

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Appeal No.1541 of 2007

JUDGMENT:

This Criminal Appeal is preferred by the accused aggrieved by the judgment dated 25.10.2007 in S.C.No.186 of 2007 on the file of Assistant Sessions Judge, Siricilla, whereunder the learned Judge found the accused guilty of the offence under Sections 376 IPC and sentenced to undergo RI for eight years and to pay fine of Rs.1,000/- in default to undergo SI for three months.

2) The factual matrix of the case which led to file this appeal can be stated thus:

a) The victim—Thimmapuram Laxmi is a resident of Areypalli; ten days prior to the incident her husband went to Dubai and she has been residing along with her son and daughter; in the outskirts of Areypalli village, she is having one and half acres of land and cotton was raised in the said land; while so, on 17.12.2005 morning she along with her mother-in-law—PW2 went to the fields to collect the cotton and in the evening she requested the accused to bring bullock cart to transport the cotton bags to their house; as the accused did not return to the field with bullock cart, PW2 went to the village to call him; the accused having observed that PW2 left the field, at about 6.00 PM he came to PW1, caught hold of her tuft, beat on the left cheek and fell her down on the ground, gagged her mouth with her saree and threatened to kill her and forcibly committed rape on her and fled away from the

scene. Then, the victim went to the house and informed to PW2 and others and gave a compliant.

b) Basing on the said complaint the police registered a case in Cr.No.103 of 2005 and after investigation filed charge sheet against the accused. The matter was taken cognizance and after appearance of the accused, the trial Court framed charges under Sections 376 and 506 IPC, for which the accused pleaded not guilty and claimed to be tried.

c) During trial, PWs.1 to 10 were examined and Exs.P1 to P9 were marked on behalf of prosecution. No oral or documentary evidence was adduced on behalf of defence. MOs.1 to 7 were exhibited.

d) The trial Court after considering both oral and documentary evidence came to the conclusion that prosecution established the guilt of the accused beyond reasonable doubt for the offence under Section 376 IPC and accordingly convicted and sentenced him as stated supra while exonerating him for the offence under Section 506 IPC.

Hence the appeal.

3) Heard arguments of Sri D.Bhaskar Reddy, learned counsel for appellant and learned Additional Public Prosecutor for the State (TG).

4a) Severely fulminating the judgment of the trial Court, the argument of learned counsel for appellant/accused is di pronged. Firstly, he would argue, the accused is innocent and nothing to do with the offence and he was falsely implicated. The sole testimony of

prosecutrix was wholly unreliable and therefore, it is dangerous to base conviction on the uncorroborated evidence of PW1.

b) His second and alternative argument is that even if sexual intercourse is established by the prosecution, the facts and evidence will suggest an inference that prosecutrix is a consenting party. In expatiation, it is argued that knowing fully well that the accused does not own bullock cart, still PW1 approached him and asked him to come to their field in the evening with bullock cart on the pretext of carrying their cotton bags to home. Further, in the evening prosecutrix purposefully sent her old aged mother-in-law in search of accused or some other villager having double bullock cart to transport the cotton bags. It would suggest that she wilfully remained alone at the field. Added to it, no injuries were found on the posterior side of the body of prosecutrix, though it is her case that the rape was committed in the cotton field for about 15 minutes. Similarly, no injuries were found on her private parts. All these would lead to an irresistible conclusion that prosecutrix was a consenting party. Learned counsel sought to argue that during trial though a suggestion in the lines of PW1 was a consenting party was not given to her, still the accused is entitled to raise such plea projecting the circumstances and evidence available on record in support of such plea. On this aspect, he relied upon the decision of the Apex Court reported in *Pratap Misra and others vs. State of Orissa*¹. He thus prayed to allow the appeal.

¹ (1977) 3 SCC 41

5) In oppugnation, learned Additional Public Prosecutor argued that the evidence of PW1 clearly established the heinous act committed by accused and nothing tangible could be extracted to impeach her credibility. Therefore, her testimony alone is sufficient to establish the guilt of the accused. Her evidence was amply corroborated on material particulars by other witnesses. Therefore, it is preposterous to contend that accused was falsely implicated. Regarding the argument that PW1 was a consenting party, learned Addl.P.P. submitted that none of the circumstances would suggest PW1 to be a consenting party for the atrocious act of the accused. The doctor found injury on her cheek and also tenderness on her back which implies vainful attempt made by her to rescue herself. He thus prayed to dismiss the appeal.

