
(2004) 07 AP CK 0003

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 376 of 1997

Ganipisetty Madhu and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 22-07-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2004) 2 ALD(Cri) 452 : (2004) CriLJ 3978

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

Bench : Single Bench

Advocate : T. Pradyumna Kumar Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

P.S. Narayana, J.—The appellants, accused 1 to 5 in Sessions Case No. 20 of 1994 on the file of the Assistant Sessions Judge, Machilipatnam, had preferred the present appeal being aggrieved of the judgment dated 11-4-1997 passed in the above case.

2. The version of the prosecution, in nutshell, is as hereunder.

It is stated that the appellants-accused on 22-2-1993 between 9.30 pm and 10.30 pm trespassed into the house of Pothuboyina Venkateswara Rao-P.W.2 and committed rape of his wife-P.W. 1 and they had also caused hurt to P.W. 1 and hence, they were charged under Sections 451, 323 and 376(g), I.P.C. and they were found guilty and were convicted of the said offences.

3. P.W. 1 is the prosecutrix and P.W. 2 is the husband of P.W. 1. P.W. 3 is the co-sister-in-law of P.W. 1. P.W. 4, P.W. 5 and P.W. 6 are residents of Mallavolu village and P.W. 7 is resident of Ramarajupalem. P.W. 8 and P.W. 9 are the Doctors, who examined the appellants-accused. P.W. 10 is the panchayatdar for the scene of offence. P.W. 11 is the Doctor, who examined P.W. 1. P.W. 12 is the Head Constable of Police who took the report to P.W. 13. P.W. 13 is the Sub-Inspector of Police, who registered the case. P.W. 14 is the Assistant Sub-Inspector of

Police and P.W. 15 is the investigating officer.

4. On 22-2-1993 at about 9.30 pm, somebody knocked at the door of P.W. 1, and when P.W. 1 opened the door, she found the appellants-accused 1 to 5, and thereafter all of them committed rape on her. Subsequent thereto, after 10 minutes, P.W. 1 got up and went inside the house and got her two children. Then she had taken both the children, crossed the canal and went to the house of Peri Nagaraju, P.W. 4 to P.W. 6 and informed them about the incident. Then, all of them had gone to P.W. 3 at Ramarajupalem. P.W. 1 informed P.W. 3 about the incident. P.W. 3 and her husband called P.W. 7 and one Parasa Satyanarayana and informed them about the incident. Subsequent thereto, all of them had gone to Guduru police station and Sub Inspector of Police and Assistant Sub-Inspector of Police were not there then. Constable asked P.W. 1 and others to wait stating that he would call the Sub-Inspector of Police. P.W. 3 advised P.W. 1 not to reveal to the police that she was raped and also advised just to state that she was beaten by the accused. Meanwhile, the Assistant Sub-Inspector of Police came and became angry stating that they came to the police station at odd hours and then P.W. 1 and P.W. 3 were called by him and asked P.W. 1 to give report, but he did not allow P.W. 1 to tell the details and obtained her thumb impression on the statement. P.W. 1 also gave Rupees 100/- on demand of the Assistant Sub-Inspector of Police. Then, P.W. 1 had gone to the house of P.W. 3 and stayed there for the night. On the next day on 23-2-1993 at about 10.00 a.m. P.W. 1 reached her house. By the time she reached her house, P.W. 2, the husband of P.W. 1, returned to the house and he enquired P.W. 1 as to what happened. But, P.W. 1 informed him that she was beaten by the appellants-accused. Then, P.W. 1 and P.W. 2 had gone to Guduru police station. Then, P.W. 1 was about to inform the facts to the Sub-Inspector of Police. The Assistant Sub-Inspector of Police shouted against her and P.W. 1 and P.W. 2 returned back. After some time, P.W. 2 came to know from the villagers about the actual incident of rape. After 9 days from the date of incident, P.W. 2 asked P.W. 1 to reveal the real facts. Then, P.W. 1 informed the real incident, which had taken place, to her husband P.W. 2. On the next day morning, P.W. 1 and P.W. 2 went to Machilipatnam and requested a person sitting near the bus stand to write a report after disclosing him the details and the report was prepared. P.W. 1 affixed her thumb impression on the report and the same was handed over to the Deputy Superintendent of Police, who in turn handed over the same to P.W. 12 the Head Constable, directing him to hand over the same to the Sub-Inspector of Police, Guduru. Accordingly, P.W. 12 handed over the report to P.W. 13, the Sub-Inspector of Police, Guduru. On 2-3-1993 at about 9.00 p.m., P.W. 13 received Ex. P 1 report and registered the same as Crime No. 12 of 1993 u/s 376(g), IPC and issued express F.I.Rs. Ex. P12 is the F.I.R. Thereafter, P.W. 1 was sent to Government Hospital. On 3-3-1993 at about 1.00 a.m., P.W. 11, the Civil Assistant Surgeon, Government Hospital, Guntur, examined P.W. 1 and found a blackish linear abrasion of 1/4" on the back of left forearm of lower 1/3rd. The Doctor, however, did not find any injuries. P.W. 15 Inspector of Police, Pedana circle took up investigation, visited the scene of

offence on 3-3-1993 and recorded statements of P.W. 1 and P.W. 2 and then he observed the scene of offence and got drafted Ex. P10 mediators report and also prepared rough sketch Ex. P14 and also secured presence of P.W. 3 to P.W. 7 and recorded their statements. On 4-3-1993, P.W. 15 arrested the appellants-accused 1 to 5 and had sent them for medical examination. P.W. 8 examined accused 1 and 2 and issued Exs. P4 and P5 respectively. P.W. 9 examined accused 3 to 5 and issued Exs. P7, P8 and P9 respectively. After completion of investigation, P.W. 15 had laid the charge-sheet.

