

**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**CRIMINAL APPEAL No.1141 of 2007**

**JUDGMENT:**

1 Aggrieved by the judgment dated 31.08.2005 passed in S.C.No.138 of 2005 on the file of the Court of the Principal Assistant Sessions Judge, Tenali, wherein and whereby the respondent herein (A.1 in the said S.C) was acquitted of the offence punishable under Section 376 of IPC, the State preferred this Criminal Appeal under Section 378 (3) & (1) Cr.P.C.

2 The factual matrix that lead to the filing of the present Criminal Appeal is as follows:

a) On 16.09.2004 at about 1.15 PM, P.Ws.1 and 2 submitted a complaint to P.W.8 (P.C.2868 of Adavuladeevi Police Station), basing on which the sentry of the station registered a case in Cr.No.33 of 2004 under Sections 376 and 324 r/w 34 of IPC and issued Ex.P.10-FIR. Thereafter, the Inspector of Police (P.W.11) conducted investigation and during the course of investigation it was revealed that on 15.09.2004 at about 11.00 PM, the respondent herein went to the house of P.W.1 and told her that her husband (P.W.2) fell down near Busi Bavi. Believing the words of the respondent, P.W.1 followed him up to Busi Bavi. Taking advantage of her loneliness, the respondent committed rape on her and left the scene of offence. P.W.1 came back to the house and informed the same to P.W.2.

b) The Investigating Officer sent P.W.1 to medical examination. P.W.7 examined P.W.1 and issued final opinion Ex.P.4 and wound certificate of P.W.1 Ex.P.3. The investigating Officer examined and recorded the statements of the witnesses

and after completion of investigation laid charge sheet for the offence punishable under Section 376 IPC against the respondent (A.1) and under Section 324 r/w 34 IPC against A.1 and A.2.

3 The learned II Additional Munsif Magistrate, Repalle after receiving the charge sheet, numbered it as PRC No.7 of 2005. The learned Magistrate, after following the due procedure, committed the case to the District & Sessions Division, Guntur under Section 209 Cr.P.C. The learned District and Sessions Judge, Guntur has taken cognizance of the offences punishable under Sections 376 and 324 r/w 34 IPC and numbered it as S.C.No.138 of 2005 and made it over to the Principal Assistant Sessions Judge, Tenali for disposal in accordance with law.

4 The learned Principal Assistant Sessions Judge, Tenali framed charges against the respondent (A.1) for the offence under Sections 376 IPC and under Section 324 of IPC against A.1 and A.2, read over and explained to them in vernacular language, for which they pleaded not guilty and claimed to be tried.

5 During the course of trial, on behalf of the prosecution P.Ws.1 to 11 were examined and Exs.P.1 to P.11 and M.Os.1 to 9 were marked. After completion of prosecution side evidence, the accused were examined under Section 313 Cr.P.C with reference to the incriminating evidence available on record against them, which they denied.

6 On behalf of the defence no witnesses were examined but Exs.D.1 and D.6 were marked.

7 Basing on the oral and documentary evidence available on record, the trial Court arrived at a conclusion that the prosecution failed to prove the guilt of the respondent for the offence punishable under Section 376 IPC and acquitted him of the said charge. However, the trial Court found both the accused guilty of the offence punishable under Section 324 IPC and were sentenced to pay a fine of Rs.1,000/- each, in default, to suffer simple imprisonment for a period of one month each. Feeling aggrieved by the judgment of the trial Court in acquitting the accused No.1 i.e. respondent herein for the offence punishable under section 376 IPC, the State preferred the present appeal.

8 The learned Assistant Public Prosecutor representing the State submitted that the trial court failed to consider that the testimony of P.W.1 is sufficient to convict the accused under Section 376 IPC. He further submitted that the trial court placed much reliance on the minor discrepancies in the evidence of the prosecution witnesses and acquitted the accused on assumptions and presumptions. It is his further contention that the trial court ought not to have given much credence to the oral testimony of P.W.7 and Ex.P.3 to P.5. He lastly contended that the findings recorded by the trial court are not sustainable either on facts or in law.

9 Now the points that would emerge for consideration in this appeal are:

i) Whether the prosecution established the guilt of the respondent for the offence punishable under Section 376 of IPC beyond all reasonable doubt? and

ii) Whether the judgment of the trial court is sustainable either on facts or in law?

10 Both the points are inter-linked; hence, this Court is inclined to answer both the points simultaneously in order to avoid recapitulation of the facts and evidence.

11 As seen from the testimony of P.Ws.1 and 2 on 16.09.2004 at about 1-45 PM they lodged a complaint with P.W.10. The testimony of P.W.10 reveals that basing on the complaint lodged by P.Ws.1 and 2 he registered a case in Cr.No.34 of 2004 for the offences punishable under Sections 376 and 324 r/w 34 of IPC. As per the version of the prosecution the alleged offence took place on the night of 15.09.2004 and the complaint was lodged on 16.09.2004. So there is no delay in lodging the complaint. The material available on record clinchingly establishes that P.W.1 set the criminal law into motion.

12 As per the version of the prosecution, the alleged incident took place at Busi Bavi. As per the testimony of P.W.1 the respondent committed rape on her in the fields of Veeranki Venkateswarlu. Ex.P.8 is the scene of offence observation report. P.W.1 has mentioned two different places as the scene of offence. P.W.11 – the investigating officer also stated that P.W.1 has given two places as scene of offence. The place where Busi Bavi is situated and the land of Veeranki Venkateswarlu is not one and the same. The prosecution failed to establish the exact place of the scene of offence.

