
(2001) 12 AP CK 0129

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 688 of 1996

Mekala Rajireddy and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 11-12-2001

Acts Referred:

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2002) 1 ALD(Cri) 477 : (2002) CriLJ 3407 : (2002) 3 RCR(Criminal) 6

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Judgement

D.S.R. Varma, J.—This appeal is filed against the judgment dated 16.8.1996 passed by the Court of Additional Sessions Judge, Medak at Sangareddy in S.C. No. 1 of 1996.

2. The accused A-1 to A-8 were charged of the offences punishable u/s 376 I.P.C. and u/s 3 of S.C. and S.T. (Prevention of Atrocities) Act, 1989 (hereinafter referred to as " the Act") . The court below, on evidence, found A-1, A-3, A-5, A-6 and A-8 guilty u/s 3(2)(iv) of S.C. and S.T. (Prevention of Atrocities) Act, read with Section 376 I.P.C., and accordingly convicted and sentenced them to suffer rigorous imprisonment for ten years each and also sentenced them to pay a fine of Rs.2,000/- each and in default, to suffer imprisonment for a period of one year each. Similarly, the court below, on evidence, found A-2, A-4 and A-7 guilty for the offence punishable u/s 376 I.P.C. and convicted and sentenced them to suffer imprisonment for ten years each and also sentenced them to pay a fine of Rs.2,000/- each and in default, to suffer imprisonment for a period of one year each. Aggrieved by the order of conviction, the accused A-1 to A-8 have preferred this appeal.

3. The case of the prosecution in brief is that on 30.8.1992 at about 8.00 p.m.,

when P.W.1, Kumari Akkolla Yellava, who is aged about 18 years and Harijan by caste, was returning to house from the house of one Makala Laxmi, P.W.3 after making beedies, A-1 to A-8 way laid, caught hold of P.W.1 and forcibly took her by lifting and closing her mouth to the fields of the victim, which is situated adjacent to the village and beat her with hands and threatened her that she will be killed if she does not oblige them and due to fear the victim kept quiet. Then A-1 to A-6 raped her forcibly, one after the other, while A-7 and A-8 watched the surroundings. After commission of the offence, A-1 to A-8 threatened her not to inform about the incident to anybody and out of fear, she did not reveal about the incident to anybody. While so, due to the loose talk by the accused in the village, the incident came to light and on information, P.W.1 was called to Siddipet Police Station on 26.12.1992 and her statement was recorded by P.W.9 and thereafter, P.W.8, the S.I. of Police registered a case in Crime No.99/1992 u/s 376 I.P.C. and issued F.I.R. to all the concerned. During the course of investigation, P.W.9, recorded the statements of P.Ws.1 to 3 and another and conducted the panchanama of the scene of offence in the presence of P.Ws.4 and 6 and sent P.W.1, the victim, to Government Civil Hospital, Siddipet for examination, where P.W.7, referred the victim to Gandhi Hospital, Secunderabad for expert's opinion. P.W.5, collected the vaginal smears and public hair clippings of the victim and sent for F.S.L. examination. After completion of the investigation, charge sheet was filed against A-1 to A-8 for the offences punishable u/s 376 I.P.C. and u/s 3 of S.C. and S.T. (Prevention of Atrocities) Act, 1989.

4. The case of the accused is of total denial.

5. In order to prove its case, the prosecution examined P.Ws.1 to 10 and got marked M.Os.1 to 10. On behalf of the defence, no witness was examined and also no document was marked.

6. On appreciation of the entire evidence on record, the court below, convicted and sentenced the accused and aggrieved by the order of conviction, as stated above, the present appeal has been preferred.

7. The learned counsel appearing for the accused Sri C. Praveen Kumar submitted that the offence was alleged to have taken place on 30.8.1992 and the statement of P.W.1 was recorded in the Police station only on 26.12.1992 i.e., after four months. Further P.W.2, who is the mother of P.W.1 who came to know about the incident, also kept quiet and as such there is inordinate delay and this is fatal to the case of the prosecution. He further submitted that the source of information is not clear and there is no complaint in this case by the victim and the statement recorded in the police cannot be treated as a complaint and it can only be treated as a statement recorded u/s 161 Cr. P.C. He further submitted that as per the medical opinion, the victim is habitual to sexual intercourse and in view of this fact, it cannot be said that the accused are responsible for the offence. He also stated that except the testimony of P.W.1, there is no other corroborating evidence and this is not sufficient to convict the accused. Finally he

submitted that A-2, A-4 and A-7 belongs to Harijan caste and there is no material on record to show that the accused committed the offence, on the ground that P.W.1 belongs to Schedule caste and as such the conviction cannot be recorded under S.C. and S.T. Prevention Act.

