

BAIL SLIP : The Petitioner/ Accused was directed to be released on bail by the order of the High Court dated 03-03-2010 in CrI.A.M.P.No. 490 of 2010 in CrI.A. No. 355 of 2010.

[3251]

IN HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**TUESDAY ,THE ELEVENTH DAY OF JULY
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO: 355 OF 2010

Criminal Appeal Under Section 374(2) of Cr.P.C against the Judgment Dated 11-02-2010 in SC.No 381 of 2008 In crime No. 260 of 2007 on the file of the Court of the II Addl. Asst. Sessions Judge, R.R. District.

Between:

BAKKA RAMU, S/o Laxmamma, Driver R/o Guttala Begumpet, c/o Hanuman Metla, Kolhapur Mandal, Mahaboobnagar Dist.

...APPELLANT

AND

THE STATE OF ANDHRA PRADESH, Represented by its Public Prosecutor, High Court of Andhra Pradesh, Hyderabad. Through the P.S., Madhapur (Cr.No.260/2007 - PRC 99/2007)

...RESPONENT

Counsel for the Appellant :SRI. C BUCHI REDDY

Counsel for the Respondents :PUBLIC PROSECUTOR

The Court made the following:

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.355 of 2010

JUDGMENT:

This Criminal Appeal is filed by the appellant – accused, questioning the judgment dated 11.02.2010 passed in S.C.No.381 of 2008 by the learned II Additional Assistant Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad.

2. Heard. Perused the record.

3. PW4 – *victim* was acquainted with the appellant. On 01.06.2007 PW4 was returning home after completion of her work. When she reached Durgamcheruvu, appellant stopped her and expressed his love for her and asked to marry him. Though PW4 refused his request, appellant forcibly took her in an auto to a place at Ayyappa Society. From there, they travelled to another village, however PW4 does not remember the name of the village. According to the evidence of PW4, appellant forcibly committed rape on her in the house of one of his relatives. Thereafter, appellant left PW-4 at his senior maternal aunt's house and left the place. Police went there and brought her to the police station.

4. Initially, on the basis of complaint of PW1 who is the mother of PW4 – victim girl, Crime No.260 of 2007 was registered by the police as

'Girl Missing'. Basing on the statement of PW4 – victim girl, police altered the section of law from Girl Missing case to Section 376 I.P.C. and investigated. The final report was numbered as S.C.No.381 of 2008 and tried before the learned II Additional Assistant Sessions Judge, Ranga Reddy District at L.B. Nagar.

5. The learned Assistant Sessions Judge having examined the witnesses and hearing arguments, found the appellant guilty of the offence punishable under Section 376 of IPC and accordingly, convicted and sentenced him to undergo rigorous imprisonment for seven (7) years. Aggrieved by the same, appellant approached this Court by preferring this appeal.

6. Learned counsel appearing for the appellant would submit that victim made a bald statement that she was subjected to forcible rape. There is no other evidence including medical evidence, corroborating the evidence of PW4, to substantiate her claim of forcible rape. Ex.P6 - FSL report does not reflect that there was any kind of semen or spermatozoa found on the clothes of the victim girl. Further, in her evidence, Doctor – PW6 stated that no signs of external injuries were found on the person of victim girl – PW4. Since it is the solitary testimony of PW4 that was made basis for conviction and her evidence cannot be believed nor reliable, counsel prayed to set aside the conviction. He further relied on the judgment of the *Hon'ble Supreme*

Court in Vimal Suresh Kamble v. Chaluverapinake Apal S.P. and another¹, in which case, the Hon'ble Supreme Court was dealing with the evidence of prosecutrix which did not inspire confidence due to inconsistencies. In the said case, the medical evidence on record did not support the prosecution evidence, since no semen or blood stains were found in the examination nor any injuries found on the person of the victim. Accordingly, the Hon'ble Supreme Court has dismissed the case of the prosecution and acquitted the accused.

7. Learned Assistant Public Prosecutor would submit that the evidence of PW4 would suffice to infer that appellant committed rape on her. Since the conviction is based on the evidence of the victim girl, the same cannot be interfered with and prayed to dismiss the appeal.

8. PW4 – victim girl stated that initially she went in an auto to a place at Ayyappa Society; from there to a village and she does not know the name of the village. From there they went to the appellant's relative house, where the alleged incident of rape had taken place. From the said undisclosed place of offence, PW4 was left at the house of appellant's maternal aunt and she was picked up by the police.

9. The details where they stayed at Ayyappa Society was not stated by PW4 and she is unable to state the name of the village. PW4 was

¹ 2003(1) ALD (Crl.) 314 (SC)

unable to identify the village. The police did not make any effort to conduct scene of offence proceedings, at the place where the alleged incident of rape has taken place by conducting investigation.

10. Doctor – PW6 deposed that she did not find any external injuries on the person of the victim girl. Though an allegation is made that appellant had committed rape on her forcibly, it casts any amount of doubt in the background of no injuries being found on the body of victim girl and the scene of offence not being identified either by the victim girl or during investigation.

11. Though the age of the victim girl – PW4 was claimed to be around 16 years, no proof was placed by the prosecution either by sending her to ossification test or any age determination test. In view of such glaring infirmities in the prosecution case, wherein the age of the victim was not determined, scene of offence not being identified and no corroboration from medical evidence, this Court deems it appropriate to extend benefit of doubt to the appellant. The conviction and sentence recorded by the learned Sessions Judge in the above Sessions Case, for the offence punishable under Section 376 IPC is liable to be set aside.

12. Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against appellant – accused in the judgment, dated

11.02.2010 in S.C.No.381 of 2008 on the file of the learned II Additional Assistant Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, for the offence punishable under Section 376 IPC, is hereby set aside. Appellant stands acquitted.

Miscellaneous Petitions, pending if any, shall stand closed.

//TRUE COPY//

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR



SECTION OFFICER

To,

1. The II Additional Assistant Sessions Judge, RR District at L.B. Nagar, Hyderabad.
2. The IX Metropolitan Magistrate, Cyberabad, Kukatpally.
3. The Superintendent, Cherlapally Jail, Central Prison, R. R. District.
4. One CC to SRI. C. BUCHI REDDY, Advocate [OPUC]
5. Two CCs to the Public Prosecutor, High Court for the State of Telangana, at Hyderabad(OUT).
6. Two CD Copies

DL

kam

Dme.

HIGH COURT

DATED:11/07/2023



Judgment

CRLA.No.355 of 2010

ALLOWING THE CRIMINAL APPEAL

⑨ pma.
9/8/23.