

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD**

CRIMINAL APPEAL No.1200 of 2010

Date:06.06.2016

Between:

Karanam Govinda Rao @ Raju

.....Appellant/
Accused

And

The State of Andhra Pradesh,
represented by its Public Prosecutor

....Respondent

Counsel for the appellant: Ms.M.Hema Jaiswal

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

JUDGMENT: (per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The prosecution laid charge sheet against the sole accused in SCs & STs Sessions Case No.28 of 2008 on the file of the Special Judge for Trial of Cases under SCs & STs (POA) Act, West Godavari at Eluru, for the offences punishable under Sections 302 and 376 I.P.C. and Section 3(2) (v) of the Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act').

2. The case of the prosecution is that one Gogi Durga, D/o Kutumba Rao (hereinafter referred to as 'the deceased') fell in love with P.W.10 about one year prior to her death and that on 14.10.2007, she visited Veeravasaram, met P.W.10 with a view to elope with him to Visakhapatnam and boarded Nidadavole passenger train at Veeravasaram at about 8.30 p.m. for Bhimavaram. P.W.10, however, asked the deceased to get down from the train, but the latter refused, proceeded to Bhimavaram and got down from the said train at Bhimavaram junction Railway Station. The appellant (hereinafter referred to as 'the accused'), who travelled from Palakol to Bhimavaram by the same train also got down at Bhimavaram junction Railway Station. When the deceased was waiting for P.W.10 to arrive at Bhimavaram junction Railway Station for going to Visakhapatnam, the accused with a *mala fide* intention approached her, got himself acquainted with her with deceitful words and gave his cell phone to her to facilitate her to speak to P.W.10. The deceased spoke to P.W.10 over the cell phone of the accused and after talking to the deceased, P.W.10 switched off his phone. The accused, who developed evil intention against the deceased, trapped her with deceitful words and provided snacks and biscuits to her. He gave his cell phone No.9849500137 and wrote his name as 'Raju' on either side of the train ticket covering his journey from Palakol to Bhimavaram on 14.10.2007. The deceased requested the accused to get a train ticket from Bhimavaram to Visakhapatnam, but the latter bought a train ticket from Bhimavaram junction to Rajahmundry by stating that he does not have sufficient money. The accused deceived the deceased by suppressing the fact of arrival of Visakhapatnam train, held her back and made her believe that they can board Visakha Express train for going to Visakhapatnam from Bhimavaram junction Railway Station at 1.30 hours. The accused took the deceased

towards Bhimavaram Town Railway Station along the railway line and when they reached a place near Motupallivari Street, Wednesday Market, Bhimavaram 3rd Ward, the accused in furtherance of his evil intention made the deceased fall down by the side of the railway track, removed her punjabi model dress pant and underwear, pounced upon her and committed rape on her against her will and without her consent by pressing her neck and mouth and thereafter, he tied her chunni around her neck, tightly strangled her and thereby, committed the ghastly murder and absconded from the scene.

On 15.10.2007, at about 11.00 a.m., P.W.1 submitted a report to P.W.18, wherein it was alleged that an unknown female, aged about 18 to 20 years, was found lying by the side of the railway track at Wednesday Market, Bhimavaram and that, some unknown persons might have murdered her. On the strength of the said report, P.W.18 registered F.I.R.No.204 of 2007 for the offence punishable under Section 302 I.P.C. of Bhimavaram I Town Police Station and submitted copies of express F.I.Rs. to all the concerned. P.W.20 took up personal investigation into the case.

During his investigation, P.W.20 got inquest held over the dead body of the deceased by P.W.1 in the presence of L.W.15 - Narina Venkata Rama Dasu, P.W.14 and L.W.17 - Maddula Annavaram. He sent the dead body of the deceased to the Government Hospital, Bhimavaram, for postmortem examination by a team of two doctors to elicit the exact cause of death of the deceased. He minutely observed the scene of offence in the presence of L.W.15 and P.W.14, drafted a detailed observation report, seized a kerchief, a piece of cloth and train ticket, which contains the cell phone number of the accused, from the scene under the cover of the observation report, got the services of the Dog Squad and Clues team and collected ample evidence. During his further investigation, on 01.11.2007, at 2.00 p.m., on receipt of credible information, P.W.20 arrested the accused, got his confession

