

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

CRIMINAL APPEAL NO.206 OF 2011

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

This appeal under Section 374(2) CrPC is directed against the judgment dated 23.11.2010 passed by the learned Special Judge for Trial of Cases under SCs and STs (POA) Act-cum-Additional Sessions Judge, Khammam, in Sessions Case No.127 of 2007, convicting the appellant, the sole accused therein, for offences under Sections 342, 363 and 376 IPC. He was sentenced to rigorous imprisonment for a period of one year and payment of fine of Rs.1,000/-, in default of which he was to undergo simple imprisonment for three months, for the offence under Section 342 IPC; rigorous imprisonment for seven years along with payment of fine of Rs.1,000/-, in default of which he was to undergo simple imprisonment for three months, for the offence under Section 363 IPC; and life imprisonment along with payment of fine of Rs.1,000/-, in default of which he was to undergo simple imprisonment for three months, for the offence under Section 376 IPC. He was however acquitted of the offence punishable under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Hence, this appeal.

The case of the prosecution, in brief, was as under: The Sub-Inspector of Police, Charla police station, P.W.10, received Ex.P1 complaint from P.W.1, the mother of the victim girl (P.W.3), at 12.15 hours on 17.05.2003 and registered a case in Crime No.36 of 2003 under Section 363 IPC. Ex.P9 is the FIR. He then proceeded to the scene of the offence at about 1.00 PM and prepared the Crime Details

Form and drew up a rough sketch of the scene of the offence. Ex.P10 is the Crime Details Form along with the rough sketch. On 23.05.2003, he received information that the accused and the victim girl (P.W.3) were at Bhadrachalam bus stand and proceeded there. He apprehended the accused and the victim and immediately recorded the statement of the victim girl (P.W.3). Basing on the said statement, he came to know that she belonged to ST community and altered the provision of law from Section 363 IPC to Sections 376, 363, 342 and 506 IPC and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Ex.P11 is the alteration Memo issued by him. He then handed over the file to the Deputy Commissioner of Police (P.W.12) for further investigation. Upon the instructions of P.W.12, he referred P.W.3 for medical examination. P.W.12 stated that upon receipt of the case file from P.W.10 and upon the authorization received from the Superintendent of Police, Khammam, he examined P.W.3 and recorded her statement. He then proceeded to RTC bus stand, Bhadrachalam, where the accused was retained by P.W.10 and took him into custody. He summoned P.W.8 and Shaik Nagoor (L.W.20) and examined the accused in their presence and recorded his confessional statement. Ex.P.6 is the confessional-cum-recovery panchanama. He seized a toy pistol and the underwear of the accused in the presence of panch witnesses. M.O.1 is the toy pistol and M.O.2 is the underwear. He then effected the arrest of the accused and on 24.05.2003, he sent him for remand. He also sent P.W.3 for recording her statement and for medical examination. Ex.P.13 is her age determination certificate. He then examined P.Ws.1 to 7 and other witnesses and recorded their statements.

Upon his transfer, he handed over the case file to his successor, who laid a charge sheet after obtaining all the relevant documents.

Upon committal, the Sessions Court framed the following charges against the accused:

FIRSTLY:-

That you on or about the day of 15th May, 2003, at about 4 P.M., took xxxxxx, D/o xxxxxx, 18 Years in Guntur bus by deceiving with false words and thereby you committed an offence punishable U/Sec. 363 of Indian Penal Code and within my cognizance.

SECONDLY:-

That you on or about the same day, time, place and during the course of same transaction as specified in charge no.1, wrongfully confined xxxxxx, D/o xxxxxx, 18 Years and thereby you committed an offence punishable U/Sec. 342 of Indian Penal Code and within my cognizance.

THIRDLY:-

That you on or about the same day, time, place and during the course of same transaction as specified in charge no.1, not being a member of a Schedule Caste or a Scheduled Tribe, committed rape on xxxxxx and thereby you committed an offence punishable U/Sec. 376 of Indian Penal Code and within my cognizance.

LASTLY:-

That you on or about the same day, time, place and during the course of same transaction as specified in charge no.1, not being a member of a Schedule Caste or a Scheduled Tribe, committed rape on xxxxxx, belongs to Scheduled Tribe punishable under the Indian Penal Code punishable with imprisonment for a term of ten years against the said victim on the ground that such person was member of Scheduled Tribe and thereby you committed an offence punishable U/Sec. 3 (2) (v) of SC/ST (POA) Act and within my cognizance.'

The accused denied the charges and claimed to be tried.

Thereupon, the prosecution examined 12 witnesses before the Sessions Court and marked in evidence 13 exhibits. No oral evidence

was let in by the accused but he marked in evidence Exs.D1 to D5, portions of the statements in Ex.P1 complaint and the statements of P.Ws.3 and 4 recorded under Section 161 CrPC.

By the judgment under appeal, the Sessions Court found the accused guilty of three out of the four charges and sentenced him accordingly. As the sentence of life imprisonment was imposed upon the accused under Section 376 IPC, the matter is posted for hearing before this Bench as per Rule 154 of the Criminal Rules of Practice.