6) In the light of above arguments, the point for determination is:

“Whether the prosecution could able to bring home the guilt of the accused beyond reasonable doubt and the conviction and sentence recorded by the trial Court is factually and legally sustainable?”

7) **POINT:** The admitted facts are PW1 is the daughter-in-law of PW2 and they are having about 1½ acres of land called as ‘Goyyanulla Regadi’ wherein cotton crop was raised and on the date of incident i.e. 17.12.2005, they engaged coolies to pluck cotton crop, arrange in bags to transport to their house. It is also an admitted case PW1’s husband went to Dubai on job about 10 days prior to the incident. It is further admitted fact that PW1 and accused belonged to same village i.e.

Arepalli and known to each other and accused is the neighbouring land owner of PW1.

8) It is in this backdrop of admitted facts the prosecution case has to be scrutinized. As per prosecution, offence took place in the cotton field of PW1 at about 6.00 to 6.30 PM on 17.12.2005 where the accused forcibly raped PW1. It is the case of the prosecution that on that day morning PW1 requested the accused who is their neighbouring land owner to bring his double bullock cart (DB cart) to enable them to transport the cotton bags as they were plucking cotton on that day. After plucking of cotton was over, the coolies went away from the field at about 5.00 PM. The accused though promised to bring the DB cart did not turn up. Hence, PW2—mother-in-law of PW1 went into the village to fetch either accused or any other villager along with DB cart to transport cotton bags leaving PW1 alone in their field. At that time of sun set when PW1 was alone, the accused who was watching for an opportunity to quench his lust went to the field of PW1 and caught hold of her tuft, bite on her cheek and forcibly fell down on the ground in spite of her resistance and committed rape on her and went away. PW1 weepingly rushed to the home. In the meanwhile, PW2 who went into the village could not get the accused but secured the DB cart of another villager and went to the cotton field and found PW1 absent. So, she returned home and found PW1 was weeping. Then, PW1 narrated the incident to PW2 and other neighbours who gathered there about the heinous act committed by accused. On that night both of them went to

Ellanthakunta PS and presented a written complaint which was registered as Cr.No.103 of 2005 and investigated into.

9) Needless to emphasise PW1—the victim alone was the witness for the diabolical act allegedly committed by accused on her. Law on appreciation of sole testimony of prosecutrix in a rape case is no more res integra and it was well laid by Apex Court and several High Courts to the effect that if her evidence infuses confidence, the same alone can be based for conviction.

10) Reiterating the aforesaid cardinal principle, the Apex Court in *State of Haryana vs. Basti Ram*² held thus:

“Para-29: The law on the issue whether a conviction can be based entirely on the statement of a rape victim has been settled by this Court in several decisions. A detailed discussion on this subject is to be found in Vijay @ Chinee v. State of Madhya Pradesh MANU/SC/0522/2010 : (2010) 8 SCC 191. After discussing the entire case law, this Court concluded in paragraph 14 of the Report as follows:

Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix if found to be worthy of credence and reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix.

This decision was recently adverted to and followed in State of Rajasthan v. Babu Meena MANU/SC/0152/2013 : 2013 (2) SCALE 479.”

Hence, it has now to be seen whether the evidence of PW1 infuses confidence in the mind of the Court and whether the evidence of other witnesses scaffolds to her on material particulars.

² (2013) 4 SCC 200

11) PW1 deposed that she knows the accused; she had a son and daughter and her husband went abroad 10 days prior to the incident; they are having 1½ acres of land called 'Goyyanulla Regadi' and at the time of incident they raised cotton therein; on 17.12.2005, along with PW2, she went to cotton field at about 10.00 AM; in the morning itself they instructed coolies to be present in the land; about 10 coolies were engaged to collect cotton into bags; at about 5.00 PM the coolies went away from the field. She further deposed while going to the field in the morning, she asked the accused to come to the field on his DB cart to carry the cotton bags to their house; the accused stated his bullock cart was not available; then, she requested another person to provide bullock cart and asked the accused to come to the field in the evening. Her further version is that in the evening the accused alone came to the field without bullock cart; when she asked him about bullock cart, he stated that he will fetch DB cart and went away; at about 5.30 PM, PW2 instructed her to stay at the field and went to the village to bring DB cart of accused or some other person; she was alone in the field at about 6.00 PM; immediately after her mother-in-law left the field and while she was engaged in adjusting the cotton bags, accused went there and caught hold her and forcibly made her to fell down on the ground and in spite of her request to let her off, he bitten on her left cheek and forcibly committed rape; she wept a lot but the accused gagged saree into her mouth and after rape he went away; she ran to her house; while committing rape accused slapped on her cheek and thrust the finger nails on the neck and also caused abrasions and even squeezed the