8. On the other hand, the learned Public Prosecution supporting the impugned judgment submitted that the grounds raised by the counsel for the accused have already been considered by the court below and after meticulously scrutinizing the entire evidence on record and basing on such evidence, the court below had recorded the order of conviction and sentence and as such the same does not warrant any interference. Accordingly he sought for confirmation of the impugned judgment.

9. In the light of the above submissions, it is necessary to look into the evidence on record.

10. P.W.1 is the victim. She stated that when she was returning to her house after attending the preparation of beedi work at the house of L.W.4 (P.W.3) and that when she reached in front of the house of Manikya Rao at about 8.00 p.m., found A-1 to A-8 under the trailer of the tractor; that out of them A-6 came out of the tractor and caught hold of my hand; that she shouted and in the meanwhile the remaining accused persons came and gagged her mouth and lifted her and took her to her own land and made her to stand at a place by leaving her at a short distance in the same land; that they discussed as to whether she should be put in a gunny bag and thrown in the well or she should be killed with knives; that all of them came to her and A-6 asked her to sleep with him by slapping her; that by force she slept with him and A-6 caught hold of my legs and raped her; that thereafter A-1 came and raped her; that when she was about to rise, A-5 came and raped her; that A-4 and A-2 also raped her ; that A-7 and A-8 were only watching while the incident was going on; that due to gang rape committed by A-1 to A-6, and watched by A-7 and A-8, she lost her prestige in the society; that A-6 also passed the remarks against her saying that though she belonged to mala caste, she wears good sarees and appears decently; that after the incident A-1 to A-8 threatened her with dire consequences if she revealed the incident; that after abusing her in filthy language, they left her to her fate; that since she was exhausted due to the incident, she slept there for half an hour; that thereafter she went to her house and slept in her house without revealing these facts to her mother or father out of fear of the accused persons; that three days thereafter while the accused persons were discussing with regard to the incident, some of the villagers overheard their discussion and made propaganda of the incident in the village and entire village came to know of the incident; that the incident also came to be known to the "Annas" (extremists); that thereupon the extremists called her and all the accused persons at her place and on their enquiry, she revealed all the facts of rape incident; that the accused persons have admitted their guilt before annas (extremists); that three months after this incident, the police came to

know of the facts with regard to the incident upon which they came to her house and on enquiry, she narrated the entire incident to the police; that at the request of the police, she went to Siddipet and narrated the same facts before the police at Siddipet; that she was referred to Gandhi Hospital, Secunderabad for examination; that the lady doctor examined her, but no cloths were seized and; that the police obtained her thumb impression on the statement, which is marked as Ex.P-1.

11. Even though this witness was cross-examined at length, nothing useful could be elicited by the defence to discredit her testimony. But the fact to be noted from the cross-examination of P.W.1 is that since the next day onwards from the incident, she stopped preparing beedies.

12. P.W.2 is the mother of P.W.1. She deposed that she came to know about the incident after one month as per the talk of the villagers only; that due to fear of villagers they could not take any action in this matter; that extremists came to know about the incident and called her and her daughter P.W.1 and also A-1 to A-8 and in their presence P.W.1 revealed the facts of the entire incident; that she did not know what A-1 to A-8 told extremists and; that thereafter the police came to their village and called her and P.W.1 and others to Siddipet and recorded their statements.

13. In the cross-examination she admitted that A-2 and A-7 are Harijans. She also admitted that there was a quarrel between her husband and the accused with regard to their land for house site pattas. Except these admissions, nothing could be elicited from her cross-examination in favour of the defence.