At this stage, it would be appropriate to note the salient points emerging from the evidence, oral and documentary, adduced by the prosecution:

P.W.1, the mother of the victim girl (P.W.3), stated that she was an agricultural coolie and belonged to Koya, a Scheduled Caste community. She stated that she was resident of Kaliveru of Charla Mandal and that P.W.3 was her eldest daughter. She stated that she knew the accused, that he did not belong to SC or ST communities and that he was a Registered Medical Practitioner in Kaliveru Village, having come to the said village for practice about four months before the incident. She stated that he lived in the adjacent house next to her for rent along with his wife and daughter. On the fateful day, she stated that she and her husband went to nip tunikaku leaves at Dammugudem and left their son and the victim girl at their residence. She stated that three days after the kidnap of the victim girl by the accused, her son came to Dammugudem and told them that the accused had kidnapped their daughter. She stated that at the time of kidnap, the age of her daughter was approximately 16 years and that she was illiterate. She stated that they then went in search of her daughter for four days thereafter. She stated that she

presented Ex.P1 complaint to the police. She stated that the police themselves scribed Ex.P1 under her dictation. She confirmed that the thumb mark on Ex.P1 was hers. In her cross-examination, P.W.1 stated that she had one son and three daughters and that she did not know her second daughter's age as on the date of the incident. The Sub-Inspector of Police (P.W.10) was stated to have scribed Ex.P1, based on what she told him. She stated that the accused lived in the house for rent which belonged to her in-laws. She stated that one week earlier to the kidnap, she went to cut tunikaku and her in-laws were residing in their house while her son and daughter were living in her house. She stated that the in-laws' house consisted of two rooms which were given to the accused on rent. She denied the suggestion that her daughter worked as a servant maid in the house of the accused. She admitted that she knew the wife of the accused and that her name was Malleswari (P.W.4). She stated that P.W.4 was the second wife of the accused and gave birth to two children through her first husband. She stated that she did not know their age and where they were living and thereafter added that P.W.4's children through her first husband were living in Venkatapuram. On the date of the incident, she stated that the daughter of the accused was aged about five years. According to her, P.W.4 was a tailor but she denied the suggestion that her daughter underwent training as a tailor apart from working as a servant maid. She stated that her house abutted the house of her in-laws. She denied that she had stated to the police as in Ex.D1, a portion of the Ex.P1 complaint. She denied the suggestion that her daughter was 19 years of age as on the date of the incident. She stated that there were no disputes between her daughter and P.W.4 on the date of the incident. She

stated that she never witnessed the Sub-Inspector of Police (P.W.10) visiting the house of the accused on the ground that he was a naxalite. She denied knowledge of whether P.W.10 used to visit the house of the accused in his absence on the ground that the accused had connections with naxalites. She denied knowledge of whether there were any disputes between the accused and his wife in view of the frequent visits of P.W.10. She stated that her daughter never accompanied the accused and his wife to Charla Shandy or to any movie either to Bhadrachalam or to Kothagudem. She stated that her son told her that P.W.4 and her daughter Sindhuja (L.W.8) were sent away by the accused first and thereafter, the accused took the victim girl (P.W.3) along with him. She again stated that the victim girl (P.W.3), Sindhuja (L.W.8) and P.W.4 left the house first and thereafter, the accused left the house and met them. She stated that Sindhuja (L.W.8), the victim girl (P.W.3) and P.W.4 left the house at 4.00 AM, whereas the accused left at 6.00 AM. She stated that her daughter did not inform her son where she was going. She stated that three days after the accused took her daughter, her son came and informed her and that her in-laws knew that the victim girl (P.W.3), P.W.4 and Sindhuja (L.W.8) left the house. She stated that when her in-laws questioned the victim girl (P.W.3) where they were taking her, P.W.4 told them that she was taking her to Warangal. She stated that her mother-in-law, Irpa Nagamma (L.W.4), questioned the victim girl (P.W.3) as to why P.W.4 was taking her and P.W.4 told her that she would bring her back. She stated that as her daughter did not turn up for a period of three days, her son came and informed her. She stated that her son did not accompany her daughter up to the bus stand. She stated that her daughter was not

traced till the date of Ex.P1 complaint and that her mother-in-law, Irpa Nagamma (L.W.4), informed her that they were going by Guntur bus and that she had not gone to the bus stand. She stated that her mother-in-law, Irpa Nagamma (L.W.4), however witnessed when they boarded Guntur bus though she did not go to the bus stand. She admitted that she did not state in Ex.P1 complaint that her mother-in-law, Irpa Nagamma (L.W.4), went to the bus stand. She stated that one week after Ex.P.1 complaint, her daughter returned home and the police referred her to the hospital. The Sub-Inspector of Police (P.W.10) informed her that no rape had been committed upon her daughter. She denied the suggestion that neither the accused nor his wife took her daughter. She also denied the suggestion that due to frequent visits of P.W.10 to the house of the accused in his absence, there were disputes between the accused and his wife. She said that she did not know whether there were any disputes between them and as to whether the accused questioned P.W.10 as to why he was coming to his house and if there was any problem, advised him to summon him to the police station. She stated that the wife of the accused (P.W.4) supported P.W.10 as there was no fault on his part in visiting her house in the absence of the accused. She stated that there were disputes between the accused and his wife and that the accused suspected his wife as she supported P.W.10. She stated that she did not know whether P.W.4 disliked the accused and the same was informed to him. She stated that at the instance of P.W.10, to get money, the case was planted against the accused. She further stated that at the instance of P.W.4, the wife of the accused, and the Sub-Inspector of Police (P.W.10), who promised that he would get money if they filed a case against the accused as they were tribals,

they filed this case. When the Judge clarified with reference to the above from P.W.1, she stated that she never filed a case by planting her daughter to claim money. She then stated that the Sub-Inspector of Police (P.W.10) advised her to file a case and P.W.4 also advised her to file a case against the accused. P.W.10 was stated to have informed her that she would get Rs.1,50,000/- from the Government but she never bothered about money, except her daughter. She stated that P.W.4 was also responsible along with the accused and P.W.4 also participated in the kidnap of her daughter along with the accused. She stated that she did not know as to why P.W.10 did not array P.W.4 as an accused. She admitted that the accused had filed a petition against P.W.10 before the Superintendent of Police as P.W.10 had developed illicit intimacy with his wife. She denied that the accused never kidnapped her daughter and that she was deposing falsely at the instance of P.W.10 and P.W.4 and that her family members were made scapegoats in the case and they were lured to get money from the Government.