neck; while she was weeping at the home, her children enquired her; her mother-in-law who went to the field returned home at about 7.00 PM and then she informed her about the incident; on the same day they went to the Ellanthakunta PS and presented the report which is Ex.P1; they remained in the police station in the night and on the next day, she went to Government Area Hospital, Sircilla along with one woman PC; as the lady doctor was not available there, she was taken to Government Hospital, Karimnagar where she was examined by a lady doctor. The lady doctor collected her clothes. This is the evidence of PW1 regarding the incident.

a) In the cross-examination she stated her husband went to Muscat 10 days prior to the incident; her father-in-law was available in the house; she knew the accused for the last 15 years, but he is not their neighbour; he was doing cultivation and accused was not hiring the bullock cart but attending cultivation only; he is a married man and having children; as the accused was their neighbouring land owner, she requested him to fetch DB cart; he was not having DB cart but having bullocks; she went to the house of accused and requested him for DB cart in the presence of his mother; for the first time when the accused came to the field, herself and her mother-in-law were only present in the field; some unknown persons scribed Ex.P1 near the bus stand, Ellanthakunta on her instructions, herself and PW2 went to police station; she did not inform about the incident to Sarpanch or village elders but informed to the neighbours; she went to lady doctor along

with PW2 and police and she was examined by the doctor three days after the incident; bite marks were visible on the left cheek with the help of mirror; when cotton being collected in their field, no such work was going on in the neighbouring lands; she sustained bleeding due to bite injury; she made efforts to push away the accused from her, but accused made her to fell down on the ground in the cotton field; at the time of incident, the cotton plants were giving the yield; she has not attempted to kick the accused as he overpowered her; she has not sustained any injury on the back and rape was committed for about 10 minutes; she went to the doctor with the same clothes that she was wearing at the time of incident; her clothes were stained with blood and semen. She denied the suggestion no incident as deposed by her had happened and accused did not come to her and commit rape. The learned trial Court observed the **demeanour** of the witness and recorded to the effect she was weeping whenever she was asked about the aspect of rape.

12) When the entire evidence of PW1 is intensely scrutinized, it would manifest that offence took place after 6.00 PM when PW1 was alone in their field after coolies and PW2 left that place. There are cogent reasons for accused to be present at the scene of offence. Admittedly, he is the neighbouring land owner of PW1 and most importantly, on that morning PW1 requested the accused to come in the evening with DB cart to transport the cotton bags. In the evening, indeed, he went to field without DB cart and when enquired by PWs.1

and 2, he told them that he would fetch the cart and went away. Since he did not return for some time, PW2 went to fetch a DB cart of accused or some other villager. The accused who was hiding in his field took advantage of loneliness of PW1, rushed there and committed heinous act.

When the cross-examination of PW1 is scrutinized, it must be said that nothing specific could be extracted to impeach the credibility of testimony of PW1 in her chief. Admittedly, PW1 and accused are known persons. She was married about 15 years ago and having two children. Few days prior to the incident her husband went to abroad on job. In those circumstances, I find no reason for the married lady to falsely implicate the accused in the case. It is pertinent to note that in the cross-examination there was not even a single suggestion showing any previous enmity between PW1 and accused by citing any reason for her to implicate him in a false case. It is her specific case that in spite of her request to leave her, he overpowered her and committed rape. She immediately rushed to home by weeping and when her mother-in-law came home, she informed the incident to her and most importantly without any delay they reported the matter to the police at about 9.30 PM. Therefore, I am fully convinced that there is a ring of truth around her evidence and it is insulated against discrepancies and inconsistencies. Therefore, her sole testimony itself builds up confidence in the mind of the Court. Added to it, her evidence gets corroboration on material particulars from other witnesses.