statement recorded under the cover of mediator's report drafted by P.W.15 and L.W.19 - Mallavarapu Durga Prasad, in which the accused voluntarily confessed to his committing the offence. P.W.20 seized the cell phone bearing No.9849500137 standing in the name of P.W.13 under the cover of panchanama. He also seized the pant and shirt worn by the accused at the time of offence under the cover of a separate mediator's report drafted by P.W.15 and L.W.19. The accused was sent to the jurisdictional Magistrate, after due medical examination, for granting his judicial custody. P.W.16 and L.W.21 - Dr. S.Ramanjaneyulu held autopsy over the dead body of the deceased and P.W.16 issued Ex.P-6 - postmortem certificate. During the postmortem examination, they preserved certain specimens and viscera of the deceased for serological and toxicological examination besides D.N.A. test. P.W.16 also examined the accused and preserved the specimens collected from him for serological evidence.

P.W.17 – the In-charge Tahsildar of Palakoderu, issued caste certificate of the deceased indicating that she belonged to Scheduled Caste. P.W.19 forwarded viscera of the deceased and specimens of the deceased and the accused to the Regional Forensic Science Laboratory, Vijayawada, for serological and toxicological evidence and also to the Forensic Science Laboratory, Hyderabad, for D.N.A. test. After receipt of the F.S.L. reports, P.W.16 and L.W.21 furnished their final opinion to the effect that the deceased would appear to have died of asphyxia due to constriction of neck. P.W.16 also furnished his final opinion in respect of the accused that he is capable of performing sexual act. The D.N.A. report was still awaited. During further investigation, P.W.21 filed a requisition before the Court to get the test identification parade of the accused done, but the said process was not completed. The charge sheet was filed for the offences punishable under Sections 376 and 302 I.P.C. and Section 3(2) (v) of the Act.

3. As the accused denied the charges levelled against him and preferred to be tried, the prosecution examined P.Ws.1 to 22, marked Exs.P-1 to P-21 and produced MOs.1 to 19. The defence did not adduce any oral evidence, but got Exs.D-1 to D-2 – the contradictions in Section 161 Cr.P.C. statement of P.W.7, marked.

4. On appreciation of the oral and documentary evidence, the trial Court while acquitting the accused of the charge under Section 3(2)(v) of the Act, however, convicted him for the offences punishable under Sections 376 and 302 I.P.C. and sentenced him to suffer rigorous imprisonment (R.I.) for ten years and to pay a fine of Rs.500/-, in default to suffer simple imprisonment (S.I.) for a period of one year for the offence punishable under Section 376 I.P.C. and also sentenced him to suffer imprisonment for life and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for a period of one year for the offence punishable under Section 302 I.P.C. Both the sentences were directed to run concurrently. Feeling aggrieved thereby, the accused filed this Criminal Appeal.

5. At the hearing, Ms.M.Hema Jaiswal, learned counsel for the appellant/accused, has submitted that the case of the prosecution is based on circumstantial evidence; that the prosecution failed to prove the motive on the part of the accused; and that as in a case based on circumstantial evidence, motive plays a very important role, as the prosecution failed to prove the motive, the accused ought to have been acquitted. She has, however, argued that the prosecution failed to establish all the links in the chain of circumstances and prove the commission of the offence of rape as well as murder by the accused and that the trial Court proceeded on mere surmises and conjectures in convicting the accused.

6. Opposing the above submissions of the learned counsel for the appellant/accused, the learned Public Prosecutor (AP) has submitted

that though there were no direct witnesses to the offences alleged against the accused, the prosecution was able to produce credible evidence through P.Ws.5 and 8 - a Railway Constable and a Samosa vendor respectively, who have last seen the deceased in the company of the accused besides the confessional statement of the accused, which was reduced into writing in Ex.P-5 - mediator's report leading to seizure of M.O.18 - cotton shirt, M.O.19 - pant (kakhi colour), M.O.13 - gold spot coloured hand bag and M.O.17 - cell phone with sim card etc., and that, therefore, the prosecution has driven home the guilt of the accused both by establishing the last seen theory as well as connecting the accused with the material objects seized from his possession based on his confessional statement. The learned Public Prosecutor has further submitted that though the medical evidence did not prove the act of rape on the deceased, the trial Court held the accused guilty of rape based on two incriminating factors, viz., (1) the deceased was found without clothes below her waist; and (2) the availability of broken bangle pieces at the scene of offence.

7. We have carefully considered the respective submissions of the learned counsel for the parties with reference to the material on record.