P.W.2, the son of P.W.1 and brother of the victim girl (P.W.3), stated that he was studying first year degree. He admitted his relationship with P.W.1 and P.W.3 and stated that P.W.3 was one year older than him. He stated that he was born on 10.05.1987 and he knew the accused, a Registered Medical Practitioner who lived in his grand parents' house in the year 2003 along with his wife and daughter. He stated that his house abutted their house. He further stated that he, the victim girl and another sister lived in the house. He stated that his parents went to nip tunikaku 20 days earlier to the incident and in their absence, he and his sister lived in that house. On 15.05.2003, he stated that they could not trace out his sister and

when he enquired with the villagers, they also told him that they could not trace her. He stated that on that day he did not find the accused, his wife and his daughter and as he could not trace out his sister, he suspected the accused and his wife and therefore went to his parents. He stated that he informed his parents that his sister could not be traced and also informed them that the accused and his family members also could not be traced and he therefore suspected them. He stated that he along with his parents returned to the house and his mother then presented a complaint (Ex.P.1) to the police. In his cross-examination, he admitted knowledge of P.W.4, the wife of the accused, being a tailor and stated that now and then his sister used to go to her house. He denied that the victim girl (P.W.3) ever trained under P.W.4 for tailoring. He again stated that now and then his sister learnt tailoring from P.W.4. He asserted that his sister never accompanied P.W.4 either to go to Bhadrachalam or any other shandy. He stated that he did not remember how long after 15.05.2003, his sister returned home. He again said that seven days (one week) after 15.05.2003, his sister returned home. He stated that he did not know whether the accused and his wife quarreled with each other now and then. He stated that his village was at a distance of 16 kilometres from Arlagudem. He stated that the Sub-Inspector of Police (P.W.10) never came to the house of the accused. He denied that P.W.10 came to the house of the accused in his absence to see the wife of the accused (P.W.4). He admitted that he did not state before the police that he suspected the accused when his sister went missing. He denied that at the instance of the Sub-Inspector of Police (P.W.10) and to claim compensation, his parents filed a false case against the accused and that he was deposing falsely.

P.W.3, the victim girl, while reiterating what was stated by her mother and brother, P.Ws.1 and 2, stated that about ten days prior to the incident, her parents went to the forest to cut tunikaku. She stated that she used to go to the house of the accused now and then and have a talk with the accused and he would now and then promise to marry her and when she questioned him as to why he would marry her, he told her that his wife was not fit for conjugal life. She stated that she refused his proposal to marry him. She stated that the accused told her that he would take her along with him with the permission of her parents. On the fateful day, she stated that the accused told her that he would go to Arlagudem along with her brother to meet her parents and he told her that he went to Arlagudem and took permission of her parents to go to Bhadrachalam along with his wife (P.W.4) and daughter Sindhuja (L.W.8). On the next day at 4.00 AM, she stated that she along with P.W.4 and the daughter of the accused, Sindhuja (L.W.8), went to Bhadrachalam and the accused also came there. She stated that the accused took her, his wife and daughter to Kothagudem from Bhadrachalam and at Kothagudem, he took them to a lodge and tried to commit rape upon her in a room and that, when his wife (P.W.4) obstructed, the accused beat her and cautioned her that he would see her end later and so saying he went to take a bath and when he entered the bath room, she stated that they bolted the door from outside and fled away along with Sindhuja (L.W.8). She stated that they went to Paloncha so as to go home but the accused came to Paloncha bus stand, caught hold of them and the accused then took her along with his wife P.W.4 and daughter, Sindhuja (L.W.8), in a paper car to Vijayawada. She stated that he took them to a lodge at

Vijayawada but she did not know the name of the lodge. She stated that the accused, his wife (P.W.4), his daughter, Sindhuja (L.W.8), and she were accommodated in the lodge. She stated that they were there for four days. She stated that the accused kept his wife and his daughter in a bath room bolted from outside and then committed rape upon her and then opened the door and the wife of the accused (P.W.4) questioned him but he beat her. She stated that the accused committed rape upon her for four days. She stated that as the accused spent all his money and there was no money with him, he took them to Bhadrachalam and he kept her in a devasthanam choultry room and told her that he, along with his wife and daughter, would go to temple. She stated that when they were going to the temple, her men caught hold of them in the bus stand. She stated that the accused, his wife (P.W.4) and his daughter, Sindhuja (L.W.8), along with her men came to her where she was placed and thereafter, her men took her to Bhadrachalam police station and the police shifted them to Charla police station. She stated that she was referred to the Government hospital and her statement was recorded by the police. In her cross-examination, she stated that she had no disputes with the wife of the accused (P.W.4) and his daughter, Sindhuja (L.W.8). She stated that P.W.4 was a tailor by profession and denied that she ever had any chitchat with her. She stated that she never informed her problems to her but used to have a talk with her now and then. She stated that she did not know whether there were any disputes between the accused and his wife and whether they were cordial. She stated that the accused used to come to her house and said that he had no happy marital life with his wife and requested her to marry him. She stated that when the accused

requested her, her age was 15 years. She stated that the accused requested her to marry him 5 or 6 times but she disagreed with the proposal. She stated that she did not inform about the proposal to the wife of the accused (P.W.4). Three months prior to her going to Bhadrachalam, she stated that the accused requested her to marry him. She stated that she did not inform her parents about the proposal of the accused to marry him. She stated that she did not accompany the accused or his family members except for going with them to Bhadrachalam. She stated that the accused committed rape upon her for the first time in Vijayawada. She further stated that she had no sexual intercourse with anybody earlier to the rape committed by the accused upon her. She stated that she did not enquire with her brother as to why he went along with the accused to her parents to Arlagudem to get their consent. She stated that she did not ask her brother as she had no idea to question him. She stated that she did not inform her grandparents before going to Bhadrachalam. She stated that she did not carry any ornaments along with her and when she enquired with P.W.4 where they were going, P.W.4 told her that they were going to her village. She stated that she did not know the name of her village and the district in which it was located. She stated that she did not question P.W.4 as to why she was required to accompany them. She stated that P.W.4 also requested her to accompany them. She stated that on the earlier day, the accused informed them that he would accompany them but did not do so. She stated that she visited Bhadrachalam before she accompanied the accused and P.W.4. She stated that the accused advised them to go to Bhadrachalam first. She denied having made statements to the police as in Exs.D2 and D3, portions of her statement recorded under