5. In support of the case of prosecution, P.W. 1 to P.W. 15 were examined and Exs. P1 to P16 were marked. On behalf of defence, certain contradictions Exs. D1 to D6 also were marked which were put to the investigating officer P.W. 15. P.W. 4 and P.W. 5 had not supported the prosecution version and they were declared hostile.

6. The plea of the appellants-accused was one of total denial.

7. However, the learned Judge believed the version of the prosecution and had convicted the appellants-accused after hearing even on the quantum of sentence. Aggrieved by the same, the appellants had preferred the present appeal.

8. Sri T. Pradyumna Kumar Reddy, the learned counsel representing the appellants-accused meticulously had taken this Court through the evidence available On record and also the contradictions and the discrepancies in the version of prosecution. The learned counsel had pointed out that there is delay of about 10 days in lodging alleged Ex. P1- F.I.R. The counsel would submit that Ex. P13 is the earliest version, which is only a Xerox copy, and the original was not produced and in fact, G. D. entry Ex. P15 also was made in this regard. The counsel submitted that the evidence of P.W. 14 is clear on this aspect and in view of the fact that Ex. P13 a xerox copy, in fact was signed as witnesses by P.Ws. 4 to 7 also. The version of P.W. 1 in this regard is highly doubtful and in the light of the earliest version Ex. P13, Ex. P1 cannot be relied upon. The counsel would maintain that when the very genesis for initiating the prosecution and the investigation is defective, definitely the appellants-accused are entitled to the benefit of doubt. The learned counsel while further elaborating the submissions had pointed out that the version of P.W. 1 cannot be believed at all. It is the case of prosecution that the whole village knows about the incident but despite the same, P.W. 1 had not revealed this fact to P.W. 2 for about 10 days. This is against the natural course of conduct and hence, the version of P.W. 1 cannot be believed. The learned counsel also had pointed out that names of P.Ws. 3 to 6 and also P.W. 7 had not been mentioned in Ex. P1 and that Ex. P1 is inadmissible and also doubtful. The counsel also submits that P.W. 1 is definitely an unreliable witness since different versions were given by her at different points of time. Except the evidence of P.W. 1, there is no other evidence worth mentioning on record and absolutely there is nothing in medical evidence at least corroborating the story of prosecution and hence, the appellants are entitled to the benefit of

doubt and the reasons recorded by the learned Judge in this regard cannot be sustained. Several other discrepancies in the evidence of other witnesses had also been pointed out by the learned counsel. Reliance also was placed on The State of Karnataka Vs. Shabuddin, .

9. On the contrary, the learned Addl. Public Prosecutor Sri Niranjan Reddy would submit that relating to the delay in giving the Ex. P1-F.I.R., satisfactory explanation had been given by P.W. 1 and cogent reasons had been recorded by the trial Court in this regard. The counsel also would maintain that mere delay always may not be fatal to the story of the prosecution if otherwise the same is explained. Inasmuch as it had been well explained and the said explanation had been well discussed by the trial Court, the same need not be disturbed by this Court. The learned counsel also would further contend that the investigating agency had not suppressed anything. Ex. P13 the earlier version made by P.W. 1, in fact, had been well explained by P.W. 1 herself in her evidence. P.W. 15, the investigating officer, also states that Ex. P 13 discloses only non-cognizable offence and hence, mere making of a G. D. entry in this regard is of no consequence. The learned counsel placed reliance on Thaman Kumar Vs. State of Union Territory of Chandigarh, in this regard. The learned counsel further contended that the Apex Court time and again pointed out to the nature of crime being heinous crime and corroboration to the evidence of prosecutrix is only to have a guard, but not always mandatory. If the Court on appreciation of evidence believes the version explained by the prosecutrix, that alone would be sufficient to sustain the conviction. The learned counsel in all fairness submitted that so far as it relates to the incident, the evidence of P.W. 1 alone is available on record and rest of the evidence is what transpired subsequent to the incident and the chain of events. The learned counsel also submitted that in the natural course of conduct, on the advice given, P.W. 1 was not inclined to reveal the incident being afraid of her husband or the family complications and had given Ex. P13, wherein it was just stated that she was beaten. Nothing more had transpired. Ultimately, it is revealed that P.W. 2 insisted to disclose the real facts and in such circumstances, P.W. 1 narrated what had happened and they proceeded to Machilipatnam and gave report to the Deputy Superintendent of Police, which was later sent to the concerned police station and the crime was registered. The course of events narrated by the prosecution are so natural and the Indian conditions especially of the rural parts also may have to be viewed in the background of the nature of the offence which had been committed. The learned counsel also placed reliance on Harpal Singh and Another Vs. State of Himachal Pradesh, ; Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, ; State of Gujarat Vs. Anirudh singhh and another, ; State of Rajasthan Vs. N.K.-The Accused,

10. Heard the counsel on record at length and perused the oral and documentary evidence available on record and also the findings recorded by the Assistant Sessions Judge, Machilipatnam in Sessions Case No. 20 of 1994.

