

* THE HON'BLE SMT JUSTICE T.RAJANI

+ Criminal Appeal No.199 of 2008

% Dated : 01.03.2018

Punam Satyanarayana Dora

..... Appellant

AND

\$ State of A.P.

..... Respondent

! Counsel for Appellant : Mr. G.V.Shivaji

^ Counsel for Respondents : Public Prosecutor (AP)

< GIST :

> HEAD NOTE :

? Cases referred :



SMT. JUSTICE T.RAJANI**Criminal Appeal No.199 of 2008****JUDGMENT:**

Impugning the legality of the judgment passed by the Sessions Judge, Mahila Court, Vijayawada in S.C. No.8 of 2005 on 06.02.2008, this appeal is preferred by the appellant, who is the accused in Crime No.72 of 2004 of G.R.P. Rajahmundry Police Station.

For the benefit of better understanding of the case, the facts, in brief, are stated as follows.

The accused was working as a Police Constable in Godavari Outpost Police Station, Rajahmundry. The victim girl is resident of Poolaa village in West Godavari District. Her marriage was held with one S.Subrahmanyam of Undi village. Due to disputes with her husband, she went to her parents' house, ten days prior to the incident. When her parents were making attempts to send her to the house of her husband, through the elders, she, under the thought that if she is sent to her husband's house, without meeting his demands, she would be again harassed, left her parents' house on 28.06.2004 and went to Godavari Railway station, on the same day at about 7 or 7.30 pm., and was sitting on the platform. Then the accused came to her and enquired about her family background, disclosing himself as Police constable and enquired about the reasons for her coming to the Railway station. He, then, forcibly took her to Godavari Railway bridge on a motorcycle and indecently behaved with her, from there he took her to a room in Arunodaya Lodge, near Godavari Bridge and there he attempted to commit rape on her. Then she escaped from him and came to Godavari Railway station. The accused again came and beat her with hands, by abusing her in vulgar language and took her to Godavari Railway Police station and confined her in that station. Another constable by name G.David Raju, informed the same to Head Constable and on that

the Head Constable came to the Railway Police Station and kept a woman Police constable, to look after her safety and telephoned to her brother. Her brother came to the spot and on the narration of the victim, report was given by him with regard to the alleged offences. The accused was sent for medical examination, wherein he was found to be in a drunken state. The victim girl was also sent for medical examination, wherein injuries were found on her body. After due investigation, charge sheet was laid against the accused for the offences punishable under Sections 323, 342, 376 read with 511 IPC.

The learned trial Court, on the side of the prosecution, examined P.Ws.1 to 13 and marked Exs.P-1 to P-9. On the side of the defence, none were examined, but Ex.D-1, in the statement of P.W.1, was marked. After appreciating the evidence on record, the learned trial Court found the accused not guilty for the offence punishable under Section 376 read with 511 IPC but found the accused guilty for the offences punishable under Sections 323 and 342 IPC and sentenced him to undergo simple imprisonment for a period of three months and to pay a fine of Rs.500/- and in default to suffer simple imprisonment for a period of one month for each of the offences. Against the said judgment the present appeal is preferred on the following grounds:

The Court below failed to appreciate the contradictions in the evidence of P.Ws.1 and 2 to 6; failed to consider the delay in giving the report; failed to see that the P.W.1 stated in the chief examination that on the telephone call made by the P.W.5 to P.W.6, asking him to come, he came to the Police Station and that she narrated the entire incident to him and that he has taken her to the Rajahmundry Police Station, but she did not state about the incident of beating her in the presence of P.W.6., whereas, P.W.6, in order to implicate the appellant gave undue statement, as if he found the appellant beating the complainant on her neck, with his hand; it also failed to consider the evidence of P.W.12,

who is a Civil Assistant Surgeon, who examined the complainant and issued certificate, mentioning that the injuries are simple in nature and as such Section 323 IPC itself is not attracted.

Heard the learned counsel for the appellant and the learned Public Prosecutor and perused material placed on record.

The learned counsel for the appellant reiterated the grounds taken in the appeal, while the learned Public Prosecutor contended that the appreciation of the evidence by the learned trial Court is on proper lines hence, the impugned judgment needs no interference.

The points that arises for consideration before this Court are:

1. *Whether the evidence of P.W.1 and other witnesses inspires confidence and whether it is affected by the inconsistencies that are pointed out in their evidence.*
2. *Whether the impugned judgment is sustainable under law.*
3. *To what result.*

Point No.1: The learned trial Court, by considering that there was an element of willingness on the part of the victim, in going along with the accused, to the Godavari Railway bridge and to the places thereafter, exonerated the accused from the offence punishable under Section 376 read with 511 IPC. But, however, the learned trial Court believed the version of P.W.1, which is corroborated by the medical evidence, to the extent, sufficient for arriving at the guilt of the accused, for the offences punishable under Sections 323 and 342 IPC. It is the propriety of the said evaluation done by the learned trial Court, that is brought to question in the present appeal.