Section 161 CrPC. She said that she did not remember as to whether she informed the police that the accused also attempted to rape her in the lodge at Kothagudem. She stated that she did not remember at what time they reached Kothagudem but they started from Kothagudem at 3.00 PM to go to Paloncha bus stand. She again stated that they started from Kothagudem to Paloncha in an auto. She said that when they were at Paloncha bus stand, the accused immediately came there. She stated that there was a scuffle in the bus stand in between the accused and his wife, but she did not go to the police station at Paloncha bus stand. She admitted that the police station was abutting the bus stand. She stated that at the bus stand, they were under a tree and the accused threatened his wife to kill her and made them board a car. She stated that P.W.4 also cried out aloud. She stated that it was not a big galata and therefore people did not gather. She stated that they reached Vijayawada at 7.00 PM or 8.00 PM on that day and took meal in a hotel. She stated that the accused took only one room with two beds and they were sleeping one after another. She stated that during night time, the accused kept his hand on her while she was sleeping. She stated that the accused took his wife and daughter to the bath room after they took meals and kept them inside the bath room. She stated that the accused also beat her and then committed rape by force. She stated that she had no prior experience of intercourse. She further stated that the accused removed her clothes and that there were scratches on her throat made by the accused. She admitted that there were no scratches on any other parts of her body. She stated that the accused committed rape only once against her. She stated that after committing rape he removed the bolt of the bath room. She stated

that the accused kept them inside and bolted the door from outside and provided breakfast to them by bolting the door. She said that there was a phone in the room but it was not working. She alleged that the accused committed rape on her four days/times during night time at 10.00 PM. She said that he also committed rape on three occasions but she did not sustain any injury. She said that she was also wearing bangles and when she pushed the accused when he was committing rape, the bangles broke. She said that the accused threatened to kill her if she did not oblige. She admitted that except scratches on her throat on the first day, no injuries were sustained by her in other intercourses. She said that he committed rape and intercourse on the second day also. She stated that on the 2nd, 3rd, 4th time the accused bolted his wife and daughter. She said that they came to Bhadrachalam on the 4th day. She said that the accused also carried her size clothes. She said that they boarded the bus during night time and on the next day morning they got down at Bhadrachalam. She stated that the choultry was abutting the temple and was not near the bus stand. She stated that she did not remember whether she stated to the police that the accused and his family members were traced by her relatives in the bus stand at Bhadrachalam. She stated that she did not remember whether she stated as in Ex.D4, a portion of her Section 161 CrPC statement. She denied the suggestion that the accused never committed rape upon her. She said that she did not know whether the doctor gave a report stating that no rape was committed upon her. She said that on the same day she was referred to Government hospital. She further stated that one day earlier to her examination, the accused had committed rape upon her. She said that she did not know whether

police used to come to the house of the accused on the ground that he was an ex-naxalite. She also denied knowledge as to whether the Sub-Inspector of Police (P.W.10) had developed illicit intimacy with P.W.4, the wife of the accused, and that the accused and P.W.4 quarreled with each other. She denied that the real dispute was between them because of P.W.10. She stated that no compensation was given by the Government and she did not know the reason for not giving compensation. She said that she did not know as to whether the Government failed to give compensation on the ground that there was no rape committed upon her as per record. She denied the suggestion that her parents obliged the Sub-Inspector of Police (P.W.10) and gave false evidence as if rape was committed so as to claim compensation. She also denied the suggestion that at the request of P.W.10, P.W.4, she and her parents were deposing falsely. She asserted that it was not true to say that no rape was committed upon her.

P.W.4, the wife of the accused, stated that she was his second wife and that she had a daughter, by name Sindhuja (L.W.8). She stated that she left her two other children with her parents. She stated that she had not married the accused and that they were only living together. She said that after she got acquainted with him, she came to know that cases were pending against him. She said that she knew that he was an ex-naxalite but was still living with him. She stated that the accused was afraid of the police and naxalites. She said that the accused went to jail when her daughter was aged about eight months and he was released from jail after 6 or 7 years and in the meanwhile, her relations were also afraid to keep her as her husband was a naxalite and she therefore lived at Besthagudem

by tailoring, along with her two sons and daughter. She stated that after his release from prison in August 2002, the accused came and took her to Bhadrachalam and they then shifted to Kaliveru for private practice, where her relatives were residing. She stated that they lived in a house of a RTC bus driver, who was her sister's husband. She stated that the accused used to suspect her as she was in her sister's house and they then shifted to a rented house belonging to P.W.3, the victim girl. She stated that P.W.3's house abutted their rented house and that P.W.3 never came to her house but the accused used to go to the house of P.W.3 now and then and threaten her. She stated that the accused requested P.W.3 to marry him as she was not fit for conjugal life and the same was informed to her by P.W.3. She said that she chastised the accused as to why he would marry P.W.3 and the accused beat her. She said that the accused advised her to go to Azamnagar to his first wife's place and bring money from her. She stated that when she told him that she was intending to go along with the accused, he insisted her that she should bring P.W.3. She stated that when she questioned the accused about taking P.W.3 along with her, as her parents were away and refused to do so, the accused beat her. She stated that the accused also told her that he went to the parents of P.W.3 where they were working to cut tunikaku and informed her that he obtained the consent of P.W.3's parents to take her along with her. She said that the same was informed to her during night time, when she was stitching the clothes. She stated that on the same day when she prepared other clothes, the same were given to P.W.3 for wearing. She said that at about 4.00 AM, she along with P.W.3 and her daughter, Sindhuja (L.W.8), started for Bhadrachalam to catch a bus