13) PW2 deposed that on the date of incident herself and PW1 went to the field along with 10 coolies at about 10.00 AM to collect cotton. She further stated when accused came to the field in the evening, they asked him to fetch DB cart; though promised, he did not return to the field and therefore, she went to the village to fetch cart while PW1 remained alone at the cotton field as the coolies already left the field. She further stated, in the village she could not find the accused and therefore, requested the neighbour and secured DB cart and went to the field but did not find PW1 and therefore, she returned to home along with cotton bags. At home she found PW1 weeping; when questioned, she (PW1) informed accused bitten on her cheek and threatened to kill and committed rape on her. Then, they went to Ellanthakunta PS and gave complaint to the police. In the cross-examination she stated that accused was neighbour to their field; three persons were collecting cotton in the field of the accused; they were, mother of the accused, one Narsavva and Kusa Mallavva. The accused was having bullocks but not cart.

14) So, when the evidence of PW2 is analysed, it can be said the same is corroborating PW1 to the effect that in the evening when accused came to the field, they asked him to bring DB cart and he went away with a promise to secure DB cart but did not turn up. Therefore, PW2 left PW1 alone in the field and went to fetch DB cart of accused or some other villager. Therefore, the evidence of PW2 confirms that PW1 was alone in the field before the incident. Her evidence would

further narrate that when she went along with DB cart to the field, PW1 was not there; so, she returned home and found PW1 was weeping and on enquiry she informed her about the incident. PW2 is not an eye-witness to the incident. She was informed about the incident within short time after the incident. Therefore, her evidence is relevant under the principle of *res gestae* as laid down under Section 6 of Evidence Act. Further, PW2 accompanied PW1 to the police station to give report.

15) PW3 is the co-villager of PWs.1 and 2, who on the request of PW2 went along with DB cart to their field to transport cotton bags. When they went, PW1 was not found and so they loaded cotton bags and brought back to the house of PW2 where they found some people gathered. On enquiry, PW1 informed that accused committed rape on her. His evidence also corroborates the testimony of PWs.1 and 2 and his testimony also falls within the principle of *res gestae*. Nothing specific is elicited from the evidence of PWs.2 and 3 to discard their evidence. It is clear that prosecution established that accused committed rape on PW1 taking advantage of her loneliness. The evidence of prosecutrix is further corroborated by the medical evidence.

16) PW7 who was the lady doctor DCS at District Headquarters Hospital, Karimnagar examined the prosecutrix on 19.12.2005 and issued Ex.P4—preliminary report and Ex.P6 final report after obtaining

Ex.P5—FSL report. Her evidence is to the effect that she found the following injuries on the person of PW1.

- 1. Contusion on left cheek 3 x 3 cms.;*
- 2. Two bite marks on the left cheek;*
- 3. Tenderness around the mouth;*
- 4. Tenderness on the back;*
- 5. There are blood stains on the blouse on left hand;*
- 6. There are blood stains on the saree;*
- 7. On neck: No injuries on anterior side and posterior side;*
- 8. Abdomen: No injuries found on anterior side and posterior side;*

The doctor preserved vaginal smears slides and vaginal wash and clothes of PW1 and sent them to FSL. She gave preliminary report under Ex.P4 and after receiving the FSL report she gave final opinion under Ex.P6 to the effect that there is evidence of external violence and ejaculation of semen.

17) A close scrutiny of evidence of PW7 would show that the doctor found injuries on the body of PW1 and there is evidence of external violation and ejaculation of semen. PW1's husband went about 10 days prior to the incident. Therefore, spermatozoa as found in vaginal smear slides and vaginal wash as per Ex.P5 would indicate that accused had sexual intercourse and ejaculated spermatozoa. The marks of injuries would suggest an inference that there was a forcible rape.

18) Now the argument of learned counsel for appellant that facts and evidence would manifest that PW1 was a consenting party has to be

scrutinized. It is true that before trial Court no suggestion was given either to PW1 or any other witness that PW1 was a consenting party.

However, in ***Pratap Misra***'s case (1 supra) the Apex Court held thus:

‘Para-2:Furthermore, none of the Courts below tried to examine the possibility which was clearly suggested by the evidence of the prosecution itself that one or more of the appellants may have had sexual intercourse with the prosecution not against her will but with her consent and the connivance of her husband PW2. The learned Sessions Judge dismissed the plea of consent on the ground that it was not pleaded by the accused, completely losing sight of the fact that in a criminal case the accused was not bound by his pleading and it was open to the accused to prove his defence even from the admissions made by the prosecution witnesses or the circumstances proved in the case. The High Court has not considered this aspect at all. Such a wrong approach, therefore, by both the Courts below has resulted in a serious miscarriage of justice to the accused calling for our interference in these appeals.”

