

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HON'BLE SRI JUSTICE K.SURENDER
AND
THE HON'BLE SRI JUSTICE ANIL KUMAR JUKANTI**

CRIMINAL APPEAL Nos: 865 of 2015 and 914 of 2017

Bail Slip : The Appellants/ Accused No.1 was directed to be released on bail by the order of the High Court dated 21-09-2015 in CrI.A.MP.No.1350 of 2015 in CrI.A.No.865 of 2015.

Criminal Appeal No.865 of 2015

Appeal under Section 374(2) of Cr.P.C aggrieved by the Judgment dated 16-09-2015 passed in S.C.No.9 of 2014 on the file of the Court of the I Additional Sessions Judge, Adilabad.

Between:

Peddur Naresh, S/o. Narsaiah, Age:26 years, Occ: Tractor Driver R/o. Pedda Bellal Village of Kadam Mandal Adilabad District.

...Appellant/Accused No.1

AND

The State of Telangana, through CI of Police Khanapur, Adilabad District, Rep. by Public Prosecutor High Court of Judicature at Hyderabad.

...Respondent/Complainant

Counsel for the Appellant: Sri S. Surender Reddy

Counsel for the Respondent: Public Prosecutor

Criminal Appeal No.914 of 2017

Appeal under Section 378(3) & (1) of Cr.P.C against the Judgment dated 16-09-2015 passed in S.C.No.9 of 2014 on the file of the Court of the I Additional Sessions Judge, Adilabad.

Between:

The State of Telangana rep. by The Public Prosecutor, High Court at Hyderabad.

...Appellant/Complainant

AND

1. Peddur Naresh, S/o. Narsaiah, Age:25 years, Caste: Padmashali, Occ: Tractor Driver, R/o. Pedda Bellai Village of Kadam Mandal.
2. Mudurukolla Narsaiah, S/o. Venkanna, Age:30 years, Caste: Pusaverla, Occ: Labour, R/o. Pandavapur Village of Kadam Mandal.

...Respondents/Accused

Counsel for the Appellant: Public Prosecutor

Counsel for the Respondent No.1: Sri S. Surender Reddy

The Court delivered the following:

THE HONOURABLE SRI JUSTICE K.SURENDER

AND

THE HONOURABLE SRI JUSTICE ANIL KUMAR JUKANTI

CRIMINAL APPEAL Nos.865 of 2015 and 914 OF 2017 .

COMMON JUDGMENT: (per The Hon'ble Sri Justice K.SURENDER)

1. Accused Nos.1 and 2 were tried for the offences under Sections 302, 201 r/w.34 and 376 of the Indian Penal Code. A1 was convicted under Section 376 of Indian Penal Code and A2 was acquitted of all charges.

2. Criminal Appeal 865 of 2015 is filed by Appellant/A1 questioning his conviction under Section 376 of Indian Penal Code. The State filed Criminal Appeal No.914 of 2017 for acquitting A1 and A2 under Sections 302 and 201 r/w.34 of the Indian Penal Code.

3. When the appeal filed by the State had come up before the Division Bench, the Division Bench on 25.10.2017 directed that Crl.A.865 of 2015 shall be posted along with the appeal filed by the State i.e. Crl.A.No.914 of 2017. Accordingly, both the appeals are clubbed. Both the appeals are heard and disposed off by way of this common judgment.

4. Heard Sri S.Surender Reddy, learned counsel for the Accused No.1 in CrI.A.No.865/2015 and learned Public Prosecutor for the State in CrI.A.No.914 of 2017.

5. The prosecution case is that PW.1 is the son of the deceased who lodged complaint with the Police on 24.12.2012 at 8:00 A.M. In the said complaint, PW.1 stated that his deceased-mother was doing coolie work and on 16.12.2012, the deceased and his maternal aunt Athram Laxmi Bai -PW.6 and PW.8 went to market. In the evening his aunt (PW.6) returned home and informed PW.1 that the deceased stayed back in the market. Deceased did not return, as such PW.1 and PW.6 searched for the deceased in the houses of the relatives and surrounding villagers, but, she could not be traced.

