

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1030 OF 2009

JUDGMENT:

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973, is filed by the appellant/accused aggrieved by the judgment, dated 15.09.2009, rendered in S.C.No.278 of 2008 on the file of IV Additional Metropolitan Sessions Judge, Hyderabad, whereby and whereunder, the appellant/accused was convicted and sentenced to undergo rigorous imprisonment for a period of six years and to pay fine of Rs.2,000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 366-A I.P.C. and further, sentenced to undergo simple imprisonment for a period of two years and to pay fine of Rs.500/-, in default to suffer simple imprisonment for one month for the offence punishable under Section 506 I.P.C. Both the substantive sentences are directed to run concurrently.

2. Heard learned counsel for the appellant/accused and the learned Special Assistant Public Prosecutor representing the respondent/State and perused the record.

3. Learned counsel for the appellant/accused would contend that without there being any legally acceptable evidence, the appellant/accused was convicted and sentenced for the offences punishable under Sections 366-A and 506 I.P.C.; that there is inconsistency in the evidence of PW.5 – prosecutrix; that on suspicion, a false report was lodged against the appellant/accused by PW.1, father of the victim; that there is no corroboration in the

evidence of PWs.1 to 5; that the trial Court had failed to take note of the statement of PW.5 (victim) that she went to her relations house on the eve of Muharram; that the prosecution failed to prove the guilt of the appellant/accused beyond all reasonable doubt and ultimately, prayed to set aside the conviction and sentence recorded against the appellant/accused by the trial Court.

4. Learned Special Assistant Public Prosecutor would contend that there are five material witnesses viz., PWs.1 to 5. PW.5 is the victim in this case. She has categorically deposed the manner how she was wrongly confined and subjected to illegal acts. There is no omission or material contradiction in the evidence of prosecution witnesses. The prosecution proved the guilt of the appellant/accused beyond all reasonable doubt and ultimately, prayed to sustain the conviction and sentence recorded against the appellant/accused by the impugned judgment.

5. In view of the submissions made by the learned counsel for both sides, the following points have come up for determination:

“1. Whether the prosecution proved the guilt of the appellant/accused beyond all reasonable doubt for the offences punishable under Sections 366-A and 506 I.P.C.?”

2. Whether the conviction and sentence recorded against the appellant/accused by the impugned judgment is liable to be set aside?”

Points 1 and 2:

6. PW.5 is the victim in this case. PWs.1 and 3 are the parents of PW.5. PW.2 is the junior paternal uncle of PW.5. PW.5, in her

evidence, stated that she was born on 31.05.1992 and the date of offence was 14.03.2007. Her evidence reveals that she knew the appellant/accused, who spoiled her life. The appellant/accused used to work in the school of minority, which is by the side of function hall, situated near to Santosh Nagar Police Station. At the time of incident (in the year 2007), she was studying 7th Class. On 14.03.2007 at about 11:00 AM, the appellant/accused has shown her some photographs and stated that he made them as Actresses in cinemas and he also made poor girls as Actresses. It is stated that the appellant/accused called her through a teacher and took her forcibly on a Scooter, on the pretext to bring her Hall Ticket. He took her to Charminar, Kishan Bagh and gave Thumps Up. She does not know what was mixed in that Thumps Up. She became drowsy. Her legs and hands became cool. She was not in a position to speak. Thereafter, the appellant/accused took her to Banjara Hills on the Scooter, where shooting was going on. She was made to sit there forcibly. One male person sat by her side and put his hand on her shoulder. She removed his hand forcibly. The appellant/accused became wild. Thereafter, she was taken from that place and ultimately, to a house, which was in Second Floor in Jubilee Hills. Thereafter, she was thrown into a room and the door was closed. She found ten girls there. Two of them, who were of her age, were naked. One Hindu girl asked her why she came there. She replied that Mujahid (accused) brought her there on the pretext to get Hall Ticket. She asked the other girls why they were weeping. They informed her that she would also be made naked within a short time. Thereafter, one tall person entered into the room and took her to the adjacent room, where