8. As rightly submitted by the learned counsel for the appellant/accused, in a case based on circumstantial evidence, the Court needs to carefully weigh the evidence on record and be satisfied that all the links in the chain of circumstances are established by the prosecution before convicting the accused.

9. We start with the motive part. The material on record clearly shows that the accused and the deceased were strangers. Both of them met in Nidadavolu passenger train between Veeravasaram and Bhimaravam junction Railway Station. As per the case of the prosecution, the deceased got into the said train as per the instructions of P.W.10, who was her lover, in order to go to Visakhapatnam, that

meanwhile P.W.10 asked her to get down from the train and not listening to his words, the deceased travelled from Veeravasaram to Bhimavaram junction Railway Station and got down at the said station and was waiting for P.W.10, but P.W.10 did not board the train and stayed back at Veeravasaram. The evidence on record would further reveal that with the acquaintance with the accused during their conversation in the train, the deceased took the assistance of the accused at Bhimavaram junction Railway Station. In order to prove that the accused was in the company of the deceased for a long time in Bhimavaram junction Railway Station, the prosecution examined P.Ws.4, 5, 7 and 8. We can straight away discard the evidence of P.Ws.4 and 7 as they failed to identify the accused during the identification parade. In this context, the evidence of P.Ws.5 and 8 is relevant. P.W.5 is a Railway Constable, who deposed that the Railway Station Manager informed him at 9.00 p.m. on 14.10.2007, that an young girl got down from the train, that along with her some boys were found creating nuisance and that he sent away the girl from the Railway Station. He further deposed that the young girl again came to the Railway Station canteen along with an young boy and the witness told the canteen persons to observe the girl and on the next day, he saw the dead body of a female person whom the witness identified as the girl he has seen in the Railway Station on the previous night. P.W.8, a Samosa vendor in the Railway Station, deposed that at 12.50 a.m. after Visakhapatnam Passenger train left the Bhimavaram junction Railway Station, he noticed an young girl wearing white panjabi dress, an young boy sitting by her at platform No.3, (the young boy was identified as the accused in the test identification parade), the accused giving a biscuit packet to the deceased, who has thrown away the same and an altercation ensuing between the accused and the deceased following which, the latter weeping. The witness further deposed that the accused found fault with the deceased for the latter throwing away the biscuit packet and

both of them came behind the witness up to the Railway Station canteen, where the witness stopped and he has seen the accused and the deceased proceeding further along the railway track. This evidence on record would clearly show that the accused was in the company of the deceased at the Bhimavaram junction Railway Station.

10. Further, P.W.10 - the alleged lover of the deceased, in his evidence clearly stated that he received a call from a mobile bearing No.9849500137, which was being used by the accused. From this evidence, it is clear that the prosecution was able to prove that the accused developed acquaintance with the deceased and he evidently developed sinister feelings towards her noticing her helpless position with her alleged lover not cooperating with her in accompanying her and proceeding to Visakhapatnam. Based on this evidence, it is reasonable to conclude that the accused developed motive to sexually exploit the deceased finding her helpless situation. Thus, in our opinion, the prosecution was able to succeed in establishing the motive at least to the extent of sexual exploitation of the deceased, if not to kill her.

11. As regards the evidence pointing to the guilt of the accused, as discussed above, at least two witnesses *viz.*, P.Ws.5 and 8 have supported the prosecution case regarding the accused being last seen with the deceased. While P.W.5 stated that he has seen the accused and the deceased being together at Bhimavaram junction Railway Station after 9.00 p.m., P.W.8 has seen the accused and the deceased quarrelling with each other and proceeding along side of the Railway track after 12.50 a.m. In the context of the specific case of the prosecution that the accused made the deceased to follow him to go to Bhimavaram town Railway Station for catching Visakha Express train at around 1.30 a.m., the evidence of P.W.8 is found to be credible and acceptable. After all, P.W.8, who is a Railway hawker, has no axe to grind against the accused. Nothing material could be elicited from the

cross examination of this witness, except putting a bare suggestion that he did not see the accused in the company of the deceased on the night of 14.10.2007 and that he does not sell samosas during night times, which he denied. The fact that the accused lent his phone to the deceased through which the latter called her alleged lover – P.W.10 is also established through the latter's evidence. The further fact that the accused obtained phone connection by using the house hold card of Chukka Kumari is also established by the prosecution by examining the said Chukka Kumari as P.W.13. These facts would prove beyond reasonable doubt that the accused had spent considerable time with the deceased in Bhimavaram junction Railway Station and that he also proceeded along the Railway track with the deceased, evidently on the pretext that he can make the deceased board Visakha Express train to go to Visakhapatnam at Bhimavaram town Railway Station.

