
(2004) 08 AP CK 0085

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 985 of 1997

Battina Dharma Rao

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-08-2004

Acts Referred:

Evidence Act, 1872 — Section 53, 54

Penal Code, 1860 (IPC) — Section 324, 354, 376, 511

Citation : (2004) 2 ALD(Cri) 784 : (2005) 1 ALT(Cri) 381 : (2005) CriLJ 362

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : A. Ravi Shankar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri A. Ravi Sankar, the learned counsel, representing appellant and the learned Additional Public Prosecutor.

2. The sole accused in Sessions Case No. 161 of 1993, on the file of the Assistant Sessions Judge, Sompeta had preferred the present Criminal Appeal.

3. The case of the prosecution, in brief, is that on 21.2.1993 at 5.30 p.m., when P.W.1-Sangaru Papamma was returning from the "coconut tope" of her brother and going to her village, on the way, the accused with an intention to commit rape on her, taking the advantage that she alone was returning through that way, forcibly caught her, threw her on the ground and when he tried to remove her saree, she raised alarming cry and the accused grew wild and gave a blow with his long handle knife on her right upper arm, causing severe bleeding injury to P.W.1 and on receiving said injury she fell un-conscious. On hearing the cries of P.W.1, P.Ws. 2 to P.W.4 and others came there and witnessed the incident and found P.W.1 having lost consciousness and accused went away from the scene of offence. Then, P.W.1 was taken to Government Hospital, Palasa. P.W.1 gave report to the police, Vajrapukotturu and the same was registered as Crime No.

10 of 1993 and subsequently, the Sub Inspector of Police after completing the investigation and after filing charge sheet, the Judicial Magistrate of First Class, Palasa had taken the case on his file, u/s 376 r/w 511 I.P.C., and committed the matter to the Court of Sessions, Srikakulam, which was made over to the learned Assistant Sessions Judge, Sompeta.

4. On appearance of the accused and on the material available on record, the learned Judge framed charges u/s 354 and 324 I.P.C. and the accused pleaded not guilty. On behalf of the prosecution, P.Ws. 1 to 12 were examined, Exs. P.1 to P.5 were marked and M.O.1 was also marked. On behalf of the defence, Exs. D.1 to D.4 were marked. On appreciation of the evidence available on record, the learned Judge ultimately had convicted and sentenced the accused for rigorous imprisonment for six years and to pay an amount of Rs. 4,000/- by way of fine, for the offence u/s 354 I.P.C. and the accused also sentenced to undergo rigorous imprisonment for three years and to pay a fine amount of Rs. 4,000/- for the offence u/s 324 of I.P.C, in total Rs. 8,000/-, in default of payment of fine amount, the accused shall undergo simple imprisonment for a period of one and half years for the offence u/s 354 and 324 I.P.C., and both sentences shall run consecutively and it is also ordered to pay compensation of Rs. 4,000/- to the injured-P.W.1 out of Rs. 8,000/-. P.W.1 is entitled to receive an amount of Rs. 4,000/- after appeal time. Aggrieved by the same, the present appeal is preferred.

5. Sri A. Ravi Sankar, learned counsel representing the appellant-accused would contend that P.W.2 to P.W.4 are relatives of P.W.1 and P.W.2 are having some land disputes with the accused and that is the reason why this false case had been foisted. The learned counsel also would submit that Ex. P.1 is in English and its scribe is not known, not only to P.W.1, but all the other witnesses also deposed that they are not aware of the scribe of Ex. P.1. thus, none had identified the handwriting of Ex. P.1 and Ex. P.1 itself is doubtful. The learned counsel also submitted, in this case, relatives alone were examined, though several persons gathered and several houses are there, in the near vicinity. The learned counsel would submit that P.W.1, no doubt deposed that P.W.5 was also raped by accused, P.W.6 is the husband of P.W.5 and this aspect relates to bad character of the accused and the same cannot be relevant and cannot be taken into consideration in view of Sections 53 and 54 of the Indian Evidence Act. The learned counsel would submit that at any rate, the punishment proposed is highly excessive.

