

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.692 of 2006

JUDGMENT:

1. This appeal is filed by the accused against the conviction and sentence imposed by the Assistant Sessions Judge, Gurazala against him in S.C.No.528 of 2005 vide judgment dated 17.3.2006.

2. The case of the prosecution reads as follows:

The victim-girl is mentally retarded. On 19.3.2005 at 9 p.m., P.W.1-Subbaratnamma, mother of the victim, gave a complaint stating that the victim is studying in Suryakiran school and as usual, she has to be dropped at 12 noon. On that day, the auto driver/accused took the victim to Julakallu. On the way, he took the opportunity of loneliness and raped the minor victim girl. Later, he dropped her. Basing on the said complaint, a case was registered against the accused and investigated into. After completion of the investigation, charge sheet was filed against the appellant-accused.

3. The Committal Court took the case on file and committed the same to the Court of Sessions, Guntur and the Court of Sessions numbered it as S.C.No.528 of 2005 and made over the same to the learned Assistant Sessions Judge, Gurazala, for disposal.

4. The trial Court framed a charge under Section 376(2)(f) IPC against the accused, read over and explained to him in Telugu, for which, he pleaded not guilty and claimed to be tried.

5. During the course of trial, P.Ws.1 to 11 were examined and Exs.P1 to P10 and M.Os. 1 to 6 were marked on behalf of the prosecution. Ex.D.1 was marked on behalf of the accused.

6. On appreciation of both oral and documentary evidence, the trial Court found the accused guilty for the offence under Section 376 IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.200/- in default to suffer simple imprisonment for 15 days for the said offence. Aggrieved by the same, the accused filed the present appeal.

7. Learned Counsel for the appellant submitted that the victim was not examined before the Court and no proper explanation was given for non-examination of the victim-girl and that non-examination of the victim is fatal to the case of the prosecution and that the medical evidence does not support the case of the prosecution and that there is no eye witness to the occurrence and that the evidence of P.Ws.1 to 4 is hearsay evidence and that there are many contradictions in the evidence of the prosecution witnesses and that the entire case is foisted against the accused in order to implicate him in the above case and that the findings of the trial Court are based on surmises and conjectures.

8. On the other hand, the learned Public Prosecutor submitted that the accused had committed a gruesome rape on a mentally retarded girl and that there is nothing to interfere with the conviction, as it is fully supported by the evidence.

9. Now, the point that arises for consideration in this appeal is:

“Whether the judgment of the trial Court warrants any interference?”

10. POINT:

Originally, the trial Court framed a charge under Section 376(2)(f) IPC against the accused. But taking into consideration the report of P.W.8, who stated that the age of the victim is 14-15 years, the trial Court came to the conclusion that the victim was not below 12 years and therefore, the accused can be convicted for the offence under Section 376 IPC, and accordingly, the trial Court convicted and sentenced the appellant-accused for the offence under Section 376 IPC. Against the said conviction, the appellant-accused filed this appeal. Therefore, this Court is proceeding to deal with the offence under Section 376 IPC.

11. It is pertinent to note that in a case of this nature, no eye witness can be expected. In the present case, it is alleged that the accused took the victim-girl, who is mentally retarded and committed rape on her. It is the case of the prosecution that after the occurrence the victim informed to P.W.1-mother by signs as to the manner of the acts done by the accused towards her. P.W.1 witnessed the scratches on the body of the victim and also the blood stains on her clothes. Since the victim-girl is a mentally retarded one, the entire case was based on the circumstantial evidence. In a case of this nature, it is to be examined as to whether the chain of circumstances of the case leads to the hypothesis that it is only the accused, who committed the offence.

12. In the instant case, the victim was not examined as a witness. It is the case of the prosecution that the victim is mentally retarded. In Ex.P7 medical report, it is stated by P.W.9-Assistant Professor of Obstetrics and Gynaecology that the victim is mentally retarded. Further, the trial Court assessed the mental capacity of the victim-girl. From the judgment under

appeal, it is obvious that the trial Court observed the demeanor of the victim and it is found that while her mother-P.W.1 was giving evidence, the victim was taking askance and was hugging her mother and at times, her behavior is somewhat coot-like and mutt. In the circumstances, this Court is of the view that non-examination of the victim is not fatal to the case of the prosecution.

13. Now, it is to be examined as to whether the chain of circumstances stated by the prosecution witnesses would establish the guilt of the accused.

