

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CRIMINAL APPEAL No.466 OF 2013

Between:

Pintu Yadav .. Appellant

AND

The State of Andhra Pradesh .. Respondent

DATE OF JUDGMENT PRONOUNCED: 24-03-2018

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes
 2. Whether the copies of judgment may be Marked to Law Reporters/Journals. Yes
 3. Whether Their ladyship/Lordship wish to see the fair copy of the Judgment? Yes

A. RAMALINGESWARA RAO, J

A. SHANKAR NARAYANA, J

**HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO
AND
HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA**

CRIMINAL APPEAL No.466 OF 2013

JUDGMENT: (Per Hon'ble Sri Justice A. Shankar Narayana)

The appellant herein is the accused in S.C.S.T. S.C. No.34 of 2012 on the file of Special Judge for Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act – cum - V Additional District & Sessions Judge, Medak at Sangareddy.

2. Questioning the conviction recorded under Section 235 (2) of the Code of Criminal Procedure, 1973 (for short, 'the Code') for the charge under Section 376 (f) of Indian Penal Code (I.P.C.) and also for the charge under Section 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act, 1989') and infliction of sentence of Rigorous Imprisonment for a period of 10 years with payment of fine of Rs.1,000/- for the former charge with default sentence of two months Simple Imprisonment, and Imprisonment for Life with fine of Rs.2,000/- with default sentence of three months Simple Imprisonment for the second charge, he preferred the present Appeal under Section 374 (2) of the Code.

3. Heard Smt. A. Gayathri Reddy, learned Legal Aid Counsel for the appellant-accused and the learned Public Prosecutor for the State of Telangana.

4. Certain relevant facts for adjudication of the Appeal grounds and the submissions made by the learned counsel for the appellant and the learned Public Prosecutor require advertence.

5. The incident in the present case, in fact, arouses conscience of a prudent person. A tender aged girl of 7 years, belonging to Scheduled Tribe, alleged to have been sexually abused by the appellant herein, belonging to Yadava community, admittedly an upper caste community. The victim, who is examined as P.W.2, was prosecuting 2nd class, staying in Tekmal Scheduled Tribes Hostel. The father of the victim girl, P. Mohan, who is examined as P.W.1, works as driver. On 17.5.2012 at about 9.30 p.m. when he returned home from his duty, he found his daughter was absent at home and when he enquired with his wife, she told him that at about 7.30 p.m., their daughter went outside and did not return. Both of them, along with other Thanda people, started searching for their daughter in the surroundings and outskirts of the village, Ilapur Chinna Thanda, but could not find her. They, therefore, returned home. On 18.5.2012 at about 6.00 a.m. their tenant, Smt Poonam Kumari, W/o. Uday, belonging to Bihar State informed them that when they went to attend calls of nature in the outskirts of the village, they observed their daughter. Thereupon, P.W.1 and his wife rushed to the spot and brought their daughter home. They found the face of their daughter was swollen, bloodstains over clothes and thighs of their daughter. When they enquired, she alleged to have told that when she was

playing at about 7.30 p.m., a resident of their Thanda, who belongs to Bihar State, took her to the outskirts of Thanda forcibly, laid her down on ground and committed rape on her. She even identified the culprit, aged 20 years.

6. P.W.1 lodged a complaint with IDA Bollaram. A case in Crime No.70 of 2012 under Section 376 (f) of I.P.C. and under Section 3 (2) (v) of the Act, 1989 was registered and Ex.P-7, First Information Report was issued. Investigation was initiated and having observed all due formalities, charge-sheet was laid alleging the aforesaid offences against the appellant-accused.

7. During course of investigation, statements of relevant witnesses were recorded, scene of occurrence panchanama was conducted in the presence of P.W.7 and another, seized blood stained earth, control earth, inner garment, tobacco sachet, key chain, zarda sachet, and one pocket note book of the appellant thereunder. At about 2.00 p.m., on 18.5.2012, P.W.5–Sri Pathloth Subba Rao, belonging to the said village, produced the appellant before P.W.14 with injuries. The appellant-accused was referred to Government Hospital, Sangareddy for treatment and examination, and even a certificate was issued as to potency of the appellant suggesting that he is capable of performing sexual act. The appellant-accused said to have confessed the commission of offence and in consequence thereof he led P.W.13 and mediators, P.W.8 and Sri Teegula Srinivas Reddy (L.W.11), to his house and handed over his vest, which was seized