6. On the contrary, the learned Additional Public Prosecutor would submit that there is no reason why P.W.1 should think of implicating or making such serious allegations against the accused only. The mere fact that P.W.2, the brother of P.W.1 is having some disputes cannot be taken as a ground to disbelieve with the clear evidence of P.W.1. Though, the other witnesses who had seen the accused running away are relatives of P.W.1, on the ground of interestedness alone the evidence can not be discarded, at best the evidence can be scrutinized with due

care and caution. The learned counsel also had drawn the attention of this Court to the evidence of P.W.1 who had deposed about the conduct of the accused and also P.W.9 the doctor and Ex. P.2, the Wound Certificate, which definitely supports the version of the prosecution. The learned counsel also had taken this Court through the evidence recorded by the learned Judge and would contend that the mere contradiction that P.W.1 was coming along with P.W.2, her brother, is not a material contradiction. If all the facts and circumstances in toto are appreciated the prosecution version may have to be believed and hence in the light of the fact that prosecution had proved its version, the conviction and sentence imposed are liable to be confirmed.

7. Heard both the counsel.

8. The evidence of P.W.1 is that P.W.2 is her elder brother and she knows P.Ws. 3 to 10 and also the accused and the offence had taken place at about 5 1/2 years ago at about 5.30 p.m. in front of the poultry farm, at that time she was going to the house from the "tope" of her brother and when she reached opposite to the poultry form of Chinta Neelayya, the accused stood across the mud road and the accused caught hold of her both shoulders, pushed her back and she fell down and the accused lifted her saree and langa and attempted to commit rape. When she raised cries like "NAKU NYAYAM CHEYANDI, DHARMAM CHEYANDI" and on hearing her cries, P.Ws. 2 to 4 and P.W.8 came there, when she pushed the accused, the accused fell down towards her right side, then the accused beat her on the middle of the right upper arm with a knife and caused a bleeding injury, and the accused was holding "INUPA PIDI KATTI" with his left hand. She also deposed that while P.Ws. 2 to 4 and P.W.8 came to the scene of offence, the accused ran away towards village and then she lost her consciousness and regained consciousness within ten minutes and people gathered there, then she had narrated the offence to a person of her village, who had drafted the report and she had put her thumb impression. No doubt, she deposed that she cannot remember the name and other particulars of the report. She further deposed that P.Ws. 2 to 4 and P.W.8 had taken her in a bullock-cart to Government Hospital, Palasa for treatment. Ex. P.1 is her report presented to the police. Ex. P.1 reads as hereunder:

"On 21.2.1993 at about 5.30 p.m. when I am returning from my brother's tope, when I reached near to the village, our villager Battina Dharmarao, s/o late Appayya caught hold of me and forcibly attempted to commit rape on me and when I refused and did not accept for his sexual lust and when tried to remove my saree, I raised big cries and then the said Battina Dharmarao beat me with his Chuettu Katti on my right upper arm and caused bleeding injury and escaped from there. I became senseless and fell down on the spot. Then my villagers came and took me to the Government Hospital, Palasa, on a cart. Today on 22.2.1993 I gave this report to you - Hence requested to take necessary action in this regard and give justice to me."

9. On the strength of this report, the Sub Inspector of Police, Vajrapukotturu P.S,

registered Crime No. 10 of 1993 u/s 376 R/w 511 and 324 of I.P.C. On the said report, the Sub Inspector of Police came to the Hospital and recorded her statement and she was treated as in-patient for one month at Government Hospital, Palasa. P.W.1 further deposed that the accused was addicted to drinking (alcohol), he used to move in the village with a knife and whenever he saw a woman alone, he used to commit rape on her. The knife, shown to her in open Court was identified by her and it was marked as M.O.1.

10. P.W.2 had supported the version of P.W.1 in all material particulars. He had narrated the incident what actually happened and how the accused was running away. P.Ws. 3 and 4 also had well supported the version of P.W.1 and submissions at length were made on the strength of Exs. D.1 to D.4 marked in the statements of P.W.1 and P.W.2, which were no doubt put to the investigating officer, which read as hereunder.

"Ex. D.1: My self and my brother are returning from our tope near to our village, our villagers by name Bathini Dharmarao, son of late Appayya forcibly caught hold of and pulled me on the floor and intended to outrage my modesty to that effect he tried to lifted my clothes."