11. The charges as against the appellants-accused, are as hereunder.

FIRSTLY : "That you A-1 to A-5 on or about 22-2-1993 at about 9.30 p.m. or 10.00 p.m. at the house of Pothuboyina Venkateswara Rao of Mallavelu Pedagaruvu village situated in the fields committed house trespass by entering into the building of Pothuboyina Venkateswara Rao used as a human dwelling in order to commit the offence of rape on Pothuboyina Kumari, wife of Venkateswara Rao, and that you thereby committed an offence punishable u/s 451, I.P.C. and within my cognizance.

SECONDLY : That you A-1 to A-5 on or about the same date, time and place voluntarily caused hurt to Pothuboyina Kumari and thereby committed an offence punishable u/s 323. I.P.C. and within my cognizance.

THIRDLY : That you A-1 to A-5 on or about the same date, time and place committed gang rape on Pothuboyina Kumari and thereby committed an offence punishable u/s 376(g), I.P.C. and within my cognizance."

12. The defence is one of total denial. Now, the question is whether the findings recorded by the learned Judge in convicting the appellants-accused and sentencing them to the rigorous imprisonment are liable to be disturbed by this Court so as to give benefit of doubt to the appellants-accused in the light of the submissions advanced by the counsel for the appellants, or such findings are to be confirmed.

13. The evidence of P.W. 1 is crucial. P.W. 1 deposed all the aspects in detail narrating the incident. P.W. 1 deposed that she got Ac. 0.20 cents of dry land and they used to raise green leaves and her husband used to sell the said green leaves raised by her. She got two daughters, now aged 8 and 6 years respectively, and she knows accused 1 to 5 present in the Court, and they are residents of Pedagaruvu. She also deposed that about 3 years 7 months back at about 4.00 pm, A. 1 was standing on the eastern side of the canal bund and she had to cross the said canal in order to fetch drinking water and at the time of passing the canal, one has to lift his or her clothes. Then she asked A. 1 to leave the said place, as she had to cross the said canal. A. 1 then left the place. Then, she crossed the canal and brought drinking water and on the same day at about 7.00 p.m., A. 1 came and asked her to give green leaves. Then, she had stated that her husband was not available. Then, A.1 left the place and went nearby the canal bund. Immediately, he returned back to her house and enquired her as to what she was doing at that time and she replied stating that she was preparing food. He also enquired as to when her husband would return to the house. A. 1 then asked as to why there was darkness in the house and she replied stating that A. 1 is in no way concerned with all those details and also told him that she would call his parents and when she tried to call the parents, A. 1 ran away from the place. The house of A. 1 is beyond the canal. P.W. 1 also deposed that she went to the other side of the canal bund and called the parents of A. 1 and on revealing the same, the parents of A. 1 told her that they would talk to A. 1 on the next day morning and asked her not to reveal all the facts to her husband to avoid complications in the matter. At that time, she noticed Pere Anjaneyulu and

she also revealed all those details to him and he assured that he would talk to A. 1 on the next day morning.

14. P.W. 1 further deposed that on the fateful day, her husband went to Jujjavaram for selling green leaves. P.W. 1 returned to her house after informing the parents of A. 1 and she along with her children slept after taking meal. At about 9.30 p.m. somebody knocked at the door of her house and she thought that her husband came, and opened the door. On opening the door she found A. 1 to A. 5 present there and A. 1 tried to embrace her after entering into her house. When she tried to release herself A. 1 caught hold of her and dragged her from the house nearby the pendal, which was erected in front of her house. A. 1 gagged her mouth by thrusting a towel and when she tried to remove the towel all the accused beat her indiscriminately. A. 2 and A. 3 separated her both legs and forcibly pressed those legs. A. 4 caught hold of both her hands. A. 5 forcibly pressed her mouth and head. Then A. 1 committed rape.

15. The learned trial Judge, in fact, while recording the evidence, had been very careful and cautious in recording the relevant aspects relating to rape in Telugu reflecting the true version of P.W. 1. No doubt during the evidence of P.W. 1 there was some objection relating to this act and the clarification had also been recorded. The learned Public Prosecutor was no doubt permitted to elicit the manner of the incident without putting any leading questions.

A question was posed to P.W. 1 : Q. When you said A. 2 and A. 3 caught hold of your legs, A. 4 caught hold of your hands A. 5 pressed your head and mouth, and then what did A. 1 do?

A. (Matter in Vernacular omitted -- Ed.)

A. 1 caught hold of my hands, A. 3 closed my mouth. A. 2 and A. 5 separated my both legs.

(Matter in Vernacular omitted -- Ed.)