along with the trouser, shirt of the appellant under cover of a panchanama. He was then remanded to judicial custody by the learned Magistrate concerned. On a request made by P.W.14 to P.W.15, who was the Tahsildar, Patancheru Mandal, after due enquiry, P.W.15 issued Community Certificates stating that the victim girl (P.W.2) belongs to Scheduled Tribe and the appellant belongs to Yadava community, recognized as Backward class. The Warden of hostel, who is examined as P.W.10, issued a certificate regarding age proof particulars of P.W.2.

8. The learned Special Judge examined the appellant-accused on 19.10.2012 and framed the charges under Section 376 (f) of I.P.C. and Section 3 (2) (v) of the Act, 1989. Since he pleaded not guilty, he was tried for the said charges.

9. In order to prove the charges framed against the appellant, prosecution altogether examined fifteen (15) witnesses and marked Exs.P-1 to P-13, besides exhibiting the Material Objects 1 to 10.

10. The learned trial Judge believed the evidence of victim and holding that even medical evidence completely corroborates that P.W.2 was subjected to sexual abuse and the evidence of P.W.12 coupled with documentary evidence Exs.P-5 and P-8 and opining that the evidence let in by the prosecution would positively prove the charges framed against the appellant-accused and that the prosecution

could prove both charges beyond all reasonable doubt, recorded conviction under Section 235 (2) of the Code. Having questioned him, as mandated by the provisions of Section 235 (2) of the Code, opined that the period of ten (10) years rigorous imprisonment would meet the ends of justice so far as the offence punishable under Section 376 (f) of I.P.C. is concerned, and, accordingly, inflicted the same besides imposing fine of Rs.1,000/- with default sentence to undergo simple imprisonment for a period of two months. Concerning the charge under Section 3 (2) (v) of the Act, 1989, learned Special Judge opined that it would be just and reasonable to award Imprisonment for Life for the reason P.W.2 is a tender aged girl and the sexual assault on her would attract the offence within Section 3 (2) (v) of the Act, 1989, besides imposing fine of Rs.2,000/- with default sentence of three months Simple Imprisonment, giving set off to the period already undergone by the appellant-accused under Section 428 of the Code.

11. Learned Counsel, Mrs. A. Gayathri Reddy, initially contended that P.W.1 since did not mention the fact that the appellant is a Bihari in Ex.P1, it gives some suspicion over the case of the prosecution since no material objects were seized from the scene of occurrence, and that the appellant did not make any confession and at any rate according to the learned counsel even if there is evidence on record to prove the charge under Section 376 (f) of I.P.C., still, the charge under Section 3 (2) (v) of the Act, 1989 is unsustainable, since

the prosecution completely failed to prove the intention on the part of the appellant that the sexual abuse on P.W.2 was on the ground that she belongs to Scheduled Tribe, and, therefore, the learned Legal Aid Counsel would urge that the second charge would not sustain, and the learned Sessions Judge, somehow, lost sight of the purport of expression occurring in Section 3 (2) (v) of the Act, 1989.

12. Learned Public Prosecutor would submit that the evidence of P.W.2–victim girl alone is clinching enough to prove the charge of sexual abuse committed on her by the appellant. According to the learned Public Prosecutor, there is nothing to show in her cross-examination that she was tutored to speak in a particular manner and there is nothing to show that there has been any enmity between the two families nor there was animosity on any other ground between the families to falsely implicate the appellant. He would further submit that the medical evidence on record also corroborates the evidence of P.W.1 as regards injuries sustained by P.W.2 and there is nothing to dispute the identity of the appellant, who is the culprit, besides circumstantial evidence also supporting the evidence of P.Ws. 1 to 3. Thus, according to the learned Public Prosecutor, charge under Section 376 (f) of I.P.C. is proved beyond all reasonable doubt by the prosecution through the evidence on record.

13. Turning to the second charge, learned Public Prosecutor would fairly come out that the prosecution is unsuccessful in establishing that the appellant committed rape on P.W.2 on the ground

that she belongs to Scheduled Tribe so as to satisfy the main ingredient of clause (v) of sub-section (2) of Section 3 of the Act, 1989, and, therefore, the appellant is entitled to acquittal so far as the second charge is concerned.