11. Ex. D2 & D3: "Thereafter the above name accused by name Bathini Dharmarao immediately took a knife (Local made knife)(Chettu Kathi) and beat me on my left shoulder thereby I sustained injury to my right hand and thereafter ran away from that spot."

12. Ex. D4: "The above named accused by name Bathini Dharmarao is beating the right hand of my sister with a long handling knife on the right hand and thereafter I witnessed the incident."

13. On the strength of this, elaborate submissions were made that the very incident is doubtful since it is not her case that she was coming along with her brother and the brother came when the incident happened on hearing the cries of P.W.1, it is a material contradiction and hence the evidence of P.Ws. 1 and 2 definitely cannot be believed. Likewise the evidence of P.W.3 and 4 also had been attacked on the ground that they are only interested witnesses. I had given my anxious consideration to the evidence of P.Ws 1, 2, 3 and 4. On a careful scrutiny of evidence, it is clear that the incident on the fateful day had happened. It is also pertinent to note that initially the crime was registered u/s 376 r/w 511 of Indian Penal Code, but the learned Judge on the material available had framed charges u/s 354 and Section 324 I.P.C. It is no doubt true that P.W.5 is the wife of P.W.6. The evidence of P.Ws. 5 and 6 is in relation to the character of the accused. These witnesses deposed that two months prior to the offence, while P.W.5 was proceeding towards the fields, the accused raped her, and these witnesses also had deposed certain other particulars. It may be that the bad conduct of the accused may not be relevant, but however the said evidence is on record. P.W.7 deposed that he knows the accused and also P.Ws 1 to 7 and he is residing at Sainuru. At about 5 years back the offence had took place at 5.00

p.m., and on the same day evening he came from his cashew tope to his house and he came to know that accused tried to rape P.W.1, but the villagers tried to catch hold of the accused but he escaped and ran away and he came to know that P.W.1 received an injury on her right upper arm, and he was examined by the police. The evidence of P.W.8 is also to the effect that he knows the accused and also the witnesses and at about 5 years back at 5.00 p.m., the offence had taken place, at the distance of 15 yards, from the village to the scene of offence and at that time, he was at his house and he heard some commotion from the scene of offence and he went there and found P.W.1 with some injury on right upper arm. No doubt, he deposed that he had not seen the accused while at the scene of offence, but he deposed that P.W.1 was unconscious and after regaining conscious, she had disclosed what had happened. So the evidence of P.Ws 2 to 4 is relevant to the extent what actually happened as narrated immediately by P.W.1, since they had witnessed the accused running away, exactly, at the relevant time. No doubt, the evidence of P.W.7 and 8 is helpful only up to some extent what actually had transpired thereafter.

14. P.W.9 is the doctor who had deposed about the injuries and issued wound certificate, Ex. P.2. It is stated in Ex. P.2 wound certificate:

"1. A mole on the right side of the chest just below the I-collar bone.

The injured person was first seen by the undersigned: at 10.30 p.m. on 21-02-1993 and the examination commenced at 10.30 p.m. on 21-02-1993.

The following injuries were found:-1) An incised wound of "x1"x1" over the middle of the right upper arm.

(N.C.) are clean cut and topering bleeding present. X ray right upper arm. AP & Lateral views were taken on 24-02-1993 vide X-ray No. 142. shows no bony injury.

I am of the opinion that the above injury is simple in nature and would have been caused by a sharp edged weapon as alleged. The age of the injury is about 4 to 6 hours. The above injury can be possible with a knife".

15. P.W.10 also deposed that at about 5 years back, the offence had taken place at 5.30 p.m. and he was at the house and he came to know about the offence from the villagers and the villagers were afraid of catching hold of the accused and P.W.1 sustained an injury on her right upper arm, he came to know about the same through the villagers and he had also seen the injury of P.W.1. This evidence is also just like the evidence of P.Ws. 7 and 8. The evidence of P.W.11 is that on that day he was not in the village, prior to that three days of the offence, he left the village and went to the hospital for treatment and after he returned to the village and he came to know in the village that the accused raped P.W.1.

