

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.58 of 2008

ORDER:

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973, is filed by the appellant/accused, challenging the judgment, dated 07.01.2008, passed in S.C.No.529 of 2005 by the learned Additional Sessions Judge, Hindupur, whereby, the appellant/accused was convicted for the offence punishable under Section 376(f) of I.P.C. and was sentenced to undergo Rigorous Imprisonment for ten (10) years and to pay a fine of Rs.500/-, in default, to undergo Simple Imprisonment for a period of one month.

2. Heard Sri P.Narahari Babu, learned counsel for the appellant/accused (hereinafter referred to as 'accused'), the learned Additional Public Prosecutor representing the respondent-State and perused the record.

3. The learned counsel for the accused would submit that the accused is an innocent person and falsely implicated in this case. There are material discrepancies in the evidence of P.Ws.1 to 3 and P.Ws.6 and 7. The offence is alleged to have taken place on 13.06.2004, whereas report was lodged with the police on 01.07.2004. There is delay of 17 days in lodging the report with the police. The brother-in-law of the accused by name Venkataramana said to have beaten P.W.2/victim (hereinafter referred to as 'victim'). There were differences between the family of the accused and the de-facto complainant. False case is foisted against the accused. The Court below has not appreciated the facts and circumstances of the case in proper perspective. The prosecution failed to prove the guilt

of the accused beyond all reasonable doubt for the offence under Section 376(f) of I.P.C. The findings of the Court below are contrary to the law and the facts of the case and ultimately prayed to allow the appeal by setting aside the conviction and sentence recorded by the learned Additional Sessions Judge, Hindupur, against the accused for the offence punishable under Section 376(f) of I.P.C. by order, dated 07.01.2008, passed in S.C.No.529 of 2005.

4. On the other hand, the learned Additional Public Prosecutor would submit that there are no material omissions and contradictions, as contended by the learned counsel for the accused. When P.W.1 (mother of the victim) was intending to lodge a report with the police immediately after the alleged incident, the villagers asked her to wait for some time and for negotiating. Therefore, there was a delay of 17 days in lodging the report with the police. There is clear evidence of victim with regard to commission of sexual assault on her by the accused. There is also medical evidence of P.W.11 (doctor who examined the victim) to substantiate the same. P.Ws.1 and 3 are the parents of the victim. They have clearly and categorically corroborated the evidence of victim. P.Ws.6 and 7 are the neighbours who saw the victim going from the house of the accused to her house. There is no reason for the victim and P.Ws.1 and 3 to foist a false case against the accused. The findings of the Court below are based on evidence and material on record. There is nothing to take a different view and ultimately prayed to dismiss the appeal.

5. In view of the rival contentions put forth by the learned counsel for both the sides, the point for determination is whether the conviction and sentence recorded by the Court below against the

accused for the offence punishable under Section 376(f) of I.P.C. is liable to be set aside.

6. The case of the prosecution is that on 13.06.2004 at 10:15 A.M., when the victim – Jaripiti Uttamma, was alone in her house, the accused called her and took her into his house and committed rape on her forcibly and threatened her with dire consequences in the event of disclosure to anybody, including her parents. The neighbours saw the victim going into the house of the accused and coming out of the house of the accused weeping on that day in the afternoon. The parents of victim went to the agricultural fields to attend the agricultural work at that time and when they returned, they came to know about the incident. Thereafter, P.W.1/mother of the victim lodged a report with the police against the accused for committing rape on her daughter. On that, a case was registered and was investigated into. The learned Magistrate concerned had committed the case to the Court of Session. Thereafter, charge was framed against the accused for the offence punishable under Section 376(f) of I.P.C. and the trial commenced.

7. During the course of trial, P.Ws.1 to 13 examined and Exs.P.1 to P.12 were marked on behalf of the prosecution; Exs.D.1 and D.2 were examined on behalf of the appellant/accused; and, M.O.1 was marked. The Court below, on appreciation of oral and documentary evidence available on record, found the accused guilty for the offence punishable under Section 376(f) of I.P.C. and, accordingly, convicted and sentenced him as stated supra. Challenging his conviction and sentence, the accused is before this Court as appellant.

