

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1050 OF 2009

JUDGMENT:

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), is filed by the appellant/accused aggrieved by the judgment, dated 31.07.2009, rendered in Sessions Case No.29 of 2009 on the file of VII Additional Metropolitan Sessions Judge, Hyderabad, whereby and whereunder, the learned Sessions Judge found the appellant/accused guilty of the offence punishable under Section 376 IPC and accordingly, he was convicted and sentenced to undergo rigorous imprisonment for a period of ten (10) years and to pay fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of three months for the said offence.

2. Heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent-State. Perused the record.

3. Learned counsel for the appellant/accused would submit that there are material contradictions in the evidence of prosecution witnesses; that though there is inconsistency in the medial evidence, the trial Court found the appellant/accused guilty of the offence under Section 376 IPC and accordingly, convicted and sentenced him to suffer rigorous imprisonment for a period of ten (10) years, which is harsh and ultimately prayed to set aside the same.

4. Learned Additional Public Prosecutor would submit that there are direct witnesses i.e., P.Ws.1 to 3 to the alleged offence;

that there is also evidence of P.W.4 to substantiate the allegations levelled against the appellant/accused; that the victim (P.W.2) was ten years old as on the date of sexual assault made against her by the appellant/accused; that the trial Court is justified in convicting the appellant/accused for the offence under Section 376 IPC and ultimately, prayed to dismiss the appeal.

5. The prosecution case is that the appellant/accused committed sexual act on the victim (P.W.2) on 06.06.2008 at old Railway 'A' cabin (Presently) running 'Niranthara Vidya Kendram', SCR, Secunderabad Division at platform Nos.4 and 5 of Secunderabad Railway Station. There is specific evidence of P.W.1-Head constable of Railway Protection Force, Secunderabad, who is a direct witness in this case, that on 06.06.2008, when he was on duty, some passengers informed him about the offence taking place at platform Nos.4 and 5, near South cabin. Immediately, he rushed to the scene of offence and noticed the appellant/accused was in a drunken state, wearing only underwear and the clothes of the victim were removed. He handed over the victim and the appellant/accused to the Inspector, Government Railway Police and lodged Ex.P.1-report. Ex.P.1 corroborates with the evidence of P.W.1 in all material particulars.

6. P.W.2 is the victim in this case. According to the evidence, she is 9 years old, but as per her deposition, she was 11 years old. She was capable of giving rational answers, it was held, when she was examined by the trial Court. She stated that she was studying third class. She gave details of the custody etc. The specific evidence of P.W.2-victim is that the appellant/accused approached

her at bus stop, offered some biscuits and chocolates, mixed something in thums up and thereafter brought her to a big building situated at Secunderabad Railway Station and made her to drink, removed her clothes and laid on her. On hearing her weeping, police came to the scene of offence and sent the victim to the hospital. Though the victim was subjected to lengthy cross-examination, nothing was brought on record to discredit her testimony.

7. There is also evidence of P.W.3, who is an eyewitness to the incident. He stated that he was working as Senior parcel porter in Railway Station. In the month of June, 2008, in the evening, he noticed a gathering near old cabin of Secunderabad Railway Station near platform No.4 and observed the appellant/accused with a drawer and the girl, aged about 9 years, who was nude. Public caught hold the appellant/accused and thereafter, handed over the appellant/accused and the girl to G.R.P police Station, Secunderabad.

8. P.Ws.4 and 5 are the material witnesses in this case, who are medical practitioners. P.W.4 stated that she examined the victim girl on 06.06.2008 at 11:30 PM. On examination, she found tear of posterior vaginal wall about 3 cms in size and tear on the hymen. She collected two smears and after receiving the Forensic Science Laboratory report, she gave opinion that there was evidence of sexual intercourse. In the cross-examination, she stated that she had not collected the blood and urine of the victim to know whether she was intoxicated or not. The evidence of P.W.5-Assistant Professor in Gandhi Medical College, reveals that

he examined the appellant/accused and gave potency certificate. P.W.6 is the Investigating Officer, who deposed about the investigation conducted in this case. The medical record marked as Exs.P.2, P.4 and P.7, reveals the sexual assault on the victim. So there is specific evidence of victim that the appellant/accused made her nude and slept on her and the appellant/accused was found wearing only drawer. Immediately, the victim was examined by P.W.4-doctor, who found tear of posterior vaginal wall about 3 cms in size and tear on the hymen. She opined that there was evidence of sexual intercourse. There is no reason for P.Ws.1 to 3 direct witnesses to depose false against the appellant/accused. Moreover, appellant/accused was caught hold red-handedly along with the victim and thereafter handed over to police. There are no material omissions and contradictions in the evidence of prosecution witnesses. There is impeachable evidence on record to substantiate the accusation against the appellant/accused for the offence under Section 376 IPC. The trial Court analyzed the whole evidence and rightly found the appellant/accused guilty of the offence under Section 376 IPC. As per the evidence, the victim was 9 years old on the date of evidence. Therefore, there is justification of imposing 10 years imprisonment.

9. Under these circumstances, there is nothing to take a different view to reduce the sentence of imprisonment imposed by the trial Court. The appeal is devoid of merit and is liable to be dismissed.

10. Accordingly, the Criminal Appeal is dismissed confirming the conviction and sentence imposed against the appellant/accused

for the offence punishable under Section 376 IPC vide judgment, dated 31.07.2009, in Sessions Case No.29 of 2009 on the file of VII Additional Metropolitan Sessions Judge, Hyderabad.

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

DR.JUSTICE SHAMEEM AKTHER

JANUARY 31, 2019
YVL



THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



CRIMINAL APPEAL No.1050 OF 2009

Date: 31.01.2019

YVL