14. P.W.3 is the wife of A-5 and she is said to be the person at whose house P.W.1 used to prepare beedies and on the day of occurrence when P.W.1 was returning from the house of P.W.3, the incident was alleged to have happened. But this witness did not support the case of the prosecution and hence, she was declared hostile.

15. P.W.4, who is said to be the panch witness of the scene of offence panchanama, did not support the case of the prosecution and he was declared hostile.

16. P.W.5 is the doctor who examined P.W.1 at Gandhi Hospital, Secunderabad and issued Ex.P-3 medical certificate. She deposed that on 29.12.1992 the victim was brought to her; that on enquiry, the patient i.e., P.W.1 told her that on 30.8.1992 she was raped by six persons one after another for one hour at 8.00 p.m., in her village; that since the rape took place about four months hymen was not intact since vagina admitting two fingerers easily and she was unmarried and as such it can be presumed that she had sexual intercourse.

17. P.W.6 is said to be panchwitness. But he did not support the case of the prosecution and he was declared hostile.

18. P.W.7 is the doctor who referred the victim girl to Gandhi Hospital for expert

opinion.

19. P.W.8 is the S.I. of Police, who recorded the statement of P.W.1 and registered the case.

20. P.W.9 is the I.O. He deposed that on 26.12.1992 he had recorded the statement of P.W.1 and sent it to Police Station, Dubbak for registering the case; that he recorded the statement of P.Ws.1 and 2 and sent the victim girl to Government civil Hospital, Siddipet for examination; that on 27.12.1992 he visited the Hasanmeeranpur village and recorded the statement; that his investigation revealed that A-1 to A-8 lifted the victim by force and took her to her own fields and forcibly raped her under threat and as such P.W.1 could not report the matter immediately after the incident.

21. In the cross-examination he admitted that Ex.P-1 statement of P.W.1 was recorded at Siddipet Police Station. He further admitted that there is no word used in the statement of the victim as "lanja".

22. A perusal of Ex.P-1 statement made by P.W.1 to the police and her evidence in the court are almost similar.

23. This is all the evidence on record. The other evidence is not very much necessary and as such I am not referring to them.

24. From the evidence on record it reveals that while P.W.1` was returning from the house of P.W.3, all the accused way laid and taking advantage of her loneliness, forcibly took her to her own fields and committed the sexual assault and threatened her with dire consequences not to reveal the incident and due to fear P.W.1 could not inform the incident to anybody. Somehow the incident came to light and on the intervention of the extremists, P.W.1 disclosed the incident to them and the accused had also confessed before the extremists. Somehow again the incident reached the police after four months, then immediately the police came and took the victim and her mother to Siddipet Police Station and recorded their statement under Ex.P-1 and registered a crime.

25. Firstly I will deal with the evidence relating to the offence u/s 3(2)(v) of the Act against A-1, A-3, A-5, A-6 and A-8.

26. P.W.1 is the only affected eyewitness. In her deposition, he stated that A-6 made remarks against her saying that though she belongs to Mala Cast, she wears good sarees and appears decently. Except this, there is nothing on record to show that the accused had committed the said offence since P.W.1 belong to S.C. Hence, basing on this comment, it is difficult to draw an inference that the accused committed the offence punishable u/s 3(2)(v) of the Act.

27. It is also an admitted fact that A-2 and A-7 are also Harijans. From the remand report it could further be seen that A-3 and A-4 are also Harijans. Further there is no evidence on record to show that since P.W.1 belongs to S.C., the accused had committed rape, with an intention to belittle her by naming her

caste.

28. Now it is necessary to extract the relevant portions of Section 3(2) of the Act as under:

29. Whoever not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or Scheduled Tribe to be convicted

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe,

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction . . .

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

(vi) knowing or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment,

(vii)

30. From the above provisions it is clear that the Statute laid stress on the intention of the accused in committing such offence. Therefore, I am of the view that mere knowledge that the victim belongs to Scheduled Caste or Scheduled Tribe community is not sufficient to constitute an offence u/s 3(2)(v) of the Act. On the other hand, such knowledge should necessarily be coupled with intention to commit such an offence, in order to belittle the person as he/she belongs to Scheduled Caste or Scheduled Tribe community.