12. The Police seized M.Os.14 and 15 – two Railway Tickets, of which M.O.15 - ticket was purchased for the journey from Palakol to Bhimavaram, which was admittedly used by the accused with his alias name as Raju, with the telephone number written on it. This piece of evidence also clearly establishes that the accused was very much in the company of the deceased immediately prior to her death. This evidence, in our opinion, is sufficient for the prosecution to establish the last seen theory against the accused. Significantly, no suggestions worth mentioning were put to the prosecution witnesses to displace the last seen theory. Even during his examination under Section 313 Cr.P.C., the accused failed to come out with any probable theory suggesting that the deceased might have been done away with in any manner other than the one which was propounded by the prosecution, by any third party. On the strength of the above evidence and the facts and circumstances of the case, we have no reason to disbelieve the case of the prosecution that it is only the accused, who caused the murder of the deceased, as he was the one who was found in the

company of the deceased in close proximity of time before the murder and that there was no possibility of anyone else committing the offence.

13. In the light of the above findings, we have to next consider as to what are the offences for which the accused is liable to be convicted.

As regards the charge of rape, Ex.P-7 – F.S.L. report clearly shows that semen is not detected on item Nos.7, 8, 10 and 11 viz., two cotton swabs, pubic hair and nail clippings respectively and that spermatozoa was also not detected on the cotton swabs. Even the post mortem report did not find that the deceased was subjected to rape. In the absence of any traces of the offence of rape, the trial Court, however, found the accused guilty of the said offence only on the following two factors, viz., 1) that the deceased was found without clothes below her waist and 2) that broken bangle pieces were seized from the scene of offence. In our opinion, the finding of the trial Court based on the above two incriminating factors that the accused committed the offence of rape cannot be sustained at all. None of the ingredients of the definition of the offence of 'rape' under Section 376 I.P.C. as it stood when the alleged offence has taken place, is attracted. Therefore, the conviction of the accused for the offence of rape is wholly unsustainable and the same is accordingly set aside. However, in the facts and circumstances of the case, we find the accused guilty under Section 511 I.P.C. for attempting to commit the offence of rape punishable under Section 376 I.P.C., and sentence him to undergo R.I. for a period of seven years.

14. As regards the charge under Section 302 I.P.C., to convict a person under this provision, the ingredients of Section 300 I.P.C. need to be satisfied. The essential requirement of 'murder' is the intention of causing death or causing such bodily injury as the offender knows it to be likely to cause death of the person to whom the harm is caused, or the intention of causing bodily injury to any person and the bodily

injury to be inflicted is sufficient in the ordinary course of nature to cause death or that if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury. As per Ex.P-8 – the final opinion of P.W.16, the deceased appear to have died of asphyxia due to constriction of the neck. In his evidence, P.W.16 reiterated this opinion. The medical evidence clearly shows that there were no external injuries except on the lower front part of the neck of the deceased. No injuries on the external genitals were also found. From this, it could be safely concluded that the accused did not have the intention of causing the murder of the deceased. It could be culled out from the evidence available on record that with the intention to have sexual intercourse with the deceased, the accused evidently forced her; that the deceased resisted, that in the scuffle appeared to have ensued in the process of the appellant using force to gain access over the body of the deceased, the accused might have squeezed her neck with the chunni. Therefore, in our opinion, the offence committed by the accused falls under Part II of Section 304 I.P.C. as he had the knowledge that the act being committed by him was likely to cause death of the deceased, but he had no intention of causing death. We, accordingly, convict the accused under Section 304 Part II I.P.C. and sentence him for rigorous imprisonment for a period of seven years.

15. In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellant/accused in judgment, dated 03.02.2009, in SCs STs Sessions Case No.28 of 2008, on the file of learned Special Judge for Trial of Cases under SCs STs (POA) ACT, West Godavari, Eluru, for the offences punishable under Sections 376 and 302 I.P.C. is modified to that under Section 511 I.P.C. for attempting to commit the offence under Section 376 I.P.C. and Section

304 Part II I.P.C. respectively. He is, accordingly, sentenced to suffer R.I. for a period of seven years for each of the said offences. We also direct that both the sentences shall run concurrently. It is needless to observe that the period of sentence undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

06th June, 2016

GHN/DR