bound for Hanamkonda to go to Warangal. She stated that they got down at Bhadrachalam and the accused appeared there. She stated that when she questioned the accused as to why he came to Bhadrachalam, he told her that he would purchase anklets. She stated that when she questioned as to how he purchased anklets in the morning time, the accused took them to a hotel at Bhadrachalam with a promise to purchase anklets for P.W.3 and the accused then took them to Kothagudem and took a room in Saiprakash lodge at Kothagudem. She stated that the accused also told her that he would purchase garments and gold ornaments not only for her but also for P.W.3 and when she questioned him as to why he purchased, he cautioned her that it was none of her business. She stated that in her presence at about 9.00 or 9.30 PM in a room in Saiprakash lodge at Kothagudem, the accused tried to outrage the modesty of P.W.3. She stated that the accused also attempted rape and she obstructed the acts of the accused, he took her daughter and her to a bath room and bolted the room from outside. She stated that when she cried out aloud, the accused went into the bath room to take a bath and she bolted the bath room from outside. She stated that she and P.W.3 then left the lodge, engaged an auto and went to Paloncha. She stated that she requested the driver of the auto to come to Bhadrachalam but he refused and advised her to engage another auto. She stated that again the accused appeared at Paloncha auto stand and made both of them board an auto and he took them to Kothagudem from Paloncha and the accused made them board a jeep or a car which was meant for carrying newspapers as if the same would take them to their house but they reached Vijayawada and there, the accused took them to Chaya lodge. She stated that they

reached Vijayawada at 7.00 or 7.30 PM and went to the lodge where the accused provided meals to them and that whenever the accused went outside, he bolted the door. She stated that about 8.00 or 9.00 PM the accused tried to outrage the modesty of P.W.3 and beat her and her daughter and pushed her and her daughter into the bath room and bolted it from outside. She stated that the accused kept her in the lodge for four days and committed rape upon P.W.3. She stated that P.W.3 and she also wept and the accused not only made her a scapegoat but also P.W.3. She stated that she had no money and could not be released from the clutches of the accused. She stated that when she questioned the accused, he told her that he would send P.W.3 and thereafter they would go to Bhadrachalam and they then took a choultry and there the accused told her that they'd go to temple, she and the accused and their daughter left for the temple while P.W.3 was in the choultry. She stated that they came to Bhadrachalam bus stand where the relatives of P.W.3 caught hold of them and thereafter they told them that P.W.3 was in the choultry and they went to the choultry and then went to Bhadrachalam police station and thereafter they went to Charla police station. In her cross-examination, she stated that when her child was about 18 months of age, the accused went to jail for seven years. She stated that she knew the Sub-Inspector of Police (P.W.10) but he never came to her house. She stated that the accused went to see him once but the accused suspected her if she had a talk with females and males and he also beat her. She denied that P.W.10 came to her house in the absence of the accused. She denied that the accused suspected whenever P.W.10 came to her house and as such there were disputes between her and the accused. She stated that the accused also

suspected her character as he was in jail. She said that P.W.3 was not related to her and had never worked in her house. She stated that she never trained her for tailoring. She said that she did not remember whether she informed the police that the accused prepared new garments for P.W.3. She denied having stated to the police that her husband advised her to go to Warangal to get money from his first wife. She stated that she did not remember whether she stated so in Ex.D5, a portion in her Section 161 CrPC statement. She stated that she did not inform the police that the accused took them to Kothagudem and he outraged the modesty of P.W.3 in her presence in Kothagudem lodge. She denied that she informed the police that she, P.W.3 and her daughter, Sindhuja (L.W.8), engaged an auto to go to Paloncha. She said that she did not think of giving a complaint to the police as she and P.W.3 intended to come to Kaliveru. She stated that when she was at PVC auto stand, there was a galata between her and her husband but she did not go to PVC nor did she report it to the police. She stated that the accused made them board an auto to go to Kaliveru. She said that when she questioned her husband as to why they should go back to Kothagudem, the accused threatened her to shut her mouth and that he would kill her. She said that there was no opportunity to raise a galata before boarding the jeep or car. She said that they reached Vijayawada at 7.00 PM and the accused committed rape upon P.W.3 at 9.00 PM and he made her and her daughter, Sindhuja (L.W.8), stay in the bath room and bolted the door from outside while he committed rape upon P.W.3. She said that the accused kicked and beat her when she was in the lodge at Vijayawada. She said that there were no visible injuries but he harassed her. She also stated

that there were no injuries on the body of P.W.3 and that she did not observe any such injuries. She said that though she got down at Bhadrachalam, she did not report to the police how the accused had committed rape upon P.W.3. She added that the accused followed them and therefore, she did not attempt to inform the police. She said that though she went to the temple, the accused followed her by catching hold of her hand and there was no opportunity to release herself from the clutches of the accused. She said that she was residing at Bestagudem and that the accused suspected that she moved with one Ramesh. She admitted that when the accused asked her as to whether she had illicit intimacy with Ramesh, because of his harassment she agreed. She denied that she was living with one Battu Ramesh of Gudem. She denied that the Sub-Inspector of Police (P.W.10) used to come to her house in the absence of the accused and that she and P.W.10 planted P.W.3 and foisted a false case against the accused to get money from the Government. She denied that she was deposing falsely and that it was not true that the accused never committed rape upon P.W.3 and that she was never taken by her husband either to Kothagudem, Paloncha or Bhadrachalam. She denied that P.W.3 failed to get compensation as there was no rape committed upon her.

P.W.5, a receptionist in Saiprakash hotel in Kothagudem, stated that he knew the accused. He said that on 15.05.2003 when he was on morning duty at about 10.45 AM, the accused came to his lodge along with his wife, a girl child and a girl. He said that the accused requested him to give a double room and thereupon he gave Room No.112. He said that the arrival register was Ex.P2 and the same was filled in by the accused, wherein he signed. He said that

Ex.P2 register did not disclose as to when he vacated the room and as he was himself relieved from duty, he could not say at what time they vacated. In his cross-examination, he denied that he had never worked as a receptionist and that he failed to identify the accused.