31. In the instant case, admittedly, A-2 and A-7 belong to S.C. community. Apart from that, the remand report reveals that A-3 and A-4 also belongs to S.C. community. In such circumstances, it is difficult to believe that all the accused had committed the offence with the knowledge that P.W.1 belongs to S.C. community, more particularly with an intention to commit such offence against her, since she belongs to S.C. community. In other words, the real intention of the accused was to commit the offence u/s 376 I.P.C. only and in view of the

above facts and circumstances of the case, it is difficult to draw an inference that the accused had intention to commit the offence u/s 376 I.P.C. against P.W., only because she belongs to S.C. community.

32. Therefore, I am of the view that the accused cannot be found guilty of the offence punishable u/s 3(2)(v) of the Act and they are entitled for an acquittal.

33. Now the only charge that remained against the accused is u/s 376 I.P.C.

34. On this, the first contention of the learned counsel for the accused, as stated above, is that the offence was alleged to have taken place on 30.8.1992 and the statement of P.W.1 was recorded in the Police station only on 26.12.1992 i.e., after four months. Further P.W.2, who is the mother of P.W.1 who came to know about the incident, also kept quiet and as such there is inordinate delay and this is fatal to the case of the prosecution.

35. On the point of delay, the learned Public Prosecutor relied on a judgment of the Supreme Court in State of Rajasthan Vs. N.K.-The Accused, wherein it was held that mere delay in filing the FIR cannot be only ground for throwing out the prosecution case. The Court has to take into account various factors for the delay and formulate the point as to whether the delay has been properly and satisfactorily explained. In the said judgment, the apex Court has referred to two other cases and observed as follows.

36. We may however state that a mere delay in lodging the FIR cannot be a ground by itself for throwing the entire prosecution case overboard. The Court has to seek an explanation for delay and test the truthfulness and plausibility of the reason assigned. If the delay is explained to the satisfaction of the Court it cannot be counted against the prosecution. In State of Rajasthan Vs. Shri Narayan, this Court observed - "True it is that the complaint was lodged two days later but as stated earlier Indian society being what it is the victims of such a crime ordinarily consult relatives and are hesitant to approach the police since it involves the question of morality and chastity of a married woman. A woman and her relatives have to struggle with several situations before deciding to approach the police....." In State of Punjab Vs. Gurmit Singh & Ors. (supra), this Court has held - "The Courts cannot overlook the fact that in sexual offence delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged." So are the observations made by this Court in in Karnel Singh Vs. State of M.P., repelling the defence contention based on delay in lodging the FIR. In the present case, in our opinion the delay in lodging the F.I.R. has been satisfactorily explained.

37. In the instant case, it has to be considered as to whether the delay has been explained by the prosecution properly in the facts and circumstances of the case. As already noticed, the victim (P.W.1) kept quiet for a long time and did not

Speak to anybody about the alleged incident out of fear. Further it is clear from the facts on record that when the police came to know about the incident, they came to the village and recorded the statements of P.Ws.1, wherein P.W.1 disclosed about the alleged incident. The investigation was conducted by the police on their own when they came to know that the offence had been committed against a woman who could not be identified even by the police. However, it cannot be lost sight that the sexual assault was committed on the victim by not one individual but by a group of persons. Further, P.W.1, who is a woman eking out her livelihood by rolling beedies cannot be expected to have courage to deal with the police on her own, particularly having regard to the nature of the offence.

38. Another interesting factor on record is that according to P.Ws.1 and 2, the incident was explained to the extremists when they enquired about the commission of offence by the accused and also called the victim and the accused and the accused admitted about the commission of offence. But what transpired between the extremists and the accused was not discussed by the trial Court, nor there is any material on record.

39. Another factor to be noticed is that the victim spoke about the commission of the offence by the accused on her own. The fact is that there is no other witness to speak about the commission of the offence. Therefore, it cannot be said that there is delay on the part of P.W.1 to register the FIR. The circumstances are clear and sufficient that the delay has been explained reasonably and satisfactorily. Hence, it cannot be held that the delay is fatal to the case of the prosecution.