16. P.W. 1 while narrating the incident also deposed that for about 10 minutes she was not in a position to move as A. 1 to A. 5 committed rape. She got up after 10 minutes and went inside the house to get her both children. She had taken both the children across the canal and went to the house of Peri Nagaraju and P.Ws. 4 to 6 and informed them about the incident. She also deposed that all the said persons took her to her co-sisters house at Ramarajupalem. She deposed that Pothuboyina Venkamma is her co-daughter-in-law. Pothuboyina Raghavulu is her husband. She also deposed that she had explained the incident to them. P.W. 1's co-sister and her husband called the elders by name Oleti Satyanarayana (P.W. 7) and Parasa Satyanarayana and narrated the incident to them. From there they went to police station at Guduru. Assistant Sub-Inspector of Police and Sub-Inspector of Police were not present in the police station and the constable asked them to wait stating that he would call the Assistant Sub-Inspector and Sub-Inspector. P.W. 1 also clearly deposed that her co-sister

Pothuboyina Venkamma advised her not to reveal to the police that she was the victim of the rape and advised her to tell the police that the accused just beat her. Meanwhile, Assistant Sub-Inspector came, who became angry on seeing all of them stating that they came to the police station at odd hours. Assistant Sub-Inspector called the victim and her co-sister inside and the elders were waiting outside the police station. Assistant Sub-Inspector then asked her to tell as to what happened, when she was about to tell him about the actual incident, he did not permit to tell her and stated that he would write the case on his own accord. The Assistant Sub-Inspector later obtained her thumb impression on her statement and asked her to give Rs. 100/- for writing the case. As there was no money with P.W. 1, she collected the same from the elders who came along with her and gave the said amount to the Assistant Sub-Inspector. The Assistant Sub-Inspector then asked her to go to her house. She also deposed that on that very day she went to her co-sisters' house and stayed in her house.

17. P.W. 1 also further deposed that on the next day morning at about 10.00 a.m. she was sent to her house and by that time her husband returned to the house. When he enquired she stated that the accused beat her and again they went to police station. Sub-Inspector and Assistant Sub-Inspector both were present at the police station. She also deposed that when she was about to inform to Sub-Inspector about real facts, the Assistant Sub-Inspector shouted against her and they returned. Sub-Inspector of police promised that he would do justice. Subsequent thereto her husband came to know through some villagers about the incident of rape. Nine days after the incident when her husband questioned her about the real facts, she narrated the incident that had taken place on that day. The next day morning her husband took her to Machilipatnam stating that they would meet the Deputy Superintendent of Police. They requested a person nearby the bus stand to write the case narrating all the aspects. When the report was prepared she affixed her thumb impression and the same was handed over to the Deputy Superintendent of Police, Bandar. Ex. P1 is the said report. Deputy Superintendent of Police sent her to Guduru Police Station. The police then sent her to Government Hospital, Machilipatnam. She also deposed that she had received injuries on her both hands due to broken bangles. She was examined by doctors at Government Headquarters Hospital, Machilipatnam and later the police examined her.

18. This witness was cross-examined at length. She had deposed that she is the second wife of her husband and it is her first marriage. No doubt, it was suggested that she was also previously married. She further deposed that her husband obtained divorce from his first wife and she does not know the details and several other submissions in this regard also have been denied. She also deposed about the document in relation to Ac. 0.20 cents of land in the name of her husband. She further stated that she had no enmity with any of the villagers of Mallavolu Peda Garuvu. She stated that she knows A. 1 to A. 5 since she came to Mallavolu Peda Garuvu and they belong to her caste. She deposed that she had no enmity with A. 1 to A. 5 till the date of the incident and she would not go

to the houses of other villagers and would, remain in her house only. But the villagers used to come to her house. Her husband used to sell green vegetables by taking them on the cycle and at certain times her husband would not return to the house at night times.

19. To test the veracity several details had been elicited relating to the topographical features of the scene of offence and she had explained every aspect in detail. She had also deposed and explained under what circumstances she had not revealed the incident initially and under what circumstances ultimately the same was revealed, to her husband, and both of them had gone to the Deputy Superintendent of Police to report the matter.

20. Relating to the incident occurred on the fateful day there is lengthy cross-examination. She had deposed that on that day night after the incident she had gone to Guduru police station and informed to the police about the incident. On that day the police reduced her report into writing and she also affixed her thumb impression, but she had not stated at that time that she was victim of rape in the hands of A. 1 to A. 5 on 22-2-1993. She also deposed that she does not know the contents of the document on which she had affixed her thumb impression. When she was shown Ex. P. 1 and questioned whether the thumb impression on it was of her, the witness replied that she does not know whether the said impression is of her and she also does not know the contents of Ex. P. 1:

21. P.W. 1 also narrated when her husband asked about the incident and how other series of events had taken place and she had also deposed that ten days after the incident she gave a report to the Deputy Superintendent of Police but not to any other senior official or Home Minister. She further deposed that Yuvathi Mandali people did not approach them and they did not take them to police and she does not know whether the Yuvathi mandali officials stated that they would send petitions to all the concerned in this matter and the said people did not meet her in the said case till then. She also deposed that she had narrated all the true facts in the report given to the Deputy Superintendent of Police.

22. P.W. 1 also deposed that when she had gone to the police station for the second time, she stated in the report that the accused beat her all over the body. She also explained the injuries received by her and deposed that there were no bloodstains on the clothes. She had received injuries on thighs and breast. She had shown all those injuries to her husband but she had not shown those injuries to police since police did not permit her to show those injuries and there is no other reason for not showing those injuries.