14. The aforesaid submissions, we would like to examine on the anvil of the evidence let in by the prosecution and the authority relied on by the learned counsel for the appellant.

15. A perusal of the evidence of P.W.1, father of victim (P.W.2), would show that P.W.2 was missing from 7.30 p.m. on 17.5.2012 and P.W.3 informed that she left the house at about 7.30 p.m. and did not return by evening till 9.30 p.m. when P.W.1 returned home. They went in search of her along with Thanda people and on the next day early hours at about 6.00 a.m. their Thanda people informed the presence of their daughter (P.W.2) in the outskirts, upon which they rushed and found P.W.2 with swollen face, clothes stained with blood and blood from the private parts of P.W.2, and, on their enquiry, P.W.2 told that on the previous night a Bihari person luring her that he would pay Rs.4/- for purchasing chocolates, took her to the outskirts of Thanda, removed her innerwear, beat and bit her and she became unconscious and he committed rape on her. That has been the substance of P.W.1's evidence and so also evidence of P.W.3, mother of the victim. Both of them were though cross-examined elaborately, still, nothing is brought out to view their testimony with suspicion.

16. Turning to the evidence of crucial witness, P.W.2, being the victim, learned Special Judge having put certain preliminary questions to assess whether she was able to comprehend the questions put to her, and having satisfied that she was able to understand the questions and give answers, proceeded with recording her evidence. She asserts that she knows the accused and nine months prior to her deposing in Court, while she was near her house, he promised to pay her Rs.4/- to purchase chocolates, took her to the outskirts of Thanda, removed her drawer, closed her mouth and beat her and thereafter, he made her to lie on the ground and slept on her. That has been the version she had spoken. In her cross-examination, she answers to a question that when P.W.1 asked her she told P.W.1 that a Bihari person committed the offence. However, to the suggestion that she did not give the name, she denied the said suggestion. What is significantly important is, her evidence would clearly prove the identity of the appellant and the acts in the direction of commission of the offence with regard to which the first charge is framed.

17. It is no doubt true, she did not express narrating the details minutely, but, her evidence is so natural for the reason for a girl of 7 years, it would be very difficult to state such details when they relate to outraging her modesty. Though, the evidence was recorded by way of 'in camera proceedings', the same has to be inferred for the reason that there would be strangers around her. However, the fact that the medical evidence on record through P.W.9,

would show that she found (i) Bruise over upper half of chest and neck (ii) Sub-conjunctival haemorrhage of right eye (iii) Abrasion on the right cheek (iv) Contusion over left eye (5) Fresh tear on the external genetolia, Hymen found not intact, Vaginal tear was present in the posterior vaginal wall extending up to rectum and involving anus; Fourcheited tear was present and she issued Ex.P5 wound certificate would corroborate the injuries on the person of P.W.2 and she collected vaginal smears. She denied the suggestion that she cannot say definitely whether there was sexual assault or not. Thus, even in her cross-examination there was nothing to suggest that P.W.2 was not subjected to sexual assault. The very presence of injuries, more particularly, injury No.5 which were fresh tears, as described by PW.9, in our view, would suffice to corroborate the evidence of P.W.2 that she was subjected to sexual assault.

18. Turning to whether the appellant is capable of performing sexual act is concerned, the evidence of P.W.12 - Deputy Civil Surgeon, Government Headquarters Hospital, Sangareddy, who subjected the appellant to potency test has submitted his report as in Ex.P8, writing therein that there was nothing to suggest that the appellant was impotent.

19. Turning to the identity of the appellant as culprit, P.W.2's evidence is sufficient as it inspires confidence and implicitly reliable. Therefore, we have no hesitation to arrive at the conclusion that the evidence on record definitely indicates that the appellant was

