

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1513 of 2007

ORDER:

This appeal is preferred, by the appellant, who is the accused, aggrieved by the Judgment, dated 25.04.2006, passed in S.C.No.106 of 2005 by the Court of IV Additional District & Sessions Judge, Fast Track Court, Ranga Reddy District, by virtue of which the trial court convicted and sentenced him to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for a period of six months for the offence punishable under Section 376 of the Indian Penal Code and further sentenced to undergo simple imprisonment for one year for the offence punishable under Section 448 IPC.

2. The facts of the case, briefly, as per the charge sheet, are as follows:

On 16.11.2003 at 08:45 PM the victim came to the police station, Saroornagar and gave an oral statement that she, along with her parents and younger brother, was residing at Viratnagar and that she was having three younger brothers. Her father is working in a hotel and mother is working as a labourer. Her parents went on their work and she was alone in their house. At about 03:00 PM, one Madhu came to her house and asked for his brother and when she informed that he was not present in the house, the said Madhu trespassed into the house and closed the doors from inside and forcibly raped her.

While she was weeping, her father came and enquired her, on which she revealed the facts to him. Her father enquired with the said Madhu and beat him with hands, on which he ran away from the spot. The statement of the victim was reduced into writing based on which a case in Crime No.890 of 2003 was registered for the offences under Sections 448 and 376 IPC.

During the course of investigation, the victim was sent to the Government Maternity Hospital for clinical examination. The scene of offence panchanama was conducted; the statement of the witnesses were recorded; accused was arrested and his confessional statement was recorded; his clothes were also seized and he was sent for judicial remand along with a requisition to send the accused for potency test to Osmania Medical College, Hyderabad. The Doctor, who examined the accused, issued a certificate and the Doctor, who examined the victim also issued medical certificate preserving the vagina smears. The seized property i.e. clothes of the victim and the accused and the human semen were sent to the Director of Forensic Laboratory, Hyderabad and by virtue of the report dated 11.02.2004, it was opined that human semen and spermatozoa are detected on items 1 and 2, but their blood group could not be determined and that human blood was detected on item No.2. Based on the said FSL report, P.W.7 issued certificate opining that sexual intercourse cannot be ruled out and P.W.5 also issued certificate opining that there is nothing to suggest that the individual examined is not capable of performing the act of sexual intercourse. After completion of

investigation, the police filed charge sheet against the accused for the same offences.

3. The II Metropolitan Magistrate, Cyberabad, L.B. Nagar, R.R. District took cognizance of the offence under Section 376 IPC and after complying with the provisions of Section 209 Cr.P.C., committed the case to the court of Sessions, Ranga Reddy District. The Metropolitan Sessions Judge, Cyberabad transferred the case to the court of Additional Metropolitan Sessions Judge, Cyberabad and in turn, the same was made over to the IV Additional District and Sessions Judge, (FTC), Ranga Reddy, for trial and disposal in accordance with law. On appearance of the accused, the trial court framed charges for the offence under Sections 448 and 376 IPC and read over the same to the accused. The accused pleaded not guilty and claimed to be tried. During trial, PWs.1 to 9 were examined and Exs.P1 to P8 and MO1 were marked on behalf of the prosecution. The accused was questioned about the incriminating circumstances in the evidence of the prosecution witnesses, when he was examined under Section 313 Cr.P.C. and he denied the truth of the evidence and reported no evidence.

4. The trial court, after evaluating the evidence and the material on record, passed the impugned judgment, against which this appeal is preferred on the ground that the court below ought to have seen that PW4 is mentally retarded and that her evidence cannot be considered. The court below ought to have seen that the blood group of human semen and spermatozoa are

not detected on items 1 and 2. The court below ought not to have ignored the Medical certificate issued by the Medical Officer, which only stated that sexual intercourse cannot be ruled out and it is only a probability. The court below ought to have seen that the accused is known to the prosecution witnesses and there could not have been any trespass in the house of PW4. The court below ought to have also seen that there are no injuries on the body of the victim. The court below ought to have seen that the evidence of PWs.2 and 3 is hearsay and hence, cannot be considered. The court below ought to have seen that the evidence of PWs.1 and 2 is contradicting with the evidence of PW4.

5. Heard the Public Prosecutor appearing for the respondent. In spite of this matter being posted today, making it clear that if none appears for the appellant, the Court shall proceed with the matter in his absence, there is no representation for the appellant.

6. From the record and based on the arguments of the Public Prosecutor, the points that arise for consideration before this court are:

1. Whether the prosecution could succeed in proving that rape was committed on the victim girl by the accused.
2. Whether the judgment of the court below is sustainable.
3. To what relief.