23. She also deposed that the Deputy Superintendent of Police had not recorded any statement from her when she gave the report to him except making endorsement on the said report. Several aspects were suggested and all these aspects were denied. She also deposed that she does not remember whether she stated in the report that Madhu and his parents came and whether she had

stated the names of Madhu and his parents. She stated the names of the persons who dragged her from out of her house in the report. She also deposed that it is not true to suggest that she did not state in Ex. P1 in detail the overt acts of A. 1 to A. 5 as stated in her chief-examination in Ex. P1. She also deposed that there was moon light on that day night at 9.30 and she had not raised any cries when all the persons caught hold of her and tried to wriggle out from the hands of accused and her bangles were broken and she received bleeding injuries on her hands due to broken bangle pieces. She also deposed that blood fell on her clothes and on that day she was wearing parrot green colour saree and green colour blouse, and that police asked her about the colour of the dress she was wearing at that time and she had stated that she was wearing parrot green saree and green colour blouse. Though police asked her to produce clothes, she had not handed over the said clothes and she washed those clothes for wearing purposes. The broken bangle pieces fell in the pendal. P.W. 1 was also further cross-examined about the details of conversation between the husband and the wife and she had narrated all the details. P.W. 1 stated that she told her husband that she gave a report to police stating that the accused only assaulted her, but did not give a report stating that the accused committed rape on her. Several questions were put relating to certain of the aspects of the members of the family of A. 1 to A. 5, and certain questions were put to discredit this witness P.W. 1 relating to what she had stated and what she had not stated in Ex. P. 1. This witness P.W. 1 despite the lengthy cross-examination to which she was subjected to, had narrated all the events in detail and as already referred to supra, several suggestions posed also had been specifically denied. It is no doubt true that except the evidence of P.W. 1, there is no other evidence available on record and all the rest of the evidence is in relation to what transpired subsequent thereto. Exs. D1 to D3 were marked through P.W. 1.

24. P.W. 2, the husband of P.W. 1, deposed about his family and how they make living and had explained in detail the series of events commencing from his enquiry in relation to the incident and P.W. 1 explained the same, and ultimately going along with P.W. 1 to the Deputy Superintendent of Police and lodging Ex. P1. This witness P.W. 2 also was cross-examined at length. Ex. D4 contradiction was marked as under :

"All the persons in our village are stating that 5 persons have committed rape upon my wife. Yesterday i.e. on 2-3-1992, I insisted my wife to state truth what had happened or else I won't to take you back. Thereupon while weeping she stated that on the night of Monday, five persons have committed rape upon her one after the other."

25. This evidence of P.W. 2 is only helpful for the limited extent of the wife narrating the events on the fateful day to the husband and both of them going to the Deputy Superintendent of Police and lodging Ex.P1.

26. P.W. 3 is the co-sister of P.W. 1, P.W. 3 also had narrated the incident, which had been disclosed to her. This witness is crucial for the limited purpose since

she had specifically deposed that she advised P.W. 1 not to disclose to police that the accused raped her as their men are not good persons and there is likelihood of disruption of matrimonial relationship. This witness was cross-examined at length and Exs. D5 was marked.

27. P.W. 4 Pere Anjaneyulu, was declared hostile. Likewise, P.W. 5 also was declared hostile. These are all not material witnesses since they only deposed about what had transpired subsequent to the incident.

28. P.W. 6 deposed that he knows P.W. 1 to P.W. 5 and all the accused. About 3 years and 9 months ago during night time, P.W. 1 came to the house of P.W. 4 and informed P.W. 4 and then P.W. 4 called him. P.W. 1 also brought her two sons along with her and then P.W. 1 stated to P.W. 4 in his presence that Ganipisetty Madhu, Nancharaiah, Eswararao, Ava, Ganjala Agamalli-all the appellants-accused, knocked at the door of the house and she opened the door thinking that her husband came and all the persons caught hold of her tuft and dragged her out of the house and gagged her mouth with a cloth piece and threw her on the ground and that one after another raped her.

This witness also narrated the other details how they had gone to the police station and the Assistant Sub-Inspector of Police calling P.W. 1 to P.W. 3 inside the police station and the other aspects. He was cross-examined at length and Ex. D6 was marked.

29. P.W. 7 is resident of Ramarajupalem, who also deposed about the details and that he had accompanied to the police station but he does not know what transpired inside the police station since he did not go inside the police station and he also explained that thumb impressions of Pere Anjaneyulu, Pere Somaiah and his signatures had been obtained on a statement by Assistant Sub-Inspector of Police and they all returned.

30. P.W. 8 and P.W. 9 are the Doctors, who examined the accused. P.W. 10 is the Village Administrative Officer, who deposed that at the request of Circle Inspector of Police, Pedana circle, himself and Perasa Ranga Rao went to the house of Pothuboyina Venkateswara Rao (P.W. 3) and they examined the scene of offence and prepared report and Ex.P10 is the observation report of scene of offence and he is the scribe of Ex. P10 report.

31. P.W. 11 is the Civil Assistant Surgeon, Government General Hospital, Guntur, who had identified P.W. 1 and she deposed that on examination, she found the following external injuries.