8. P.W.2 is the victim. As per her evidence, she was 16 years old as on the date of alleged incident and 18 years old as on the date of her deposition. She stated that she suffered paralytic stroke when she was seven years old. Thereafter, she used to stay at her home. Her parents and other family members used to go to agricultural work. Two years back, on one day, in the morning, her parents went to agricultural work, leaving her at the house. Her three brothers also went to attend agricultural work. She was alone in the house. Then, the accused came to her house, took her into his house and closed the doors after taking her inside. Thereafter, the accused removed her dress and gagged her mouth. He tied her hands and legs and laid her on the ground. He fell on her and put his penis into her vagina. He did not take out his penis for 1½ hours and he entered into sexual intercourse with her for 1½ hours. When she tried to raise cries, he pressed her throat with his hands. She felt pain and raised cries as 'Abba Abba'. Even then, the accused did not leave her. The accused caught her breast and pressed her breast. Thereafter, the accused threatened to kill her throwing her into well or by pressing her throat, if she discloses the incident to anybody. Thereafter, the accused sent her out. P.W.2 further deposed that the accused undressed himself and entered into sexual intercourse with her by force with naked body. She also deposed that she narrated the incident to mother, the villagers asked her not to give police report. Thereafter, a landlord of Kapu community called them and asked them to give report to the police. Thereafter, they lodged a report with the police. She also deposed that the place of offence is at the house of the accused. She has also categorically stated that she returned to her house weeping.

9. P.W.2/victim was subjected to lengthy cross-examination, wherein, she reiterated the commission of rape on her by the accused in the manner she deposed in her chief examination. She denied that she was deposing false. Nothing helpful to the accused was elicited in her cross-examination.

10. P.Ws.1 and 3 are the parents of the victim. Both of them deposed about the commission of rape by the accused forcefully on their daughter. They deposed that they left the house for agricultural work in the morning and when they saw the neighbours in front of their house on their return and when they questioned their daughter/victim when she was weeping, her daughter did not give reply due to fear. Sometime thereafter, she revealed that the accused committed rape on her. The evidence of P.W.3 corroborated with the evidence of P.W.1.

11. There is also evidence of P.Ws.6 and 7, who are neighbours. P.W.6 and P.W.7 had categorically deposed in his chief examination that three years back, at about 10:30 AM, when they were sitting in front of their house, they saw the victim going from the house of the accused to her house, weeping. When they asked the victim, why she was weeping, the victim went away without stating anything to them. On the same day at 04:00 P.M., P.W.1 informed them that the accused raped the victim. In the cross-examination of P.Ws.6 and 7, Exs.D.1 and D.2 (Statement of P.Ws.6 and 7 under Section 162 of Cr.P.C.) were marked, wherein, it is mentioned that the victim informed them that she was raped by the appellant/accused. There is specific evidence of P.Ws.6 and 7 to the effect that they saw the victim leaving the house of the accused weeping on that day and

P.W.1/mother of the victim informed them that the accused committed rape their daughter (victim).

12. The learned counsel for the accused contended that there are material discrepancies in the evidence of P.Ws.1 to 3 and P.Ws.6 and 7. It appears from the record that P.Ws.6 and 7, for some reason or the other, wanted to help the appellant/accused. So, they omitted to state the mention made in Exs.D.1 and D.2. It is not at all a material contradiction and it is in no way helpful to the accused. As per the evidence of P.W.6, the house of P.W.6 is situated opposite the house of the accused. Therefore, it cannot be said that P.Ws.6 and 7 deposed falsely against the accused. There is consistency and corroboration in the evidence of evidence of P.Ws.1 to 3 and P.Ws.6 and 7.

13. P.W.11 is the doctor who examined the victim on 01.07.2004 at 04:45 PM. P.W.11 deposed that the victim attained monarchy, breast developed normally, auxiliary hair and pubic hair developed normally, introverted fornices free and cervix healthy. Hymen ruptured at 3, 4, 6, 7, 9 0 position. P.W.11 sent the vaginal and cervical swabs and smears to RFSL, Tirupati for examination. Ex.P.8 is the report of FSL, Tirupati. As per Ex.P.8, human semen and spermatozoa are detected in vagina of the victim.