shooting was going on. There, two girls were found in naked condition and four male persons were having no clothes over their bodies. Then one person came to her and made her naked. She was in Menses during that time and blood was oozing out from her private part. The said person thrown her on the floor. She became unconscious. Thereafter, she was shifted to a hall in that house. Then the appellant/accused shown her a knife and threatened her not to disclose anything about the incident either to her parents or to the police. The appellant/accused also stated that he had lot of influence and if she informs anyone about the incident, he will kill her parents and brother. Thereafter, the appellant/accused brought her to the ground floor, made her sit on the Scooter and took her to Charminar, Jubilee Hills and then to Banjara Hills. At about 11:00 or 11:30 PM, when they reached Mata Ki Khedki area, they saw a police van. The appellant/accused, by seeing the police vehicle, took his Scooter in a small lane and when the Scooter became slow, she jumped from the Scooter and ran towards a Temple and concealed herself near a van, which was parked on the road and the appellant/accused was shouting towards her. Thereafter, she made a telephone call to her uncle – PW.2 from a public telephone by placing one Rupee coin and asked him to come to Mata Ki Khedki area. After some time, PWs.1 and 2 came there and took her, but she did not reveal about the incident to them, as she was under threat from the appellant/accused. When PWs.1 and 2 enquired her during night hours, she falsely stated that she went to Alawa. On the next day morning, they went to the police station and she did not disclose anything to the police, as she was under threat from the appellant/accused. After four days, when

her father (PW.1) was weeping, she informed the real happenings, as to how she suffered in the hands of the appellant/accused. Thereafter, they went to the police station and narrated the incident to the police. She also stated that she gave statement before the Magistrate.

7. Ex.P2 is the Date of Birth Certificate of PW.5 issued by the Municipal Corporation of Hyderabad, which disclose the date of birth of PW.5 as 31.05.1992. PWs.1 to 3, who are the father, uncle and mother of PW.5 - the victim, supported the prosecution case, particularly the absence of PW.5 etc.

8. PW.6, who is having a business unit near the school where PW.5 was pursuing her studies, deposed that the appellant/accused was working in their Viceroy Function Hall. PW.5 is the student of the school adjacent to the said function hall.

9. PWs.4 and 7 have not supported the case of the prosecution and were declared hostile. PW.8 is the Sub-Inspector of Police, who conducted investigation in this case. He deposed about the lodging of Ex.P1-Report by PW.1 and the investigation conducted in the case. PW.9 is another Investigating Officer, who after verifying the investigation conducted by PW.8 – Sub-Inspector of Police, filed the charge sheet.

10. It is crystal clear from the evidence of PW.5, who is 15 years old as on the date of alleged incident, that the appellant/accused lured her by tendering a false promise and took her away from the legal guardian with an intention to seduce her for illicit intercourse by some other persons. There is specific evidence of PW.5 that at

Banjara Hills, some person put his hand on her shoulder. She has also given the details of other persons, who made an attempt to sexually exploit her at Jubilee Hills in the name of shooting, and how the appellant/accused misbehaved with her and seduced her for the purpose of intercourse by other persons. There is also specific mention of PW.5 that one male person undressed her and during that time, as she was in menses, blood was oozing from her private part and as such, she was thrown on the floor. Further, there is specific evidence of PW.5 that the appellant/accused had threatened her with dire consequences to eliminate her parents and brother, if she discloses the entire episode to anyone. Simply, the appellant/accused had denied everything. There is no reason for PW.5 to depose against the appellant/accused. There is consistency and corroboration in the evidence of PW.5 with other material oral evidence and documents. There are no omissions or material contradictions. PW.5 had also stated in her evidence that she did not disclose the happenings to her parents on the night when she met them, due to threats given by the appellant/accused and after four days, when she saw her father weeping, she revealed everything to him and thereafter, they went to the police station and reported the matter to the police. Further, PW.5 is a girl of 15 years old, which is established by cogent and convincing evidence. There is no reason for her to fabricate a story and depose against the appellant/accused. Her continuous absence was demonstrated by examining PWs.1 to 3. Under these circumstances, all the requirements under Sections 366-A and 506 I.P.C. are proved beyond reasonable doubt against the appellant/accused by the prosecution. The trial Court rightly convicted and sentenced the

appellant/accused for the offences punishable under Sections 366-A and 506 I.P.C. Under these circumstances, the quantum of sentence imposed by the trial Court is quite and just. There are no circumstances to interfere with the same on any ground. The appeal is devoid of merit and is liable to be dismissed.

11. In the result, the Criminal Appeal is dismissed confirming the judgment, dated 15.09.2009, rendered in S.C.No.278 of 2008 on the file of IV Additional Metropolitan Sessions Judge, Hyderabad.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

January 31, 2019.
MD

Dr. SHAMEEM AKTHER, J

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1030 OF 2009

January 31, 2019

MD