1) Blackish linear abrasion of 1/4" on the back of left arm of lower 1/3rd.

Internal Examination : There are no injuries. No fresh bleeding. No fresh tears. Old tears present. Underwent Hysterectomy about five months back. No pubic hair. No discharge per vagina. Hymen-old tears present. No injuries on internal aspect of thighs, lower abdomen and breasts. Vaginal slides not preserved as alleged rape happened on 20-2-2003 i.e. 9 days back and it is not a fresh case.

Further, she washed her private parts and clothes. P.W. 11 expressed opinion that leading marital life she was accustomed for sexual inter-course and she deposed that she gave wound certificate on 3-3-1993 which is Ex. P11 and P.W. 1 was referred to their hospital by the Station House Officer, Guduru. In Cross-examination, P.W. 11 stated that abrasion would be there for 6 days in case if there is scalp formation, and in this case there is no scalp formation and such abrasion noted by her is possible as it is within the reach of the hand, and it is true that the said injury is also possible by scratching and she did not mention age of the said injury in the said certificate. She was re-examined regarding possibility of causing injuries which are external injuries about 10 days and she had stated that no definite opinion can be given with regard to the age of the injury and the age of the injury might be about 6 days.

32. P.W. 12 is the Head Constable of Police, who deposed about the handing over of the report Ex. P1 to him by the Deputy Superintendent of Police to hand over it to the Station House Officer, Guduru, and this witness taking the report-Ex. P1 along with P.W. 1 and handing over it to Guduru police and producing P.W. 1 before the Station House Officer, Guduru, as per the instructions of the S.D.P.O. He also deposed that the Sub-Inspector of Police registered a case.

33. P.W. 13 is the Sub-Inspector of Police, who deposed about registering F.I.R. as crime No. 12 of 1993 u/s 376(g) I.P.C. and issuing express F.I.Rs. to all concerned. Ex. P12 is the FIR issued by him in crime No. 12 of 1993 and the copy of the FIR was sent to the Circle Inspector of Police, Pedana through H.C. 1332 and that he sent the victim-P.W. 1 to the Government Hospital for medical examination. This witness also was cross-examined.

34. P.W. 14 is Assistant Sub Inspector of Police, who is another crucial witness, deposed about what had transpired. He deposed that P.W. 1 came to police station along with Somayya, Parasa Satyanarayana, Oleti Satyanarayana (P.W. 7) and Pothuboyina Raghavulu and that he recorded the statement of P.W. 1 and obtained thumb impression of P.W. 1 and signatures of other persons as witnesses and a G. D. entry was made on 22-2-1993 at 22.30 hours. Ex. P 13 is copy of the statement recorded by him, and after making G. D. entry, since he filed that the case is non-cognizable one, he sent the Police Constable to the village on next day morning and called the accused whose names were mentioned in the statement. Meanwhile, he came to Court in connection with the case. By the time he returned to the police station, Sub Inspector of Police was present. He informed him about the G. D. entry made and also about sending Police Constable to the village of P.W. 1. He further deposed that he did not do any further investigation on the said statement. This witness also was cross-examined.

35. The investigating officer was examined as P.W. 15, who deposed about all the details of investigation. The contradictions elicited from the evidence of prosecution witnesses had been put to this witness in cross-examination. After narrating all the details relating to the investigation, he also specifically deposed

that the contents of Ex. P13 reveals commission of non-cognizable offence and he also deposed about certain details relating to Ex. P13 and other details relating to the investigation.

36. On the strength of this material available on record and also in the light of the reasons recorded by the learned Judge, whether the findings deserve to be disturbed.

37. Submissions at length were made that except the evidence of P.W. 1, absolutely there is no corroboration and the medical evidence also does not support the version of P.W. 1 and in the absence of corroboration at least from the medical opinion, definitely the conviction cannot be sustained.

38. Now, it has to be seen whether the trustworthiness of the evidence of P.W. 1, in any way, had been shattered by the defence in cross-examination or whether there are such inherent improbabilities by virtue of which the prosecution story would suffer, which would entitle the appellants-accused for an acquittal. Before proceeding further, submissions at length are advanced relating to Exs. P1 and P13. P.W. 14 and P.W. 15 clearly deposed that they felt that the said report does not disclose any cognizable offence. Section 154 Cr. P.C. reads as here-under.

"(1) Every information relating to the commission of cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and a substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under Sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in-charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned, who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

39. In the light of the clear language of Section 154 Cr. P.C., it cannot be said that Ex. P1 report disclosing cognizable offence is in any way hit by Section 161 Cr. P.C. In alternative, the contention is that at least Ex. P1 can be looked with suspicion in the light of Ex. P13 and in the light of the changing versions at least on three occasions --Ex. P13, while at police station and again while approaching the Deputy Superintendent of Police -- the evidence of P.W. 1 can not be believed.