The Manager of Hotel Chaya at Vijayawada was examined as P.W.6. He said that he saw the accused in the box but while he was working as a receptionist in Chaya hotel on 16.05.2003, the accused came there stating that his name was Raghu and claiming to be of Hanamkonda, Warangal District. He stated that the accused, his wife, a 16 year old girl and a 8 year old girl came to the hotel and took a double room, viz., Room No.109. Ex.P3 is the arrival register which was stated to have been filled up by the accused and the time was stated to be 4.30 PM on 16.05.2003. In his cross-examination, he stated that he requested the accused to give identification proof but he informed that there was no identification proof. He denied the suggestion that the accused never occupied Room No.109 in his lodge along with other persons.

The clerk in Bhadrachalam choultry was examined as P.W.7. He said that the accused came to their choultry in the summer of 2003 under the name Raghu. He said that the accused and his wife and another lady and a girl child came to the choultry at 5.30 AM and the accused requested him to give a room. He stated that the third room in the second floor was given to the accused and an entry was made in the choultry accommodation register (Ex.P4). In his cross-examination, he admitted that there was no signature in Ex.P4 by the accused. In his further chief-examination, he stated that the accused signed in the register and the relevant entry was Ex.P5. Again, he admitted that the register did not contain the signature of

the accused. He said that the column meant for the signature was filled by the accused with amount and he signed in the register in the next column. He denied the suggestion that he did not know the accused at all and that he never occupied the room. He denied the suggestion that he was deposing falsely as per the advice of the Sub-Inspector of Police (P.W.10) as he had animosity against the accused.

P.W.8 was the witness in whose presence the police allegedly recorded the confession of the accused. He stated that he and Shaik Nagoor (L.W.20) went to Bhadrachalam in the morning time as he was suffering from diabetes so as to get medicine there. He stated that in the evening time he came to the bus stand to return to his village at about 7.00 PM. He stated that he witnessed the Sub-Inspector of Police, Charla (P.W.10), and the Deputy Superintendent of Police, Bhadrachalam (P.W.12), in the bus stand and as they knew him, they called him and Nagoor (L.W.20) and in their presence, the accused, a lady and a girl child were also present. He said that the police requested him to enquire with the accused. He said that he did not remember as to what was confessed by the accused, but he confessed before him. He said that the police read over the contents of the confessional statement in the presence of the accused and the accused admitted its contents. He said that in his presence, a toy pistol (M.O.1) was seized from the person of the accused. He said that a cut drawer was seized from the possession of the accused by the police. He said that M.O.1 was seized under Ex.P6. He said that identification slips were attached to the case properties and they contained his signature along with the signature of Shaik Nagoor (L.W.20). In his cross-examination, he denied that he signed the confessional statement in Charla police station. He also denied the

suggestion that the police never apprehended the accused in Charla bus stand in his presence. He denied that when he visited the police station, he signed on Ex.P6. He denied the suggestion that he was very close to the Sub-Inspector of Police (P.W.10).

P.W.9 was the Civil Assistant Surgeon, Area Government Hospital, Bhadrachalam, who examined P.W.3, the victim girl, on 23.05.2003. She said that she was moderately built and no injuries were noted on her chest, thighs and external genital area. She said that her hymen was not intact. She said that the various specimens collected from the victim girl were sent to the forensic science laboratory for analysis, including her pubic and auxiliary hair, her nails, swabs from cervix and vagina. She said that she was also referred to a dental surgeon of Area Hospital, Bhadrachalam, for determination of her age. She stated that the forensic science laboratory report dated 24.07.2003 (Ex.P7) recorded that sperm and spermatozoa were not detected in the swabs and that there was no evidence of recent intercourse. She stated that P.W.3 informed her that a known person had restrained her in a room and forcibly committed rape upon her a week previous to the date of her examination. She confirmed that Ex.P7 was the FSL report, while Ex.P8 was her final opinion, wherein she recorded that there was no evidence of recent intercourse. In her cross-examination, she said that the victim girl (P.W.3) informed her that she was restrained in a room and rape was committed upon her but did not inform the name of the assailant.

P.W.10, the Sub-Inspector of Police, spoke of the steps taken by him during the course of investigation before he handed over the same to the Deputy Superintendent of Police (P.W.12). In his cross-

examination, he stated that the accused was an ex-extremist and at the time of the incident he was working as a Registered Medical Practitioner in the village. He denied the suggestion that he used to visit the house of the accused frequently to observe whether he was still continuing his relations with naxalites, by extending any medical aid or supplying food to them. He denied the suggestion that he used to visit the house of the accused in his absence and therefore became close to his wife (P.W.4). He denied the suggestion that the accused got angry with him as he was visiting his house in his absence frequently. He said that he did not know whether P.W.4 was the second wife of the accused. He denied the suggestion that P.W.4 had two grown up sons, which fact was known to him, and that she had been residing with the accused by leaving her two sons. He said that it was not true to say that because of his frequent visits, there arose disputes between P.W.4 and the accused. He further denied that in that connection, he supported P.W.4 and to eliminate the accused from the scene he, in collusion with P.Ws.1 to 4, got foisted the present false case. He denied the suggestion that he and P.W.4 misled the victim and her family members that they would get money if they filed a complaint against the accused, who was not a tribal, and thereby got this false case registered against him. He denied the suggestion that his statement that P.W.1 presented Ex.P1 complaint, whereupon he later came to know of the presence of the accused and the victim girl (P.W.3) along with P.W.4 at the bus stand, Bhadrachalam, on 24th was false and he created a record to make up the story. He denied the suggestion that P.W.3 and her family members were made to speak against the accused as they were assured of compensation by the Government. He denied the

suggestion that the accused never kidnapped the victim girl and never committed rape upon her and that was the reason why the doctor opined that no rape was committed upon her.

P.W.11, a doctor, stated that he examined the accused on 27.05.2003 and he stated that there was nothing to suggest that he was not capable of performing the sex act. He confirmed that Ex.P.12 was the potency certificate issued by him.