40. The learned counsel for the appellants argued that the information given to the police by some unidentified sources cannot be recorded as FIR as normally the police start investigation upon the complaint made by the victim. In this case, on receiving the information the police visited the village and recorded the statements of P.Ws.1 and 2. P.W.1, in her deposition stated:

41. Three months after this incident the police came to know the facts with regard to the incident upon which the police came to our house and on enquiry with me I narrated the entire incident to the police. At the request of police I went to Siddipet also.

42. P.W.9, who worked as Sub-Inspector of Police, Siddipet, recorded the statement of P.W.1. He stated thus:

43. On 26-12-1992 I have recorded the statement of P.W.1 and sent it to Police Station Dubbak for registering the case. P.W.8 and myself have taken up the investigation in Cr.No.99/92.

44. P.W.8, who is another investigating officer stated that after receiving the statement of P.W.1, registered the case in Crime No.99/92.

45. From the above, it is clear that the investigating officer did not speak

anything about the delay in registering the FIR. It appears that there are no details or particulars of P.W.1. They only came to know that the offence had been committed by somebody against P.W.1. The information received was absolutely vague and inadequate and therefore, the police came to the village and questioned P.W.1 and took her to the police station. At the police station, P.W.1 gave her statement elaborately. That statement has been treated as FIR. Even though the police had prior information, the actual investigation had been taken up after the statement of P.W.1 was recorded. It shows that there is no chance for the investigating agency to conduct any investigation in the necessary direction. In *State of U.P. Vs. P.A. Madhu*, , the Supreme Court observed as follows:

.....the telephonic message was an extremely cryptic one and could not be regarded as an FIR in any sense of the term. Secondly, assuming that Gui had given the telephonic message in utter chaos and confusion when shots after shots were being fired at the deceased, there was no occasion for Gui to have narrated the entire story of the occurrence. In fact in his evidence Gui has denied that he personally telephoned the police but he stated that he asked somebody to telephone the police which appears to be both logical and natural- Moreover, such a cryptic information on telephone has been held by this court to be of no value at all. In *Tapinder Singh Vs. State of Punjab and Another*, this court in identical circumstances observed thus (at p.1569 of AIR):

THE telephone message was received by Hari Singh. A.S.I., Police Station, City Kotwali at 5.35 p.m, on 8/09/1969. The person conveying the information did not disclose his identity, nor did he give any other particulars and all that is said to have been conveyed was that firing had taken place at the taxi stand, Ludhiana. This was, of course, recorded in the daily diary of the police station by the police officer responding to the telephone call. But prima facie this cryptic and anonymous oral message which did not in terms clearly specify a cognizable offence cannot be treated as first information report. The mere fact that this information was the first in point of time does not by itself clothe it with the character of first information report.

46. Therefore, in view of the above decisions and also in view of the facts and circumstances of the case, I hold that the statement of P.W.1 under Ex.P-1 recorded by the police cannot be treated as a statement u/s 161 Cr. P.C. and on the other hand, the said statement has to be treated only as an F.I.R.

47. Now the question is whether the prosecution established its case to bring home the guilt of the accused.

48. In this case, there are no eyewitnesses to the incident. The only witnesses who spoke about the commission of the offence is the prosecutrix herself and P.W.2, who spoke about the circumstances which led to the commission of offence.

49. Hence it is necessary to look into the evidence of P.W.1 - prosecutrix once

again. She deposed to the effect that four months back when she was returning to her house after attending the preparation of beedi work and when she reached the house of one Manikya Rao at about 8.00 p.m. she found some people hiding behind the trailer of the tractor and that A.6 came out and caught hold of her hand and that she shouted and in the meanwhile the remaining accused came and gagged her mouth and lifted her and took her to her own land and made her to stand at a place by leaving her at a short distance and that they discussed whether she should be put in a gunny bag and thrown in the well or she should be killed with knives and then A.6 came to her and forced her to have sexual intercourse without her consent and when she refused A.6 committed rape on her and thereafter A.1, A.5, A.4 and A.2 committed rape on her while A.7 and A.8 were only watching the incident.

50. In her cross-examination nothing could be elicited to discredit her testimony.

51. P.W.2, the mother of P.W.1 also deposed that she came to know about the sexual assault committed on P.W.1 only after about a month. But she also did not inform to anybody out of fear. I do not find any thing unnatural in her conduct in not informing to anybody.