The learned counsel for the appellant relies on the inconsistencies in the evidence of the witnesses, to contend that the entire evidence is unreliable. Now let us look at the facts. The age of the victim girl is stated to be 19 years. The evidence of her, as P.W.1, that she came to the Railway station as she did not want to go to her husband's house is corroborated by the evidence of P.W.2, who is her brother. From the above behavior of P.W.1, who is aged 19 years, it can be understood that she did not develop maturity, to the level, sufficient enough to take care of herself and to face the situations with which she is confronted in life. It also appears that she was in a helpless state. A girl, aged 19 years, sitting at a Railway station, without any direction as to how she should go about in her life, can be expected to be in state of confusion and vulnerability. There arises, no doubt, with regard to what she stated. But, however, a benefit of doubt was extended to the accused, by virtue of the fact that she did not raise any cries, while she was being taken on the motorcycle by the accused and thereafter. Whether the said approach of the learned trial Court was right or wrong is not for this Court to decide in the instant appeal. But it would suffice to say that the truth in part of the version of P.W.1 had to be upheld by the learned trial Court, in spite of it seeing an element of consent on the part of the P.W.1, as there was sufficient corroboration for that part of her evidence, which the learned trial Court believed.

The inconsistencies, with regard to the injuries, as pointed out by the appellant's counsel, is about the manner in which the injuries were caused on her body. In the report given by P.W.1, she stated that the accused came to her, holding a stick and beat her, while the evidence of P.W.6, which is that of the Head Constable (Retd.) shows that the accused beat her with hand. The learned counsel contends that the injuries as stated by the Doctor, P.W.12, cannot be sustained, when a person is beaten with hands. The injuries are in the form of a contusion

on left shoulder about 2" x 1" red in colour and a linear abrasion on the medial aspect of lower 1/3rd of left forearm, about ½" length red in colour. If the Court sees an element of truth in the version of the victim, that would suffice to believe her evidence. The mental state of a woman in a vulnerable state, stands beyond explanation. A hyper technical approach in evaluating her evidence may not be warranted.

The argument that beating with hands would not cause a contusion and abrasion, cannot be upheld. Whether the beating has taken place or not has to be understood from the manner in which the witnesses deposed before the Court. There is no animosity proved between the appellant and P.W.6, who stated that the accused beat P.W.1 with hand. The case of P.W.1 has been consistent, both in the report and in her evidence. She states that accused approached her with a stick and beat her. There are two instances of beating, stated by P.W.1. One is when she was sitting on the platform along with two other passengers and the other instance is, when the accused took her to the cell. The second instance of beating is not stated to be with a stick and it can be understood that it is the second beating that was witnessed by P.W.12. The contusion was found on the shoulder but not on the neck of P.W.1, which is the place of beating, stated by P.W.6. Hence, it is possible that the contusion was caused by beating with a stick. So also the abrasion.

The effort made by the appellant's counsel to make the evidence of P.W.13, unreliable, based on the entries made in the sentry book turns vain. Any violation in the procedure, by the people concerned, cannot be allowed to operate to the detriment of the victims, who have no role to play in the compliance and non compliance of the prescribed procedure. The sentry book, no doubt, shows that the accused was on sentry duty from 18:00 to 20:00 hours; P.W.13 explains that no entries would be made in the sentry book, if people go out for short time. The witness

examined as P.W.5, is one G.David Raju. According to him, P.W.1 came and questioned the accused. But he somehow did not support the whole version of P.W.1. But, his evidence shows that he was told in the Police Station, that the accused attempted to commit rape on one lady on the previous night and then the Sub Inspector of Police handed over the accused to him, saying that he was arrested. There may be many reasons for the witnesses not to come out with whole truth. But if the stated facts get corroboration from the prime witness, it would certainly lend support to the credulity of the version of the said witness. The presence of P.W.1 at the platform is undoubtedly proved. The presence of the accused is also proved. The evidence of P.W.5 is almost in the form of *Res gestae*, as he was informed about the acts of the accused almost immediate to the incidents and it becomes admissible, by falling out of the hearsay category of evidence. The injuries are proved and they are not alleged to be self inflicted. Omission to state about beating with a stick, does not affect the testimony of P.W.1, as she stated the same in the report, which is earlier to the statement and the said omission, then, can, safely, be attributed to the erroneous recording of the statement. When something which finds place in the report, does not find place in the 161 Cr.P.C. statement, it loses significance as an omission, while appreciating the credibility of the witness.

P.W.3 is a constable, speaks about the accused bringing a lady and making her sit in the station and about his informing the matter to P.W.6. Though he was declared hostile, the facts stated in his chief examination, would lend support to the testimony of P.W.1, to the extent of wrongful confinement by the accused. P.W.4, another constable, speaks about his taking the accused to hospital, for examination of his drunkenness. A certificate is stated to have been issued by the doctor. As regards the delay in giving the report, very cogent explanation comes from P.W.6, who says that P.W.1 asked him to wait till her brother

comes. It is very probable that she, in the state she was, would wait for her brother to arrive, for taking any decision on what has happened, as, it involved a police person and she would, probably, want her brother to advise her on the consequence of lodging a report. Hence, a comprehensive appreciation of the evidence, would lend credibility to the evidence of P.W.1 and would conclusively prove the guilt of the accused, for the offences punishable under Sections 323 and 342 IPC.

POINT No.2: Hence, in view of the discussion, under point No. 1, this Court does not find any reason to set aside the impugned judgment.

POINT No. 3: In the result, this Criminal Appeal is dismissed.

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

Date: 01.03.2018
LSK

JUSTICE T.RAJANI