40. It is needless to say that this country is a traditional country and in the

background of the traditions and honour of the women folk, the conduct of the victim may have to be examined. The course of events, if carefully scrutinized, is so convincing and natural. The victim is a married woman living with the husband, having children. P.W. 3, co-sister of P.W. 1, suggested P.W. 1 that their men are not good and by revealing the heinous crime which had been perpetrated against her by the five accused, it may lead to disruption of matrimonial tie itself. One can visualize the thinking and the mental make up of such a lady while taking a decision and in the light of the explanation given by her clearly, this Court has no hesitation in accepting that the explanation given by her that for the reasons and on the suggestions made by the well-wishers like P.W. 3, initially she thought of just giving the report stating that she was beaten by the accused and not revealing what actually had transpired. The course of events narrated is so natural and convincing. Reasons in detail had been recorded by the learned Judge while accepting the version deposed by P.W. 1. I have carefully and cautiously scrutinised the evidence of P.W. 1 and also evidence of P.W. 3. It is no doubt true that the medical evidence P.W. 12 may not support the version of P.W. 1, the reason being delay. The aspect of delay also was canvassed with all seriousness.

41. Reliance was placed on *Thaman Kumar Vs. State of Union Territory of Chandigarh*, (supra) wherein it was held that on receiving telephonic message about the incident, the Sub Inspector making entry in daily diary report and after receiving the information proceeding to the spot along with other constables, would not be an FIR and non-mentioning of the name of assailants in that entry also would not have any bearing.

42. Strong reliance was placed on *State of Gujarat Vs. Anirudh singhh and another*, (supra) in relation to the First Information Report and the witnesses turning hostile and the evidentiary value thereof.

43. It is no doubt true that there is delay of 10 days in lodging Ex. P1 in the present case. On careful scrutiny of evidence of P.W. 1 to P.W. 3, the conduct of P.W. 14 also cannot be appreciated. The way in which he was reluctant in dealing with the grievance also, there is some doubt. However, this Court is not inclined to comment any further on this aspect, in the light of the reasons recorded supra. The delay in giving the report-Ex. P1 to the Deputy Superintendent of Police was well explained by P.W. 1. The evidence of P.W. 2, P.W. 3 and other witnesses also is available on record to explain under what circumstances the delay had occurred.

44. It is settled principle that always delay in F.I.R. necessarily need not be viewed with doubt in relation to the version of the prosecution and if the prosecution is able to satisfactorily explain the same, the delay may not be of any consequence. In *Harpal Singh and Another Vs. State of Himachal Pradesh*, (supra), the Apex Court while dealing with delay in lodging F.I.R. in a rape case, on appreciation of evidence arrived at conclusion that as the honour of the family was involved, the members of the family have to decide whether to take the

matter to Court or not. Hence, the explanation of delay of 10 days in the present case was held to be reasonable.

45. In State of Rajasthan Vs. N.K.-The Accused, (supra) the Apex Court held as under : "A mere delay in lodging FIR cannot be held a ground by itself for throwing the entire prosecution case overboard. The Court has to seek an explanation and test the truthfulness and the plausibility of the reason assigned. If the delay is explained to the satisfaction of the Court it cannot be counted against the prosecution."

46. Hence, in the light of explanation given in clear and categorical terms by P.W. 1 to P.W. 3 supported by other witnesses, I have no hesitation in arriving at the conclusion that the delay was properly explained and this was the finding recorded even by the trial Court. Hence, I do not see any compelling reasons to express a different opinion relating to this aspect.

47. The next aspect canvassed in elaboration is want of corroboration to the evidence of P.W. 1. The evidence of P.W. 1 has been dealt with, by me in detail above. The same need not be repeated. Exs. D. 1 to D6, certain contradictions elicited in the evidence of P.W. 1 and other witnesses, if carefully scrutinized, are only minor discrepancies definitely not touching the main version or the crux of the prosecution story as spoken by P.W. 1.

48. P.W. 15, the investigating officer, had deposed that he had been working as Inspector of Police at that relevant point of time and he had received express F.I.R. in crime No. 12 of 1993 u/s 376(g) I.P.C. from the Sub-Inspector of Police, Guduru police station and had taken up investigation in the case. On 3-3-1993 at about 8.00 a.m. he visited Mallavolu Peda Garuvu and examined P.W. 1 and P.W. 2 and recorded their statements. He sent a word for P.W. 10 and Parasa Ranga Rao to act as mediators and in their presence he observed scene of offence from 9.00 a.m. to 11.00 a.m. and mediators report was drafted which is marked as Ex. P10. P.W. 15 also deposed that he had prepared a rough sketch, Ex. P14, and the scene of offence is in front of the house bearing D. No. 11/19 at Mallavolu Peda Garuvu. He secured the presence of P.W. 3 and P.W. 4, Pera Nanchyaraiah, P.W. 5 and P.W. 6, Pera Nagaraju, Pera Kanakamma, Pera Nagedram, Ganipisetty Anjaneyulu, Ganipisetty Damayanti, Parasa Satyanarayana, P.W. 7, Pothuboyina Raghavulu and recorded their statements. He then reached Guduru police station and perused G.D. dated 22-2-1993 made at 22.30 hrs. Ex. P15 is the G. D. entry made at 10.30 p.m. on 22-2-1993. Later, he caused enquiries for the accused. On 4-3-1993 he examined Pera Bhulakshmi, Pera Samudramma and Pera Venkamma and recorded their statements. On the same day he arrested all the accused at Machilipatnam. He prepared a requisition to Medical Officer and sent all the accused for medical examination. After the said examination the accused were sent to Guduru police station and they were confined in the police station. On 5-3-1993 all the accused were produced before the Court. On 17-4-1993 he received wound certificates of P.W. 1 and all the accused. He then examined Dr. B.G. Sugunavathi (P.W. 11), Dr. K. Sanjeeva Rao (P.W. 8), Dr. R. Prabhakara