52. P.W.5, the doctor who examined P.W.1 and issued Ex.P-3 medical certificate also deposed that upon her enquiries, P.W.1 told her that on 30.8.1992, she was rapped by six persons one after another in her village. Ex.P-3 reveals that P.W.1 had experience of sexual intercourse even though, admittedly she was not married as on the date of the medical examination. This factor in my view does not help the defence. The crucial thing that is to be noted is that whether the earlier sexual experience was with or without her consent. However that aspect need not be discussed much inasmuch as the same is not very much material.

53. Furthermore as already pointed out the statement of P.W.1 was recorded by the police and the same was marked as Ex.P-1 and the same has already been accepted as F.I.R. A comparison of the evidence of P.W.1 before the Court and the contents of Ex.P-1 F.I.R. are consistent with each other on all material aspects. The evidence of the doctor to the extent that P.W.1 stated before her that she was subjected to rape also has to be taken into account as a piece of corroboration. Except the oral testimony of P.W.1 before the Court and Ex.P-1, F.I.R. there is no other evidence on record. But in my view the oral testimony of P.W.1 has been substantially corroborated by Ex.P-1 F.I.R. and also the evidence of the doctor P.W.5. In cases of the present nature, much corroboration cannot be expected, nor is necessary. It is enough if the court is satisfied with the oral testimony of the prosecutrix, depending upon the other facts and circumstances of the case. Therefore, in my considered view, the solitary testimony of P.W.1 supported by Ex.P-1 F.I.R. is convincing and capable of inspiring confidence in the mind of the court.

54. The Hon'ble Supreme Court in Lekh Raj, no further corroboration is necessary. In the said judgment, the Supreme Court observed thus:

55. If the prosecutrix is believed to be truthful witness, in her deposition, no further corroboration may be insisted. Corroboration is admittedly only a rule of prudence. This court in State of Punjab Vs. Gurmit Singh and Others, took note of the existing rate of crime against the woman and held; "Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive of its responsibility and be sensitive while dealing with cases involving sexual molestations."

56. On this issue the Supreme Court also referred to two other cases in State of Maharashtra Vs. Chandraprakash Kewalchand Jain, and State of Punjab Vs. Gurmit Singh and Others, .

57. From the above observations of the Supreme Court it is clear that the corroboration of the evidence of the prosecutrix need not be pressed. The evidence on record is totally substantial. In such a case, as held by the Apex Court in the above judgment, no corroboration is required, provided the solitary testimony of the prosecutrix is convincing.

58. Now it has to be considered whether all the accused have committed the offence u/s 376 I.P.C.

59. From the evidence of P.W.1 it is clear that only A-1 to A-6 committed the offence and A-7 and A-8 only watched the incident. She further deposed that all the accused physically lifted her to her own fields and made her to stand at one place and discussed about the manner in which she should be killed i.e., whether she should be put in a gunny bag and thrown in a well or to kill her by stabbing. That indicates that the accused had the initial intention to commit the offence u/s 302 I.P.C., but some how they developed the idea of committing the offence u/s

376 I.P.C. and such idea culminated into offence. Therefore, it is clear from the evidence on record that A-1 to A-6 are liable for the offence u/s 376 I.P.C. and as per the evidence of P.W.1, A-7 and A-8 did not participate in the offence and they simply watched the incident. As already discussed, the initial intention of all the accused was to kill and therefore, it cannot be accepted that A-7 and A-8 also had an intention to commit the offence u/s 376 I.P.C. and in such a case A-7 and A-8 cannot be convicted for the offence u/s 376 I.P.C., particularly when there is no charge u/s 34 I.P.C.

60. In the result, the criminal appeal is partly allowed. A.1, A.3, A.5, A.6 and A.8 are acquitted of the charges punishable u/s 3(2)(v) of SC, ST (Prevention of Atrocities) Act. However, A.1 to A.6 are convicted for the offence punishable u/s 376 IPC and keeping in view the facts and circumstances of the case, the sentence is reduced from ten years to seven years of rigorous imprisonment. The fine amount imposed by the lower Court is confirmed. A.7 and A.8 are acquitted of the charges leveled against them and their bail bonds stand cancelled and fine amount, if paid, shall be refunded.