14. P.W.1-de facto complainant, who is the mother of the victim, deposed that the victim is her minor daughter and she is mentally challenged and is in a cretin-like state and she is studying in a school being run for mentally challenged. She knew the accused and he is an auto driver. The victim goes to school daily in the auto of the accused. On every day, around 12.30 p.m., or so, the victim will be dropped from the school in the same auto. On the date of incident, the accused brought the victim around 3 or 3.30 p.m. Meanwhile, she made enquiries with the neighbours as her daughter did not return. As the accused brought her daughter in the auto on the date of incident around 3 or 3.30 p.m., she wanted to enquire him. But the accused did not stop the auto. She noticed the clothes of her daughter in the other direction. She also noticed scratches on her breast and back. Her daughter complained pain in stomach. She noticed blood stains on clothes. When she tried to elicit information, her daughter made some gestures. She gave Ex.P1 complaint. The victim was referred to the Government hospital.

15. P.W.2 father of the victim deposed that on the date of incident, he came to the house at about 4 or 4.30 p.m., and he noticed scratches on the back of his daughter and also some blood stains on her clothes.

16. P.W.3-Principal of Surya Kiran Mentally Retarded Training Organization at Karempudi deposed that the victim is studying in their school and the accused, who is the auto driver, has been working in their school for about 4 years. The accused daily brings the students in the auto and again drops them. On the date of incident, the victim was sent around 1 p.m., in the auto, and daily, around 2 or 2.30 p.m., the accused used to return. On the date of incident, the accused brought the auto at around 3 p.m., and went away. P.W.1 came to the school and enquired about her daughter. P.W.3 told that she sent the victim away around 1 p.m. She noticed some scratches on the back of the victim and also noticed that victim's pyjama was in opposite direction. She caused enquiries for the accused. The accused was found absconding. She has not received any complaint from P.W.1 against the accused.

17. P.W.4-M.R. Ajit Kumar, a teacher deposed that on the date of incident he proceeded in the auto driven by the accused along with the students. The victim also travelled in the same auto. Instead of dropping her at Karempudi, the accused brought the victim-girl upto Julakallu. While getting down the auto, when P.W.4 questioned the accused as to why he brought the victim upto Julakallu, the accused replied that he was unmindful. The accused told him that he would again go back and drop her. Around 4 p.m., he received a call from P.W.3.

18. P.W.5 deposed that he was present when the police observed the scene of offence and the police seized M.O.3-cut drawer from the scene of

offence. He deposed that on 5.4.2005 around 4 p.m., the police called him to the house of the accused, where police apprehended the accused and recorded his confessional statement in his presence.

19. P.W.6 deposed that the father of the victim came to him and complained that his daughter was raped by the accused and he along with VAO went to the school where the victim was studying and P.W.3 told them that they are searching for the accused. He noticed scratches on the back of the victim and noticed the pyjama of the victim in other direction.

20. P.W.7-Civil Assistant Surgeon in Government Hospital, Gurazala, deposed that he collected semen from the accused person and sent to RFSL, Guntur. Ex.P5 is the RFSL report.

21. P.W.8-Civil Assistant Surgeon, Forensic Medicine, Guntur, deposed that he examined the victim and that the age of the victim is about 14-15 years.

22. P.W.9-Assistant Professor of Obstetrics and Gynaecology, who examined the victim, deposed that the victim is mentally retarded. P.W.9 gave opinion stating that the possibility of the sexual intercourse cannot be ruled out as there is fresh hymen tear with bleeding.

23. P.Ws.10 and 11 are the police officials.

24. P.Ws.1 to 3 and 6 categorically stated that there are scratches on the back of the victim girl. The evidence of P.W.9-Doctor supports the version of P.Ws.1 to 3. P.W.9 stated that she found two abrasions on the back of the victim girl. It is the case of the prosecution that the occurrence

took place near a culvert on the road side. Therefore, the injuries sustained by the victim substantiate the case of the prosecution.

25. The evidence of P.W.4 supports the case of the prosecution. P.W.4, who travelled along with the students in the auto on the date of incident, categorically stated that the accused took the victim-girl upto Julakallu instead of dropping her at her house in Karempudi and when he questioned the accused, he pretended ignorance and told that he would drop her at Karempudi. Nothing was elicited from the cross-examination of P.W.4 to disprove his testimony. The evidence of P.W.4 supports the version of P.W.1 and the case of the prosecution.