16. The evidence of P.W.12, the Sub-inspector of Police is that while he was in-charge of police station, P.W.2, the brother of P.W.1, presented the report and on the basis of the report, Crime No. 10 of 1993 was registered u/s 376 r/w 511 IPC

and u/s 324 IPC, and he sent original first information report along with the report to Judicial First Class Magistrate, Palasa and also to the concerned and the same is marked as Ex. P.5. Then he had sent P.W.1 to the government hospital and recorded the statement of P.W.1, then proceeded to the scene of offence, prepared a rough sketch at the scene of offence and recorded the statements of the witnesses. P.W.12 had tried to arrest the accused, but found the accused absconding from the village, and on 02-03-1993 at about 6.00 p.m., he found a person called B. Dharma Rao with a knife, he arrested him at the same place and he seized the knife in the presence of mediators, P.Ws. 3, 4 and he brought the accused along with knife to the police station and sent the accused to judicial custody. After receipt of the wound certificate he filed the charge sheet. This witness also deposed that P.W.11 stated before him as in Ex. P4 and M.O.1 is knife, which he seized from the accused at the time of arrest.

17. The mere fact that P.W.1 and other witnesses deposed that they couldn't recollect the name of the person who had drafted Ex. P.1 may not be so material since the contents of Ex. P1 are clear and categorical. No doubt certain statements were made that Ex. P1 is in English and all these witnesses were illiterate. An English knowing draftsman, on hearing what had been stated by P.W.1 could have drafted, on this ground the first information report cannot be viewed with any suspicion. The evidence of P.W.1 is so clear and categorical. It is no doubt true that a contradiction that she was coming along with her brother had been marked. But in the considered opinion of this Court, this is not such a material contradiction for the reason that P.W.1 was coming and it may be that P.W.2 also was there at some distance and on hearing the cries, immediately P.W.2 also reached the spot and accused ran away. This would definitely probablise the version of the prosecution. Apart from the evidence of P.W.2, the evidence of P.W.3 and 4 also is available to the effect that the accused was just running away and the victim, P.W.1, had narrated what had happened, immediately after the incident. There is other evidence also on record no doubt the said evidence is in the nature of hearsay, since they had spoken that they have been informed about the incident. On the strength of this evidence, the learned judge after recording findings in detail had arrived at a conclusion that the accused is guilty both u/s 354 IPC and u/s 324 IPC, and had sentenced him to undergo imprisonment and also imposed fine. Section 354 of IPC dealing with the assault or criminal force to a woman to outrage her modesty as amended by the state of A.P. Act 6 of 1991 dated 01.04.1991 reads as hereunder:

18. Section 354. Assault or criminal force to woman with intent to outrage her modesty:

"Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Provided that the Court may, for adequate and special reasons to be mentioned

in the judgment, impose a sentence of imprisonment of either description for a term which may be less than five years, but which shall not be less than two years."

(A.P. Act 6 of 1991(w.e.f. 1-4-1991)

19. It is no doubt true that the prior bad character, which had been deposed, by P.W.5 and 6 may not be relevant and the same need not be considered. It is represented that the appellant-accused is only a first offender and apart from this aspect of the matter, the wife and children are dependents on him and he is the breadwinner of the family.

20. Taking into consideration of the over all facts and circumstances, the conviction imposed u/s 354 I.P.C. is hereby confirmed but the sentence is modified to a period of two years and as far as the imposition of fine is concerned, the same is hereby confirmed and as far as the conviction u/s 324 I.P.C. is concerned the sentence of imprisonment is hereby set aside, and the imposition of fine amount of Rs. 4,000/- is hereby confirmed, i.e. the total fine of Rs. 8,000/- (Rs. Eight thousand only) to be paid, in default, the accused shall undergo the simple imprisonment for a period of six months. It is brought to the notice of this Court; the fine amount had already been paid. The sentences imposed to run concurrently and the payment of amount of Rs. 4,000/- out of Rs. 8,000/- to P.W.1 by way of compensation also is hereby confirmed. Accordingly, the conviction, as such u/s 354 and 324 I.P.C. are hereby confirmed, but the same are modified to the imposition of R.I. as specified supra and also the fine as specified supra, and in the alternative the imprisonment referred to supra, except modifying the sentence imposed u/s 354 and 324 I.P.C., in all other aspects, the findings of the learned judge are hereby confirmed subject to the said modification. The appeal shall stand dismissed. The bail bonds shall stand cancelled. It is needless to say that the accused shall surrender and serve the rest of the sentence and the accused also is entitled to set of if any in accordance with law.