14. P.W.12 is the investigating officer. As per his evidence, M.O.1 – Petty Coat of victim was seized under Ex.P.3 Seizure Panchanama in the presence of mediators, i.e., P.W.5 and another. When M.O.1 was sent for analysis, a report under Ex.P.11 was received from RFSL, Tirupati. As per Ex.P.11 – RSL Report, analysis was made and human semen and spermatozoa were found on M.O.1 – petty coat.

As per the evidence on record, M.O.1 – petty coat was worn by the victim at the time of alleged incident.

15. P.W.12 arrested the accused on 23.07.2004, got examined P.W.11 – doctor, who found that the accused is capable of performing sexual intercourse. Admittedly, the victim is a physically challenged person. She was unmarried. In the circumstances, there is no possibility of her to have sex with any other person.

16. The learned counsel for the accused contended that one Venkataramana, brother-in-law of the accused, said to have beaten the victim one day prior to the date of lodging the report with the police, there are differences between the family of the accused and the family of the de-facto complainant and that due to the said differences, this case is foisted against the accused.

17. As seen from the entire evidence on record, there is evidence of P.Ws.6 and 7/neighbours, and the evidence of P.W.2/victim. There is also medical record to show sexual assault on the victim by the accused. There is consistency and corroboration of material prosecution witnesses. Even if brother-in-law of the accused Venkataramana beat the victim and P.W.1 chastised him, if the prosecutrix wanted to implicate somebody for the offence of this nature, she would have implicated Venkataramana in this case. Even in such event also, there would not be any medical evidence to show that the hymen of the victim was ruptured at 3, 4, 6, 7, 9 0 position. Hence, the medical evidence adduced on behalf of the prosecution clearly establishes sexual assault on the victim. There is clear cut evidence of the victim that sexual acts were committed on her by the accused, forcibly, under threat, without her consent.

18. In support of his contentions, the learned counsel for the accused relied on the decisions of the Apex Court in *State of Rajasthan Vs. N.K.*<sup>1</sup> and *State of Punjab Vs. Gurmeet Singh*<sup>2</sup>. I have analysed the aforementioned citations. The facts of the aforementioned citations are distinct from the facts of the case on hand. There is nothing to take a different view. The Court below has also analysed the provision of Section 375 of I.P.C. and the requirements to constitute the offence punishable under Section 376 of I.P.C. There is oral evidence and the medical evidence to believe that the accused had committed sexual assault on the victim, forcibly, under threat, without her consent. There are no contradictions or omissions in the evidence of P.Ws.1 to 3 and P.Ws.6 and 7, as contended by the learned counsel for the accused. The findings of the trial Court are based on material record. The prosecution has also satisfactorily explained the delay of 17 days in lodging the report with the police. Further, there is no reason for the de-facto complainant/mother of the victim to foist a false case alleging heinous offence of rape on her daughter. Under these circumstances, the Court below rightly found the accused guilty for the offence punishable under Section 376(f) of I.P.C. and sentenced him to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs.500/-, in default, to undergo Simple Imprisonment for a period of one month.

19. As far as the quantum of punishment imposed against the accused is concerned, since the accused committed a heinous offence of rape on a rustic, helpless, physically challenged girl, the Court

<sup>1</sup> (2000) 5 SCC 30 = 2000 CrL L.J. 2205

<sup>2</sup> 1996 CrL L.J. 1728 = (1996) 2 SCC 384

below rightly held that the accused deserves no lenience in imposing sentence of punishment. This Court is in acceptance with the Court below with regard to the quantum of punishment and the same is appropriate based on the condition of the victim and the manner in which the victim was sexually assaulted. Valid reasons are assigned by the Court below in imposing such imprisonment and there is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

20. In the result, the Criminal appeal is dismissed.

21. It is brought to the notice of this Court that the accused was enlarged on bail by this Court by suspending the sentence of imprisonment imposed against him, at the time of admitting this Criminal Appeal on 22.01.2008. In view of the dismissal of the Criminal Appeal, the accused is directed to surrender before the learned Judicial Magistrate of First Class, Kadiri, forthwith to serve the remaining sentence of imprisonment. If the accused do not surrender before the learned Magistrate within a period of one week from the date of this order, the learned Magistrate shall take coercive steps to commit the accused to jail to serve the remaining sentence of imprisonment.

Miscellaneous petitions, if any, pending in this Criminal appeal, shall stand closed.

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Dr. SHAMEEM AKTHER, J

14<sup>th</sup> December, 2017  
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