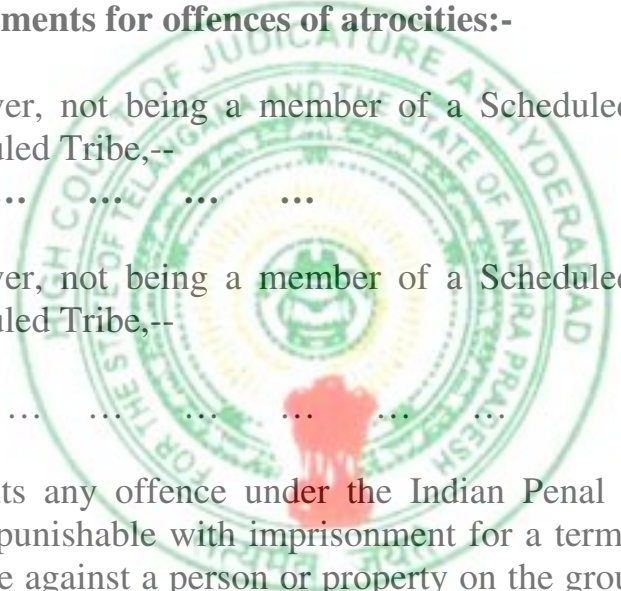
the person, who sexually assaulted P.W.2 or subjected her to rape. Therefore, we are of the view, that the prosecution positively proved the charge under Section 376 (f) of I.P.C. against the appellant beyond all reasonable doubt.

20. On our intrinsic examination of the finding recorded by the Special Judge, we are in complete agreement with the conclusion arrived at by the learned Special Judge in holding that the prosecution proved the charge under Section 376 (f) of IPC against the appellant, and, therefore, we are not inclined to interfere with it as the said finding is based on proper appreciation of evidence on record in accordance with the evidentiary rule. Even with regard to the sentence of rigorous imprisonment of ten (10) years inflicted on the appellant, we are of the opinion that it was the minimum sentence provided therefor. Keeping in view that the victim was a tender aged girl of seven years and the appellant in order to satisfy his carnal desire targeted her, luring her that he would pay Rs.4/- for purchasing chocolates, taken her to the outskirts and beat her and committed rape on her, as could be gathered from the injuries found on her face, and acted as a beast in satisfying his lust, we opine that no adequate and special reasons to interfere with the sentence of Rigorous Imprisonment inflicted and, therefore, we confirm the conviction recorded under Section 235 (2) of Code for the charge under Section 376 (f) of I.P.C. and the sentence of ten (10) years Rigorous Imprisonment, and payment of fine of Rs.1,000/- with default

sentence of two months Simple Imprisonment. On our examination of the record, we find that somehow while framing the charge, clause-2 of Section 376 was not mentioned by the trial Court. Therefore, the charge ought to be under Section 376 (2) (f) of IPC.

21. Turning to the second charge under Section 3 (2) (v) of the Act, 1989, we would like to appreciate the common submissions made by both, the learned Legal Aid Counsel and the learned Public Prosecutor. We intend to extract the relevant provision.

“3. Punishments for offences of atrocities:-

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- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--
... ..
 - (2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--
 - (i) to (iv)
 - (v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;
 - (vi) and (vii)

22. Thus, we find the expression “on the ground that such person is a member of a Scheduled Caste or Scheduled Tribe” is occurring in clause (v). The said provision was occurring prior to the present amended provision. As per the present Amended provision, even ‘knowledge’ is sufficient to attract the offence under clause (v). Since the offence in the present case took place in the year 2012, by

which date the un-amended clause was in vogue, it is difficult to deduce the intention on the part of the appellant to commit the offence under Section 376 (2) (f) of I.P.C. on the ground that P.W.2 belongs to Scheduled Tribe. Thus, somehow, the learned Sessions Judge, in our view, went wrong in viewing the purport of Section 3 (2) (v) of the Act, 1989. Even the investigating agency appears to have proceeded on the premise that commission of an offence under IPC would attract section 3 (2) (v) invariably in case victim belongs to either Scheduled Tribe or Scheduled Caste.

23. In the present context, this Court earlier in **Talari Mala Obulesu and others v. State of Andhra Pradesh**¹, had occasion to deal extensively with the purport of Section 3 (2) (v) of the Act, 1989. It would be profitable to refer to the expression of this Court in the said case contained in paragraph Nos.5 and 6 thus:

“5. The provisions of Section 3 (2) (v) of the Act will be attracted where any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more committed against a person or property on the ground that such a person is a member of Scheduled Castes or Scheduled Tribes or such property belongs to such member by a person who is not a member of such Castes or Tribes. It is also to be seen that while for a particular offence under the Penal Code, imprisonment prescribed is for a term of ten years or more, under Section 3 (2) (v) of the Act the punishment that can be awarded for the same offence is, imprisonment for life and with fine. Thus for the same offence, when it is committed under the