6. On 24.12.2012, a female dead body was found near Narsapur village. PW.1 and others went there and identified the dead body as that of the deceased. The body was decomposed, maggots and insects were all over the body. The dead body was completely naked. PW.1 suspected that someone might have throttled her to death due to quarrel for daily wages or due to illegal relation or for any other reason. Ex.P1-complaint was received by PW.15. PW.15 recorded the statement of PW.1 and then handed over the investigation to PW.16-

Inspector of Police. PW.16 went to the scene of offence and observed the scene of offence and dead body. Photographs were taken and the statements of PWs.2 to 5 were recorded. The blood stained soil, control earth and the wearing apparel of the deceased were also seized. PW.14 who is the Doctor went to the scene of offence and conducted postmortem since the body was in a highly decomposed state and could not be taken to hospital. On 25.12.2012, PW.16 examined PWs.6, 7, 9 and 10 and others.

7. While the investigation was pending, it is alleged that PW.11 who is an ex-sarpanch of Kaddam village, surrendered the appellant/A1 before Police. According to PW.11 the appellant went to him and confessed that he had committed the murder of the deceased. Accordingly, PW.11 took the appellant/A1 and handed him over to PW.16. In the presence of PW.13 and another, confession of appellant/A1 was recorded. Thereafter, A2 and A3-Juveniles were also arrested by the police on the basis of information given by A1. At the instance of A1 and A2, the motorcycle used at the time of offence was seized. On the outskirts of Narsapur village a stone was shown by A1 and A2 with which the deceased was allegedly killed. M.O.8 is the said stone that was seized at the instance of A1 and A2.

8. Investigation was concluded and charge sheet was filed against A1 and A2. According to PW.16, A3/Juvenile was also involved against whom charge sheet was filed in the Juvenile Court.

9. The charges framed against A1 and A2 by the I Additional Sessions Judge, Adilabad are as follows;

"Firstly: That you accused No.1 and 2 along with A3 (juvenile) on 16th day of December, 2012 at about 7 p.m. at the outskirts of Narsapur village in Sy.No.287, caused the death of Athram Laxmi Bai by throwing boulder on her face in which you no.2 caught hold of the legs of the deceased. You No.1 pelted boulder on her face and A3 crushed her throat due to her illicit intimacy with you No.1 and 2 and you No.1 and 2 thereby committed an offence punishable U/Sec. 302 r/w.34 of IPC and within the cognizance of this Court.

Secondly: That you A1 on the same date, time and place as mentioned in Charge No.1 supra, committed rape on the deceased by taking her to the out skirts of Narsapur village and later caused her death by throwing boulder on her head and that you No.1 thereby committed an offence punishable U/Sec.376 and 201 r/w.34 of IPC and within the cognizance of this Court."

10. Having examined the witnesses, the learned Sessions Judge acquitted A1 for the offences under Sections 302 and 201 r/w.34 of IPC, acquitted A2 for the offence under Section 302 r/w.34 of IPC, and convicted A1 only for the offence under Section 376 of IPC.

11. Learned Counsel appearing for the appellant/accused would submit that conviction was recorded by the learned Sessions Judge for committing rape of PW.2. However, PW.2 did not state anything about rape being committed by the appellant-A1 as such, the question of conviction does not arise.

12. Learned Public Prosecutor would submit that A1 and A2 were arrested by the Police and pursuant to their confession, the stone with which the accused committed murder of the deceased was recovered. The witnesses PW.6 and PW.10 have seen the deceased going along with A1. Since there is last seen evidence and thereafter the dead body was found, the learned Sessions Judge ought to have convicted the accused 1 and 2 for the murder of the deceased.

13. The evidence of last seen as stated by PW.6 and PW.10 cannot be made basis to infer that the deceased was with the appellant soon before her death. PW.6 is the aunt of the complainant-PW.1. She stated in the cross-examination that she had seen A1 for the first time in the Court on the date of her evidence. However, the said version of PW.6 that she saw the deceased going along with A1 was not informed to PW.1 nor finds place in the complaint filed by PW.1. Similar is the evidence of PW.10 who stated that he has seen the

deceased moving along with A1. He further volunteered that the deceased used to move with Tractor driver and also with A1 who was on his bike. The said evidence also cannot be considered in view of the vague statement that was made and also for the reason of not stating the same during the earliest point of time.

