

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.556 of 2006

JUDGMENT:

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1. This Criminal Appeal is filed by the accused challenging the judgment dated 12.4.2006 passed in S.C. No.302 of 2004 by the Assistant Sessions Judge at Suryapet.

2. The case of the prosecution is as follows:

The victim-Chepuri Seetha is living along with her children after the death of her husband by doing coolie work. The accused developed evil desire against her and observed her movements from time to time. When the victim went for coolie work to cut the paddy crop at the field of one Kunduru Appi Reddy on 19.11.2003 and while she was going back to the house at about 1.30 p.m. to provide milk to her infant child, the accused came across her and caught hold of her right hand and dragged her into the red-gram field forcibly and committed rape on her. The victim sustained minor injury over her lower lip and her bangles were also broken. The accused took the sickle from the ground and threatened her to kill, if she raised any alarm. On the complaint lodged by the victim, a case was registered and investigated into. After completion of the investigation, charge sheet was filed against the appellant. The learned Judicial First Class Magistrate, Kodad took cognizance of the offence under Sections 376 and 506 IPC, and committed the case to the Court of Sessions. The Court of Sessions took the case on file and made over the same to the learned Assistant Sessions Judge at Suryapet, for disposal.

3. The trial Court framed charges for the offence under Sections 376 and 506 IPC against the appellant, read over and explained to him in Telugu, for which, he pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 16 were examined and

Exs.P1 to P11 and M.Os.1 to 7 were marked on behalf of the prosecution. D.Ws.1 and 2 were examined on behalf of the appellant.

5. The trial Court after considering the oral and documentary evidence, found the appellant-accused guilty for the offence under Sections 376 and 506 IPC convicted and sentenced him as follows:

- 1) The appellant is convicted and sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.100/- in default to suffer simple imprisonment for a period of one week for the offence punishable under Section 376 IPC;
- 2) The appellant is convicted and sentenced to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 506 IPC.
- 3) Both the sentences shall run concurrently.

Aggrieved by the conviction and sentence imposed by the trial Court, the appellant filed this appeal.

6. Learned Counsel for the appellant submitted that the evidence of P.W.1-victim as to the injury received by her on her lip during the course of incident, is not supported by medical evidence and that it was not established that the spermatozoa detected was of the appellant. He further submitted that the owner of the land, where the alleged incident took place and the owner of the land, where P.W.1 worked after the occurrence, were not examined. He further submitted that P.Ws.5 and 6 do not support the case of the prosecution and that there is delay in lodging the complaint and the same was not explained properly. He further submitted that the trial Court has not appreciated the evidence in a proper perspective.

7. Learned Additional Public Prosecutor submitted that the evidence of P.W.1 is supported by P.Ws.2 to 4 and the FSL report and that the trial Court has appreciated the evidence in a proper perspective and that the judgment under appeal does not warrant any interference by this Court.

8. Now the point that arises for consideration is:

“Whether the learned Assistant Sessions Judge is justified in convicting the appellant for the offence under Sections 376 and 506 IPC.?”

9. **POINT:** It is the case of the prosecution that the appellant committed rape on the victim-P.W.1 in the fields and he also threatened her. In a case of this nature, the evidence of any eye witness cannot be expected. On the basis of the evidence of the victim-P.W.1 alone, conviction can be given. But the evidence of the victim of alleged rape shall be carefully scrutinized, and such evidence cannot be accepted on its face value and it has to be tested with touch stone on probabilities and her conduct.

10. P.W.1 even though stated the manner in which she was subjected to sexual intercourse in the fields, but there is no evidence to show that she sustained any injury. P.W.12-Dr. Anitha Rani stated in her evidence that P.W.1 had not sustained injury. According to P.W.1, she was caught hold by the appellant and dragged into the fields and she started crying from the time when she was caught by the appellant and she also tried to resist him and her bangles were broken. If really, there is any such resistance in the middle of the fields and if the bangles were broken as stated by her, she ought to have received injuries. But there is no evidence of such injuries.

11. Further, P.W.1 in her evidence stated that after the occurrence, she went to her house and reported the matter to her maternal grand mother and again she went back to the fields where she also informed the incident to her brother and after completing the work, P.W.1 and her brother returned to the house and reported the matter to their parents and they approached their caste elder-P.W.6-Bonala Mangaiah, who expressed his inability to conduct any mediation and advised them to approach the police concerned. The above evidence

of P.W.1 would go to show that P.W.1 after the occurrence acted in a manner, which is not known to a prudent person or to a person, who is really a victim in a case of this nature. Her evidence discloses that she was very cool enough to complete her work in the fields and thereafter, informed about the incident to her parents and then, she went to P.W.6 and informed him about the incident.

12. Further, the evidence of P.W.6 falsifies the entire evidence of P.W.1. In his evidence, P.W.6 deposed that about 1 ½ year back, P.W.4-Ravi Yellamma, who is the mother of P.W.1, came to him at about 7 p.m., and informed about some galata and he advised her to approach the panchayat board members for the settlement of dispute. The said evidence of P.W.6 was not contradicted by the prosecution since it is the case of P.W.1 that commission of rape by the accused was informed to P.W.6. P.W.6 categorically deposed that the mother of P.W.1 approached him in connection with some galata. P.W.4-Ravi Yellamma deposed that she informed to P.W.6 about the commission of rape whereas P.W.6 categorically stated that P.W.4 informed him about some galata. In the circumstances, the evidence of P.W.1 does not inspire any confidence.

13. Basing on the above evidence adduced by the prosecution, it is highly unsafe to convict the appellant, that too in a case of rape, which is punishable with minimum sentence of imprisonment. Therefore, this Court is of the view that the learned Assistant Sessions Judge is not justified in convicting the appellant for the offence under Sections 376 and 506 IPC. Accordingly, the point is answered.

14. In the result, the Criminal Appeal is allowed setting aside the conviction and sentence imposed by the learned Assistant Sessions Judge, Suryapet, against the appellant-accused for the offence under Sections 376 and 506 IPC in S.C.No.302 of 2004 vide judgment dated 12.4.2006. Consequently, the appellant-accused is acquitted for the

said offences. The fine amount, if any, shall be refunded to the appellant. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:22nd July, 2016
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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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