19) Therefore, the contention of learned counsel for appellant that accused is entitled to project the circumstances and evidence of the prosecution to his advantage to take an alternative or different plea though not raised the same earlier. It is in this context, the plea of consent has to be looked into.

20) Then, learned counsel for appellant brought to the notice of this Court certain circumstances in his endeavour to establish the plea of consent. It is argued that accused had no DB cart and knowing fully well, PW1 went to him on the morning of incident and requested him

to bring his DB cart to her field apparently for transportation of cotton bags. This was only a ruse to invite him to their field in the evening to satisfy her lust as otherwise, there was no reason for her to invite him to the field. I am unable to accept this plea. It is true PW1 admitted in the cross-examination that accused was not having DB cart but having only bullocks. However, she assigned reasons for her request. As the accused was a neighbouring land owner, she requested him to fetch bullock cart. Therefore, her clear explanation is to the effect that though he was not owning DB cart but only owns bullocks, she requested him to fetch DB cart from others and bring it along with his bullocks to her field to transport cotton and she made the said request in view of the fact that he was none other than their neighbouring land owner and she knew for the last 15 years. Therefore, it is too wild to draw an inference that she invited him to the field only to satisfy her lust.

21) The next argument is that she purposefully sent away her mother-in-law (PW2) to search for bullock cart so as to be alone in the field to spend with accused. This argument also does not hold water. When the evidence of PW2 is perused, she stated that on the evening accused came but without bringing bullock cart and when enquired he promised to bring cart but did not return. Therefore, PW2 went to the village in search of the cart leaving PW1 alone in the cotton field. It is not the case of PW2 that either PW1 requested or forced her to go to village and fetch an alternative cart. On the other hand, it appears PW2

herself went to the village to fetch the alternative bullock cart as it was getting dark. Even in the evidence of PW1 we would find that at about 5.30 PM, PW2 herself went to the village to bring DB cart of the accused or cart of some other person. Her evidence is also to the effect it was PW2 who instructed PW1 to stay but PW1 did not herself ask PW2 to go to the village. Therefore, the argument that PW1 purposefully sent PW2 to the village to remain alone in the field cannot be countenanced.

22) The next argument is that there were no injuries on the back side and private parts of PW1 which would suggest that there was no resistance and she might be a consenting party. This argument does not hold much conviction. The evidence of PW7 which was already extracted supra, would show the doctor found injuries on the person of PW1. The doctor found contusion on left cheek 3 x 3 cms.; tenderness around the mouth; tenderness on the back; blood stains on the clothes and saree. These injuries particularly the injury on the cheek with bite marks and tenderness on the backside and also blood on the saree and clothes would manifest that there was strong resistance and struggle by PW1 and therefore, accused inflicted injuries on her. When all these facts and other circumstances are taken into consideration, the alternative argument that PW1 might be a consenting party will not stand to scrutiny and hence rejected.

23) The next argument is ofcourse, with regard to corrections and mistakes committed by the Investigating Officer in mentioning the date

of examination by the doctor etc. It should be noted that the incident was occurred on the evening of 17.12.2005 and Ex.P1—complaint was made at 21.30 hours on that night and FIR was promptly sent to the Magistrate on 18.12.2005 at 8.30 AM. These circumstances would show that there was no delay in lodging the FIR and transmitting the same to the Court. In that view, it can be said that there is ring of truth in the prosecution case. The mistakes in mentioning the date of examination etc. will not cut across the genuinity of the prosecution case.

24) So, on a conspectus of facts and evidence, this Court is of the considered view that prosecution could able to establish the guilt of the accused for the offence under Section 376 IPC beyond reasonable doubt and the trial Court has rightly recorded the conviction and sentence. Hence, I find no merits in the appeal and it is liable to be dismissed.

25) In the result, the Criminal Appeal is dismissed by confirming the conviction and sentence passed by the trial Court against the accused in S.C.No.186 of 2007. The accused shall surrender before the Trial Court to serve the sentence.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 19.07.2018

Murthy