¹. 1992 (3) ALT 509

circumstances mentioned in Section 3 (2) (v) of the Act, enhanced punishment is provided for under the Act. Consequently it is incumbent upon the Presiding Officers of the Court to frame the charge invoking the relevant provisions of the Act. Thus under Section 3 of the Act, enhanced punishment is provided for under the Act compared to the one that can be awarded under the Indian Penal Code. Thus in the event of invoking the provisions of the Act, it is incumbent upon prosecution to make mention of the relevant provision of the Act also in the charge.

6. It is to be seen that the petitioners herein are charged under Sees. 147, 148, 302 read with 149 IPC. It is no where on record to show that the offence was committed on the ground that the deceased or injured were members of Scheduled Castes or Scheduled Tribes which is an essential ingredient of Section 3 (2) (v) of the Act, while the assailants are not from Scheduled Castes or Scheduled Tribes. What I mean to say is that to invoke the provisions of Section 3 (2) (v) it is incumbent upon the prosecution to show that the offence was committed by non-S.Cs. and S.Ts. on the ground that the deceased or injured are members of Scheduled Castes or Scheduled Tribes. To drive home the point, I would like to give an illustration. A and B were travelling by a train sitting side by side and without being known to each other. On the way, altercation arose between them, A stabbed B resulting in the instantaneous death of B and on trial it was held that the offence was under Section 304 Part II of the Indian Penal Code where the maximum punishment is 10 years or fine or both. Since A and B were strangers they never knew the caste of each other. Can it be said that section 3 (2) (v) of the Act be invoked in this case because the deceased was a member from Scheduled Caste while the assailant was not a member of either Scheduled Castes or

Scheduled Tribes. The answer is an emphatic 'No' because the offence was not committed on the ground that the deceased was a member of Scheduled Castes or Scheduled Tribes. So, unless the offence is committed on the ground that the injured or the deceased was a member of the Scheduled Castes or Scheduled Tribes or in a case relating to property, the property belongs to a member of S.Ts., or S.Cs. the provisions of the Act cannot be invoked though the other conditions are satisfied, namely, the assailant was not from S.Cs. or S.Ts. while the injured/deceased is from S.Cs. or S.Ts."

In the case at hand, in our considered view, the prosecution, somehow, did not let in evidence to prove that the accused committed sexual assault on PW.2 on the ground that she belonged to scheduled tribe. The said intention on the part of the accused is not brought out by the prosecution by leading evidence in that direction. Therefore, the aforesaid decision squarely applies to the present fact-situation. Hence, we hold that the prosecution failed to prove the charge under Section 3 (2) (v) of the Act, 1989 against the appellant. The learned trial Judge, somehow, overlooked the particular ingredient occurring in Section 3 (2) (v) of the Act, 1989, and merely proceeded on the premise that since PW.2 belonged to the scheduled tribe, the offence under Section 3 (2) (v) of the Act, 1989 would automatically apply and, thus, held that the prosecution could prove the said charge. Therefore, we are of the considered view that the finding recorded by the trial Court in regard to the charge under Section 3 (2) (v) of the Act, 1989 is tainted with illegality warranting interference. Hence,

the said finding and conviction recorded for the charge under Section 3 (2) (v) of the Act, 1989 and the sentence of Imprisonment for Life inflicted and the fine amount imposed on the accused are liable to be set aside.

24. Hence, we hold that the prosecution is unsuccessful in proving the charge under Section 3 (2) (v) of the Act, 1989; and, consequently, conviction of accused for the said charge is unsustainable, and, therefore, we acquit the accused for the charge under Section 3 (2) (v) of the Act, 1989.

25. Since the sentence of Rigorous Imprisonment of ten (10) years inflicted on the appellant for the charge under Section 376 (2) (f) of I.P.C., is confirmed by us, the present Appeal is partly allowed directing the appellant to serve out the remaining period of sentence for the charge under Section 376 (2) (f) of IPC.

As a sequel thereto, miscellaneous petitions if any pending in the Appeal shall stand closed.

A. RAMALINGESWARA RAO,J

A. SHANKAR NARAYANA, J

Dt. 24.03.2018
MD/YVL/gbs