka, State of Punjab Vs. Gurmit Singh and others, Mohd. Imran Khan Vs. State Government (NCT of Delhi) and Dinesh Jaiswal Vs. State of Madhya Pradesh. I have noted the submissions of both sides. The assistance of one Ms. Devamani Kanakaraj, Correspondent of Christian Fellowship School for Deaf, Vasantpet, Proddatur was taken by prosecution in the Sessions Court for examination of P.W.1, the victim. The said person had experienced in deaf and dumb school for 32 years as a teacher. No doubt P.W.1 identified A-1 in the Court and also by signs stating how she was subjected to rape. However, this evidence of P.W.1 was recorded again after remand on 25-07-2005, 5 ½ years after the incident. P.W.8, the doctor, who had examined P.W.1 had opined that P.W.1 was not in a fully sane condition. In this view of the matter, unless there is corroboration to some extent of her evidence, it is not safe to rely on it. It is stated by P.W.1 in answer to a question put through the interpreter by the counsel for A-1 as to whether the accused had beaten her, P.W.1 had replied in the affirmative. P.W.8 however stated that there were no external injuries on the body of P.W.1 when she examined her at 4.10 p.m. on 10-01-2000 within four hours of the incident. If P.W.1 was beaten by the accused and the rape had occurred between 11 a.m. and 1 p.m. on 10-01-2000, when P.W.8 examined P.W.1 at 4.10 p.m. on that day, there would be external injuries on the body of P.W.1 apart from blood stains in her under garments or external genitalia. Also when a question was put by the learned counsel for the accused as to whether the accused was a known person to P.W.1, she replied through gestures that he was a known person. This evidence cannot be believed because both her parents P.Ws.2 and 3 have stated that the accused was not known to them and P.W.1 has not stated how she knew the accused. A suggestion was given to P.W.1 that parents of the victim girl had tutored her, but the interpreter expressed her inability to put this question to P.W.1. There is no dispute that Ex.P-1 complaint was lodged by P.W.2 and the same was received by P.W.12 who was then working as an Assistant Sub Inspector in Yerraguntla police station and he registered it as Crime No.5 of 2000. In Ex.P-1 complaint, the names of the accused were specifically mentioned by P.W.2. However, P.W.2 in his cross examination had stated that he did not know the accused prior to the offence and he also did not know the name of the accused at the time of the identification parade. Without knowing the identity of the accused at or before the filing of the FIR, how P.W.2 could have mentioned the name of the accused in the FIR is not explained by the prosecution. This suggests that the FIR itself might have been subsequently created. Even P.W.3 stated that she did not know the accused. P.W.4 in her chief examination had stated that she saw P.W.1 in an auto with two persons. She did not state that these two persons were could be

[illegible]

[illegible]