26. P.W.1 stated in her evidence that daily around 12.30 p.m., or so, the victim girl is being dropped at her house and on the date of incident, the victim-girl was dropped at about 3.30 p.m. and when she wanted to ask the accused about the delay, he did not stop his auto and he went away. Nothing was elicited from the cross-examination as to any enmity between P.W.1 and the accused. There is no reason to believe that the accused has been falsely implicated in the above crime. No such suggestions were also made in the cross-examination of the prosecution witnesses. The conduct of the accused in not responding to the call of P.W.1 establishes the case of the prosecution.

27. The next circumstance is that abscondance of the appellant. P.W.3-Principal of the School deposed that when she caused enquiries for the accused, she found him absconding from his house. The appellant also could not furnish any explanation for his absence. This circumstance strengthens the case of the prosecution.

28. Yet another circumstance is the recovery of M.O.3-cut drawer of the victim girl at the scene of offence. It was identified by P.W.1 in the presence of mediators as it belonged to the victim-girl. P.W.5, who is a mediator to the scene of offence, categorically stated about the recovery of M.O.3 at the scene of offence. This circumstance leads to draw an adverse inference against the accused.

29. Next circumstance is that the blood stains were found on the garments of the victim and the scratch marks were also on the back of the victim. In this regard, the medical evidence of P.W.9 supports the case of the prosecution.

30. The fact that remains undisputed is that the accused was engaged by the school to bring the mentally retarded children like the victim in question and drop them in their respective houses. Therefore, it can be inferred that the duties of the accused can be treated as that of a care taker rather than a driver. Therefore, it can be said that the appellant is solely and wholly responsible, in respect of the mentally retarded children, who are being dropped at their houses, for any occurrence that had happened during the course of transit in his auto.

31. From the evidence on record, it is evident that on the date of incident, the victim-girl was taken by the accused to Julakallu instead of dropping her at her house as stated by P.W.4. The evidence of P.W.4 coupled with the other circumstances stated above amply proves the case of the prosecution. There is no scope for drawing any inference against others, than the accused in commission of the offence in question.

32. The evidence of P.Ws.1 to 4 is very consistent and corroborative and their evidence was not tainted with any sort of doubt or suspicion. The

medical evidence also supported the prosecution case. This Court does not find any scope for interference with the findings recorded by the trial Court on facts. Therefore, this Court is of the view that the trial Court has rightly convicted the accused. The sentence also does not require any interference because this is a very extreme case of rape where a mentally retarded girl, whose mental retardation is very well known to the accused, was subjected to sexually intercourse brutally by the accused. Accordingly, the point is answered.

33. In the result, the conviction and sentence imposed by the learned Assistant Sessions Judge, Gurazala against the appellant-accused for the offence under Section 376 IPC in S.C.No.528 of 2005 vide judgment dated 17.3.2006, are confirmed.

34. The period already undergone by the appellant-accused shall be set off under Section 428 Cr.P.C.

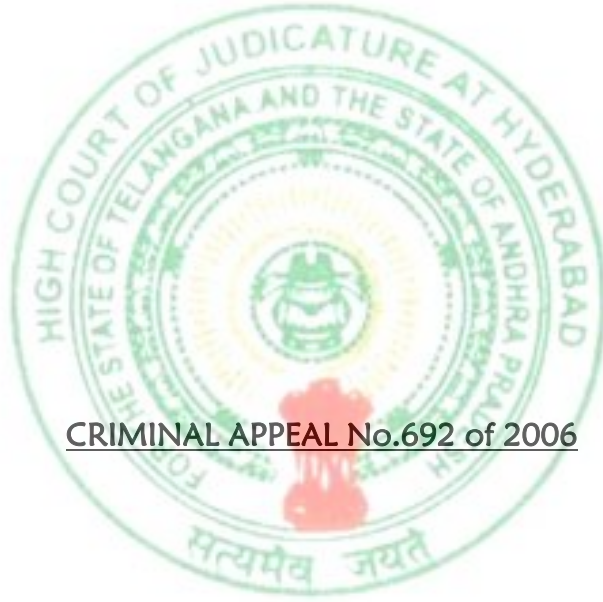
35. The appellant-accused is directed to surrender before the Court concerned on or before 16.8.2016 so as to serve the remaining sentence. In default, the Court concerned is at liberty to take appropriate steps in accordance with law.

36. Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE RAJA ELANGO

Dated:4th August, 2016
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THE HONOURABLE SRI JUSTICE RAJA ELANGO



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04.8.2016

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