Sastry (P.W. 9) and prepared a letter of advice along with the requisition for sending material objects to F.S.L., Hyderabad. Ex. P16 is the letter of advice. After completion of the investigation on 28-5-1993 he filed charge-sheet against the accused. Since P.W. 4 and P.W. 5 were declared hostile Ex. P2 and P3 were not proved. P.W. 15 also deposed original of Ex. P13 might have been misplaced in the police record. The G. D. entries were made basing on contents in Ex. P13. No doubt this witness admitted that there are two reports but the contents of Ex. P13 reveal commission of only non-cognizable offence and he had explained the other details relating to Ex. P13. He was cross-examined at length relating to non-mentioning of certain names and non-mentioning of name of the scribe and certain other details in Ex. P1. The contradictions also were put to him.

49. The evidence of P.W. 1 referred to supra is clear and categorical. It is no doubt unfortunate that the medical evidence in the present case had fallen into insignificance because of the delay or the lapse of time. But the fact remains that this witness P.W. 1 well, had inspired the confidence of the Court in deposing all the details. The circumstances, which had been well explained by P.W. 1, clearly corroborated with the evidence of P.W. 2 and P.W. 3 as well.

50. In relation to the corroboration to the testimony of prosecutrix, the Apex Court in *Krishan Lal Vs. State of Haryana*, held as under :

"In rape cases, Courts must bear in mind human psychology and behavioural probability when assessing the testimonial potency of the victim's (prosecutrix) version. The inherent bashfulness, the innocent naivet'e and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbabilise the hypothesis of false implication. The injury on the person of the victim, especially her private parts, has corroborative value. Her complaint to her parents and the presence of blood on her clothes are also testimony which warrants credence. To forsake these vital considerations and go by obsolescent demands for substantial corroboration is to sacrifice common sense in favour of an artificial concoction called "judicial" probability."

51. Strong reliance was also placed in *State of Rajasthan Vs. N.K.-The Accused*, (supra) wherein it was held as under :

"Where in a case of rape, the prosecutrix was a married woman and was living with her parents according to custom and was a virgin prior to the commission of crime and FIR was lodged with delay due to the fear that her husband and in-laws on knowing the incident would refuse to carry the girl to reside with them and along with that there was a communal tinge to the whole of incident and complainant was prevented from lodging FIR by community fellows of accused and such facts found mention in FIR also inasmuch as complainant stated in FIR that the delay in lodging report was due to village panchayat, insult and social disrepute, it was held that the delay in lodging FIR was satisfactorily explained."

52. In the above decision the Apex Court had also arrived at a conclusion that when the medical examination is delayed due to delay in filing FIR and injuries

suffered by prosecutrix were abrasions which would heal up within 2-3 days, testimony of prosecutrix regarding resistance offered by her and the manner in which crime was committed, inspiring confidence. Other evidence also lending support to the testimony of prosecutrix just crossing 16 years of age. Consent on her part cannot be inferred. Absence of injuries on person of prosecutrix necessarily need not lead to an inference of consent on the part of prosecutrix.

53. In *Mallela Sreenu v. State of Andhra Pradesh* (2000) 1 A LT (CRL) 360 it was held that in a case of this nature the Court cannot set aside the conviction solely on the ground that there are no eye-witnesses, except P.W. 1. As already referred to supra, in the present case due to delay the medical evidence may not be of serious consequence. On a careful scrutiny of the findings recorded by the learned Judge and also on a careful analysis of the evidence of P.W. 1 in detail, this Court is of the considered opinion that the findings recorded by the learned Judge deserve no disturbance at the hands of this Court.

54. Before parting with the case, this Court is conscious of the fact that the fundamental principle of jurisprudence is that the guilt of the accused has to be clearly established. In the light of the clear and categorical evidence of P.W. 1 and also the natural course of events resulting in the delay in making Ex. P-1, which have been explained clearly by P.W. 1, and also taking into consideration the well considered findings recorded elaborately by the learned Judge, this Court is of the opinion that the evidence of P. W. 1 is definitely trustworthy. Hence there are no merits in the appeal and accordingly the appeal shall stand dismissed, confirming the conviction recorded in judgment dated 11-4-1997 in Sessions Case No. 20 of 1994 on the file of Assistant Sessions Judge; Machilipatnam. The bail bonds are hereby cancelled.

55. . The learned counsel for the appellants-accused at this stage represented relating to quantum of sentence and submitted that the appellants are of young age and their families are dependant on them and they are all agriculturists. Taking into consideration the overall facts and circumstances of the case, the imprisonment is reduced to five years so far it relates to offence u/s 376(2)(g), IPC; and six months in relation to the offence u/s 451, IPC. Both the sentences shall run concurrently. The sentence imposed is modified accordingly. It is needless to say that the appellants-accused are directed to surrender to serve the sentence imposed.