POINT NOs.1 and 2: -

7. PW1, who is the father of the victim girl, stated that the victim is aged about 25 to 26 years and that she is suffering from mental disorder but she can answer the questions, though often she cannot answer. As she was suffering from mental disorder, her marriage was not performed. The accused is the friend of his son. PW1 is working in a hotel. His wife is working as a daily labourer. Speaking about the incident on that day, he stated that he went to the hotel to attend his work. His wife also left the house to attend the labour work. His daughter was alone in the house. He returned to the house at about 03:30 PM and knocked the door, by that time the accused opened the door and came out of the house. Then he questioned the accused why he entered into the house. He replied that he came for his son and ran away. The victim girl came to him weeping and stated that the accused laid her on the ground, bolted the door from inside and committed rape on her. Then he took the victim girl to the police station and informed the police as to what happened. They recorded the statement of the victim girl and sent her for medical examination.

8. In the cross-examination, it was elicited that the victim girl does not have any knowledge about the menstruations. It was suggested that he did not state before the police that on the date of the alleged offence, when he knocked the door, the accused opened the door and came out of the house and that he questioned the accused about his presence at his house at that

time. It was also elicited that the accused has cordial terms with his family members, being a friend of his son.

9. PW2 is the mother of the victim girl. Her evidence is that she was informed by the victim that the accused entered the house and committed rape on her.

In the cross-examination, it was elicited that her daughter is unable to attend to her personal affairs and she assisted her and that she does not know sexual affairs and its consequences and conjugal life. It was also elicited that at first PW1 and her daughter went to the police station and thereafter on knowing the same she also went to the police station. It was suggested to her that her son is due Rs.50,000/- to the accused and when the same was demanded by the accused this case was foisted. The same suggestion is found in the cross-examination of PW1 also but the amount was not suggested.

10. PW3 is the brother of the victim girl. On the date of incident, when he returned to the house, the victim informed him that the accused committed rape on her.

In the cross-examination, he denied that he has obtained a loan of Rs.50,000/- from the accused. Same suggestion was given to him also.

11. PW4 is the victim herself. The court examined her after assessing her mental capacity with regard to giving evidence. From the answers given by the victim, the court came to a conclusion that the witness was in a fit state of mind, though she looked mentally retarded and that she gave rational answers.

She categorically stated that she knows the accused and that he is friend of her younger brother. She spoke about the incident, stating that the accused came to her house, closed the doors, pushed her on the ground and committed rape on her. She also stated that prior to that the accused enquired about her brother. After the incident, her father came to the house, she informed the same to the father and later they went to the police station and from there she was referred to the hospital and the doctors examined her.

In the cross-examination, it was elicited that she was alone in the house at the time of the incident.

12. PW5 is the Doctor, who examined the accused and issued the potency certificate stating that he is sexually impotent. PW6 is a witness for the confession made by the accused and the seizure of the cut drawer of the accused.

13. PW7 is the Assistant Professor in the Government Maternity Hospital, who examined the victim girl, collected the vaginal smears and sent them to FSL and after receiving the FSL report she gave an opinion that sexual intercourse cannot be ruled out.

In the cross-examination, it was elicited that no injuries were found on the genital parts of the victim. She seized petty coat of the victim and handed over the same to the police.

14. PW8 is the Sub Inspector of Police, Saroornagar, who received the report given by the victim girl and conducted part of the investigation. He sent the victim girl to the hospital,

conducted scene of offence panchanama and later handed over the investigation to PW9. PW9 spoke about sending the material objects and the vaginal smear to FSL and about the confession made by the accused and seizure of his cut drawer.

15. The FSL report, which was marked as Ex.P7, shows that human semen and spermatozoa were detected on items 1 and 2 viz. item No.1 being the cotton petty coat and item no.2 being the cut drawer. Human blood was also detected on item No.3. It was noted in the FSL Report that item No.1 is a light violet colour cotton petticoat. But, however, it appears that there is slight error in the identification of the colour of the petty coat. But it is not denied by the accused that it is not the petty coat of the victim girl.

16. Hence, from the above, it is more than clear that the accused entered the house of the victim girl and committed rape on her. The cross-examination could not succeed in proving that there was any motive for PWs.1 to 4 for foisting a false case. The defence that the case was set up, also could not be proved. There is absolutely no basis laid for the suggestion given to PW3 that he took a loan of Rs.50,000/- by the accused.

17. Hence, in view of the above ample evidence, which is not shattered by the cross-examination, this court opines that the prosecution could prove that the accused committed rape on the victim girl. Hence, this court does not find any reason to interfere with the judgment of the court below.

Points 1 and 2 are accordingly answered.

POINT No.3:-

18. Accordingly, the Criminal Appeal is dismissed.

T. RAJANI, J

September 10, 2018
LMV