14. Accused No.1 was convicted for committing rape of the PW.2. PW.2 was declared hostile to the prosecution case. She stated in Court that she suspected that A1 and A2 might have killed her mother. PW.2 further stated that A1 came to their house twice and slept in their house after consuming liquor. However, PW.2 did not state about her examination by any doctor during her deposition before Court. PW.12 is the doctor who examined the victim girl/PW.2 namely Athram Rajibai @ Rajitha d/o.Srinivas, aged 11 years, on the ground that she was raped by a known person namely Pedduri Naresh. At the time of examination pubic hair, vaginal swabs and vaginal smears were taken. PW.12 gave opinion initially that intercourse might have taken place and final opinion would be given after Forensic lab report. Ex.P6 is the examination report of PW.12. The samples taken from the victim were sent to FSL. Ex.P7 is the FSL report. In Ex.P7 10 items were examined. Final opinion Ex.P8

was given and according to Ex.P8 sexual intercourse was attempted on Athram Rajibai @ Rajitha, d/o.Srinivas, aged 11 years.

15. PW.2 was examined on 15.09.2014. She stated that she was aged 17 years before the Court. However, Ex.P6 and P8 show that the victim girl was aged 11 years. When PW.2 has not stated anything about rape being committed on her, learned Sessions Judge committed error in relying on Exs.P6 and P8 to record conviction under Section 376 of IPC. In the absence of any evidence by PW.2 that she was subjected to rape relying on Exs.P6 and P8, which do not reflect any injuries on the body or any kind of blood or semen to be that of the appellant, the question of conviction does not arise. Firstly, PW.2 did not support the version of rape committed on her and secondly Ex.P6 and P8 do not contain any details of commission of rape.

16. Insofar as the appeal by the State is concerned, the learned Sessions Judge has rightly found that only on the basis of M.O.8-stone, recovered at the instance of A1 and A2, it cannot be said that it was A1 and A2 who committed the murder. Even according to the prosecution case, the dead body was found and thereafter complaint was filed. The place of offence was not discovered at the instance of

appellant or the other accused. The learned Sessions Judge has rightly acquitted A1 and A2 for the offence under Section 302 and 201 r/w.34 of IPC.

17. Accordingly, the appeal filed by the State in CrI.A.No.914 of 2017, is dismissed.

18. The appeal filed by A1 in CrI.A.No.865 of 2015, is allowed setting aside the conviction recorded by the I Additional Sessions Judge, Adilabad, in SC.No.9/2014, dated 16.09.2015, for the offence under Section 376 of IPC. The appellant/A1 is acquitted.

A.V.S.S.C.S.M. SARMA
JOINT REGISTRAR

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SECTION OFFICER

To,

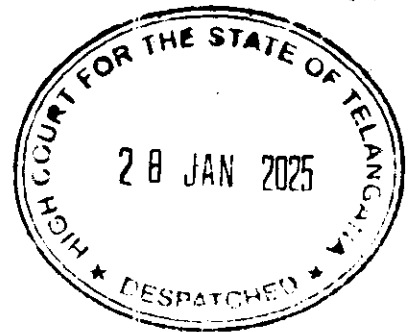
1. The I Additional Sessions Judge, Adilabad. (with records, if any)
2. The Additional Judicial Magistrate of First Class, Nirmal.
3. The Superintendent, Central Prison, Warangal.
4. The Station House Officer, Khanapur Police Station, Adilabad District.
5. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad [OUT]
6. One CC to Sri S. Surender Reddy, Advocate [OPUC]
7. Two CD Copies

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HIGH COURT

DATED:31/12/2024



COMMON JUDGMENT

CRLA.Nos.865 of 2015 and 914 of 2017

**CRLA.No.914 of 2017
IS DISMISSED
CRLA.No.865 of 2015
IS ALLOWED**

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20/01/25
to 25