P.W.12, the Deputy Commissioner of Police, Bhadrachalam, spoke of the various steps taken by him during his investigation already referred to *supra*. In his cross-examination, he stated that the accused was an ex-naxalite and that he came to know of the same during his investigation. He denied the suggestion that P.W.10 visited the house of the accused so as to harass him. He denied the suggestion that during such visits, the Sub-Inspector of Police (P.W.10) developed illegal contact with P.W.4 and in that connection, P.W.10 bore a grudge against the accused. He denied the suggestion that at the instance of P.W.10, he foisted a false case. He denied the suggestion that though it was a false case and there was no rape, even as per P.W.9, they charge-sheeted the accused.

This being the evidence adduced by the prosecution, Ex.P1 makes for an interesting reading. Therein, it is stated that the complaint was made on 17.05.2003 by P.W.1, the mother of the victim girl (P.W.3). She stated that when she and her husband went to cut tunikaku, they left her mother-in-law, father-in-law and the victim girl in their house, but on 15.05.2003, the accused and his wife kidnapped her by playing trickery. She said that her daughter was a minor and was innocent and that her whereabouts were not known and that she was scared as to her whereabouts and her

survival. This complaint was stated to have been received by the Sub-Inspector of Police (P.W.10) at 12.15 hours on 17.05.2003.

However, the First Information Report (Ex.P9) does not reflect at what time it was sent to the Court and what time it was received. There is no endorsement or signature thereon as to the receipt thereof by the Court. To compound matters further, the deposition of P.W.1, the complainant, who presented Ex.P1 complaint, completely turned the case of the prosecution topsy-turvy. She stated in no uncertain terms that at the instance of the wife of the accused (P.W.4) and the Sub-Inspector (P.W.10), who promised that they would get money if they filed a case against the accused as they were tribals, they filed this case. Significantly, the Sessions Court clarified with reference to the above statement from the witness and she then stated that she never filed a case by planting her daughter to claim money. She then contradicted herself by saying that the Sub-Inspector (P.W.10) advised her to file the case and that the wife of the accused (P.W.4) also advised her to file the case against the accused. She then said that the Sub-Inspector of Police (P.W.10) informed her that she would get Rs.1,50,000/- from the Government but she was never bothered about the money but only about her daughter. She further stated that the wife of the accused (P.W.4) was also responsible along with the accused.

It is therefore evident from the deposition of P.W.1 that the wife of the accused (P.W.4) and the Sub-Inspector of Police (P.W.10) actively encouraged her to file the case against the accused. Insinuations as to the alleged intimacy between the wife of the accused (P.W.4) and the Sub-Inspector of Police (P.W.10) were brought out in abundance in the testimony of various witnesses.

Even P.W.1 admitted in her cross-examination that there were disputes between the accused and his wife as the accused suspected his wife as she supported P.W.10. Significantly, P.W.1 stated in her cross-examination that she was informed by P.W.10 that no rape had been committed upon her daughter (P.W.3). The medical evidence indicated that there was no proof of P.W.3 having had recent sexual intercourse. The medical examination of P.W.3 was on 23.05.2003 by P.W.9 and she stated that P.W.3 informed her that she had been raped one week prior to that date. However, P.W.3, in her own cross-examination, stated that one day earlier to her medical examination, the accused had committed rape upon her. This contradiction by P.W.3 casts any amount of doubt as to when the alleged sexual activity took place between her and the accused. Ex.P8 medical certificate indicated that P.W.3 was not a virgin as her hymen was no longer visible but neither semen nor spermatozoa were detected on the internal swabs sent for analysis.

There is no evidence of P.W.3 having put up a fight against the accused, if really any act of rape was committed or attempted upon her. At one stage, she said that her bangles broke, but there were no injuries on her wrist. It is indeed unbelievable that she would not have sustained injuries had she been forced into sexual intercourse against her will. Even the medical examination did not show any internal injuries which would have been the case had she repeatedly been subjected to forcible sexual intercourse against her liking.

Further, the version put-forth by the witnesses for the prosecution as to the sequence of events does not lend credence to the story put-forth by the prosecution. In the event the accused planned to commit the rape of the victim girl (P.W.3) and with that

intention, he engineered a plan to take her away from Kaliveru, it is indeed peculiar that he would want to have his wife (P.W.4) and his daughter, Sindhuja (L.W.8), in attendance. This action militates against normal human behaviour when wrongdoing is planned. All the more so, as his eight year old daughter was also present. The story, as it unfolds thereafter, gets murkier. According to P.W.3 and P.W.4, at Kothagudem the accused attempted rape upon P.W.3 but thereafter, when he went into the bathroom, P.W.4 bolted the door from outside and they made good their escape. However, they stated that the accused caught up with them at Paloncha bus stand. As to how he would have known where they went is one issue. That apart, when they knew that he was up to no good, it is indeed surprising that they quietly boarded a vehicle with him in a public place and made no attempt to inform anyone, despite the presence of a police station nearby.

The next incongruity arises out of the claim that the accused committed rape upon P.W.3 several times in a lodge at Vijayawada. Presumably, there would have been other inmates in the lodge and had the victim girl (P.W.3) raised a hue and cry, if the accused did anything against her will, it would have drawn attention immediately. Evidence was adduced by the employees of the lodges at Kothagudem and Vijayawada who spoke of the accused coming there with the others long after the event. As to why they would remember the accused out of the several hundreds of customers that they would have seen over this period of time is not explained, but they both claimed that they knew the accused.

The final nail in the coffin in so far as the prosecution's case is concerned, comes from the fact that the prosecution rested its case

primarily on the premise that the victim girl (P.W.3) was a minor. P.W.1, the mother of the victim girl, also stated so. However, the age determination certificate (Ex.P.13) put her age as on 27.05.2003 as 18 years completed. Her brother (P.W.2) said that his date of birth was 10.05.1987 and that his sister was one year older than him, but this is not borne out by the medical examination which shows that P.W.3 had completed 18 years of age by the time of such examination. It is therefore clear that she was a major at the time of the incident. Going by her own deposition, she herself went willingly with the accused and his family members. Her departure with them was also to the knowledge of her brother and her grandparents.