13 As seen from the testimony of P.W.1, on 15.09.2004 at about 11.00 AM, the respondent came to her and informed that her husband i.e. P.W.2 fell down at Busi Bavi and had taken her to Busi Bavi. As per the testimony of P.W.1, the respondent had taken her to the land of Veeranki Venkateswarlu and pushed her on the ground and committed rape on her by closing her month with his left hand. In spite of her best efforts, she could not resist the respondent in the commission of the offence. At one stage, P.W.1 deposed that the respondent removed his left hand from her mouth. The testimony of P.W.1 clearly reveals that even after removal of left hand of the respondent, she did not make any hue and cry. If the testimony of P.W.1 is taken into consideration, she did not make alarm at the time when the alleged offence took place.

14 It is needless to say that the victim may receive some external injuries in the scuffle if some body committed rape on her. As per the testimony of P.W.7, the victim did not receive any external injuries on her body. As per the testimony of P.W.1, the respondent had taken her towards Busi Bavi from the village centre in a different route. There is no whisper in the testimony of P.W.1 that she questioned the respondent when her husband was not seen at Busi Bavi. As per the testimony of P.W.1 one will take half an hour to reach Busi Bavi from the village. At one stage P.W.2, who is the husband of P.W.1, stated that the respondent was with him up to 11.00 PM on that night. If that is so, how the respondent had taken P.W.1 to the Busi Bavi or the fields of Veeranki Venkateswarlu, whichever the case may be, is

not properly explained by the prosecution. It is not possible for a any one to be at two different places at the same time.

15 The oral testimony of P.W.7 coupled with Exs.P.3 and P.4 clearly reveals that there are no signs of committing rape on P.W.1. The medical evidence is not corroborating with the evidence of the victim. If the medical evidence is taken into consideration, no rape was committed on P.W.1. The testimony of P.W.7 clearly reveals that no spermatozoa was found on M.Os.1 to 3, which belong to P.W.1. For one reason or the other, the investigating agency did not send P.W.1 for medical examination up to 17.09.2004. P.Ws.1 and 2 lived together on 15.09.2004 and 16.09.2004. In such circumstances, the possibility of cohabitation between P.Ws.1 and 2, being wife and husband, cannot be ruled out completely. This is one of the important circumstances to be considered by the Court.

16 P.W.8, who is the sentry of the Police Station, registered the case and issued FIR. In fact, Station House Officer alone is competent to register the case in grave offences. Exs.D.2, D.3, D.4 and D.5 are the contradictions elicited in the cross examination of P.W.1. There are number of material contradictions and omissions in the testimony of P.W.1.

17 The defence counsel elicited in the cross examination of P.Ws.1 and 2 that P.W.1 used to commit theft in the houses of that locality. When the defence counsel put a suggestion to P.W.2 that he committed theft in the fish tanks of A.1 and A.2, P.W.2 simply stated that "I do not know". If really he has not

committed theft in the fish tanks of A.1 and A.2, he would have denied the same. When a suggestion was put to P.W.2 that he committed theft of articles and pledged the same with the respondent, he simply replied that "I do not know". P.W.1 also admitted that her husband, P.W.2, used to commit theft in the houses. Both of them have admitted that villagers imposed fine of Rs.1,000/- on P.W.2. All these aspects clearly go to prove the conduct of P.Ws.1 and 2.

18 Another interesting aspect is that in the cross examination P.Ws.1 and 2 categorically deposed that the respondent never involved in any offence. They further deposed that the respondent never behaved indecently with P.W.1 or he never made any gestures to P.W.1 with an evil motive. As seen from the cross examination of P.Ws.1 and 2, it can be perceived that they certified the conduct of the respondent.

19 The oral testimony of P.W.3 coupled with Ex.P.2 reveals that the respondent received injuries. For one reason or the other, the police did not register criminal case against P.Ws.1 and 2 for causing injuries to the respondent. The version of the prosecution that P.W.1 followed the respondent in the midnight towards Busi Bavi or land of Veeranki Venkateswarlu is somewhat unbelievable. Non-receiving of injuries by P.W.1 also creates a doubt in the mind of the court. Apart from that, the medical evidence completely negates the contention of P.W.1. In view of the disputes between P.Ws.1 and 2 and the respondent, the possibility of implicating the respondent in a false case cannot be ruled out completely. The prosecution miserably failed

to prove the guilt of the respondent for the offence punishable under Section 376 of IPC.

20 The trial Court has meticulously scrutinized the testimony of P.Ws.1, 2 and 7 and the documentary evidence available on record in order to appreciate the rival contentions. Basing on the material available on record, the trial Court arrived at a conclusion that the prosecution has miserably failed to establish the guilt of the respondent for the offence punishable under section 376 of IPC. The trial Court has assigned reasons much less valid reasons to its findings. There is no flaw much less legal flaw in the findings of the trial Court, which warrant interference of this court. I am in complete agreement with the findings recorded by the trial Court in all aspects. I see no merits in this Criminal Appeal and hence the same is liable to be dismissed.

21 In the result, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions if any pending in this appeal shall stand closed.

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**T. SUNIL CHOWDARY, J.**

**Date: 8<sup>th</sup> February, 2018**  
**Kvsn**