Though there is an allegation of her illegal confinement by P.W.3, this claim is also full of holes. As already pointed out, though the prosecution's case is that P.W.3 was raped several times in a lodge at Vijayawada, there is no evidence of her ever raising a hue and cry when the accused molested her. That apart, she stated that she was kept in the Devasthanam choultry at Bhadrachalam while the accused and his family members went to the temple. She however does not explain as to why she did nothing when she was left alone and why she did not either raise a hue and cry or inform anybody that she was being held against her will. P.W.4 also repeated this version and said that P.W.3 was alone in the choultry when they went to the temple. This inexplicable acquiescence on the part of the victim girl (P.W.3) clearly puts it beyond doubt that she was not being confined against her will.

Another peculiar build-up added to the alleged rape of the victim girl by the accused was brought out by the so-called recovery made by the police from him in the presence of witnesses, P.W.8 and

Shaik Nagoor (L.W.20). According to P.W.8, a toy pistol (MO.1) was seized from the person of the accused. Significantly, P.W.3 never mentioned any toy pistol being used to silence her during the commission of the alleged rape. The Sub-Inspector of Police (P.W.10) complicated the matters further for the prosecution. He stated that he received information that the accused and the victim were at Bhadrachalam bus stand and he proceeded there and apprehended the accused and the victim. This is in direct contravention to what P.W.3 stated. She said that her people caught hold of the accused and his family members in Bhadrachalam bus stand while they were on the way to the temple and when they told her people that she was in the choultry, they came there and took her to Bhadrachalam Police Station and thereafter, to Charla Police Station. She was therefore never at Bhadrachalam bus stand. However, P.W.10 claimed this to be so.

On a conspectus of the aforesaid evidence, it is clear that the victim girl (P.W.3) was a minor at the time of the incident. She willingly went with the accused and his family members and the same was to the knowledge of her own family members, viz., her grandparents and her brother. As to why she was taken by the accused and his family members is not clear, but even if there was any sexual intimacy between the accused and victim girl (P.W.3), it is not shown to be non-consensual, as already noted *supra*. The wife of the accused (P.W.4) and the Sub-Inspector of Police (P.W.10) played an active role in engineering the registration of this case against the accused. The mother of the victim girl (P.W.1) admitted this to be so. There is no evidence of any illegal confinement to establish commission of an offence under Section 342 IPC. There is also no

acceptable proof of P.W.3 having been kidnapped as she, being a major, went willingly with the accused and his family members. Commission of the offence under Section 363 IPC is therefore not made out. There is also no evidence of commission of rape attracting Section 376 IPC, in the light of the various contradictory elements in the oral and documentary evidence, already referred to *supra*. Overlooking all these aspects, the Sessions Court blindly relied upon the evidence of P.Ws.3 and 4 without noting the inherent inconsistencies in their testimony. The Sessions Court selectively scrutinized the evidence, brushing aside the relevant aspects which diluted, if not destroyed, the prosecution's case.

Reference was made by Sri G.Vasanth Rayudu, learned counsel for the appellant/accused, to the judgment of the Supreme Court in **NARENDER KUMAR V/s. STATE (NCT OF DELHI)**¹. Therein, the Supreme Court affirmed, on the strength of case law, that if the statement of the prosecutrix inspires confidence and is accepted by the Court conviction for rape can be based on the solitary evidence of the prosecutrix and no corroboration would be required, unless there are compelling reasons which necessitate it. However, if the Court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. The Supreme Court further observed that there is an initial presumption of innocence of the accused and the prosecution has to bring home the case against the accused by reliable evidence.

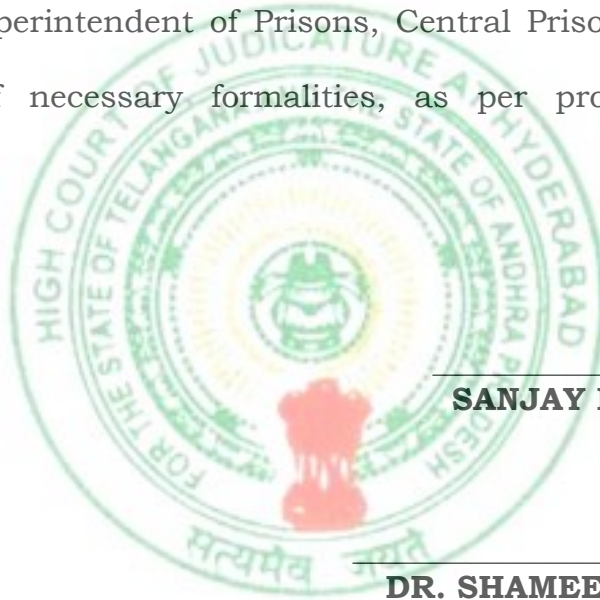
Applying this test to the case on hand, it is clear that the inconsistencies galore in the prosecution's case raise any amount of

¹ AIR 2012 SC 2281

suspicion and doubt as to the claim of the prosecution that the accused illegally confined P.W.3 in various public lodges and a choultry and also subjected her to sexual intercourse against her will. There is just no acceptable evidence of any of these charges.

The conviction and sentence recorded by the Sessions Court on three out of the four charges against the accused without sufficient proof therefore cannot be sustained and the same are accordingly set aside. The appellant/accused is acquitted of all charges.

The appeal is allowed. The appellant/accused, who was enlarged on bail pending this appeal, shall present himself forthwith before the Superintendent of Prisons, Central Prison, Warangal, for completion of necessary formalities, as per procedure, for his discharge.



SANJAY KUMAR, J

DR. SHAMEEM AKTHER, J

22nd AUGUST, 2017

SVV/PGS