

(1991) 08 AP CK 0012

In the Andhra Pradesh High Court

Case No : Criminal Appeals No's. 846 of 1990 and 369 of 1991

Mukhera Belakota Reddi

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 26-08-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 376

Citation : (1992) CriLJ 2236

Hon'ble Judges : M.N. Rao, J;J. Eswara Prasad, J

Bench : Division Bench

Advocate : C. Padmanabha Reddy, for the Appellant; Public Prosecutor, High Court of Andhra Pradesh, for the Respondent

Judgement

1. These two Criminal Appeals are interconnected and so, they are disposed of by this common judgment.

2. Criminal Appeal No. 846/90 was filed by the sole accused in Session Case No. 123/89 against his conviction u/S. 376 of the Indian Penal Code, and sentence of ten years Rigorous Imprisonment. He was charged for committing the offences punishable under Ss. 376, 302 and 201 of the Indian Penal Code. In respect of charges u/Ss. 302 and 201, IPC, he was acquitted by the learned Sessions Judge. Criminal Appeal No. 369 of 1991 was preferred by the State against that acquittal.

3. The version of the prosecution as to how the crime in question was committed, in brief, is as follows : The deceased Tulisamma, aged about 27 years, was the wife of P.W. 1 Boggula Jamala Reddy, who is a resident of Takkellapadu village. The accused Balakoti Reddy also belongs to the same village. Their houses are situated in the weaker sections colony of the village. The accused had two children and, the deceased had no children. Two months prior to 27-3-89, the date on which the deceased Tulisamma was alleged to have been murdered, the deceased informed her husband P.W. 1 that the accused in his absence visited their house and asked her to have sexual intercourse with

him offering to pay Rs. 2,000/- She then retorted saying that she would give Rs. 3,000/- to him, if he were to send his wife to her husband for sexual intercourse. On 27-3-89 at about 8-30 a.m. P.W. 1 went to Ramannapalem, a neighbouring village, to fetch ground-nut seeds. The deceased locked the house and went to the chilli garden of P.W. 10 Nagi Reddy, to fetch grass for their milch buffalos. She took with her a sickle and a lungi for tying the grass. P.W. 2, a boy aged about 15 years and belonging to Dhobi caste, went along with his brother Appayya to the cotton field of P.W. 6 Mukkera Venkateswara Reddy, to work as a cooly for plucking cotton. P.W. 3 is one Madhusudan Rao. The lands of P.W. 3 Madhusudan Rao, P.W. 10 Nagi Reddy and P.W. 6 Venkateswara Reddy, are adjacent to each other. There is a water-pump fixed with an oil-engine at the field of Nagi Reddy. The water for P.W. 3's land also was being taken from the said water-pump. On the date of the incident P.W. 3 went to the field of Nagi Reddy P.W. 10 to release water for his lands. The accused came to Nagi Reddy's field on the morning of 27-3-89. He caught hold of the hands of the deceased Tulisamma saying that she was going with everybody but not with him, although he offered her money. The deceased Tulisamma retorted that she would give Rs. 3,000/- to him, if he were to send his wife to her husband for sexual intercourse. Whereupon, the accused beat Tulisamma with the butt-end of the sickle on hands and legs. Seeing that incident P.W. 2 became panicky and sent his brother to bring P.W. 1, the husband of Tulisamma. The accused thereafter felled Tulisamma and committed rape on her. P.W. 2's brother returned and informed P.W. 2 that the house of the deceased was locked P.W. 3 who was present at the oil-engine of Nagi, Reddy, was requested by P.W. 2 to intervene, but he replied saying that if he were to intervene he would be killed. After the rape was committed, the accused came to the oil-engine shed and wore his underwear. P.W. 2 ran away to the village. The deceased Tulisamma got up with great difficulty, came near the engine-shed, and picked up a mud-pot for water. The accused then gave water to the deceased to drink. P.W. 4 who, was passing along that side saw the accused throwing the deceased into the well and when he questioned, the accused threatened to cut his neck if he disclosed this to anyone. P.W. 4 fearing his life ran away. P.W. 1 the husband of the deceased returned from Ramannapalem at about 2 p.m. and found his house locked. He waited for some time and sent to the chilli-garden of P.W. 10 Nagi Reddy, but did not find his wife there. In the evening at 5 or 6 O'clock when he was lying on a cot in front of his house, P.W. 2 came and informed him that the accused had beaten the deceased. P.W. 1, P.W. 8 Mutha Reddy and some others went to the field of Nagi Reddy with torch lights and noticed at the well four or five small heaps of cut grass, broken bangle pieces and a safety pin. On the next day at about 7 a.m. in the morning P.W. 1, 8 and others went to the field of Nagi Reddy and found the dead body of the deceased floating in the well. The police were informed, the S.I. of Police Yerrupalem P.W. 13 received a telephone message at about 10-15 a.m. and after entering the same in the General Diary he rushed to the scene with Constable. At the scene of offence, the S.I. of Police found P.W. 1 and recorded his statement Ex. P1 at about 11 a.m. and sent it to the Police Station where it was registered

by P.W. 12 Head Constable as FIR in Cr. No. 7/89. The FIR is Ex. P6. Information about the incident was sent to the Inspector of Police P.W. 14 by the Sub-Inspector P.W. 13 and after receiving the information the Inspector of Police, Madhira, reached the scene at 12 noon and conducted inquest from 12-30 to 3 p.m. At the inquest, he examined P.Ws. 1, 3, 5 and others. Ex. P2 is the inquest report. The Inspector of Police, seized MOs. 1 to 5, broken bangle pieces, safety pin, blood-stained banian pieces, chappal and a cotton lungi at the inquest. The Inspector of Police got the water in the well pumped out. Under Ex. P3 mahazar, M.O. 6 the saree on the body of the deceased was seized and the body of the deceased was sent to the hospital for post-mortem examination. Dr. V. V. Rajeswari, Medical Officer, Government Hospital, Madhira, conducted post-mortem on 29-3-89. Ex. P5 is the post-mortem certificate. The accused was arrested on 20-4-89. When he was questioned in the presence of P.W. 9 he produced M.O. 9 a torn banian from a handbag which was seized under the mahazar Ex. P4. The charge-sheet was filed on 15-7-89. The plea of the accused was one of denial.

The learned Sessions Judge, after considering the evidence on record, found the accused guilty of the offence under S. 376 and sentenced him to a term of ten years" R.I. The evidence of P.Ws. 2 and 3 was believed by the learned Sessions Judge. The medical evidence, according to the learned Sessions Judge, corroborated the ocular evidence of P.Ws. 2 and 3. The conduct of P.Ws 2 and 3 was not found to be abnormal in the particular circumstances by the learned Sessions Judge. Their presence at the scene of offence was properly accounted for. The conduct of P.W. 2 in not informing P.W. 1 the husband of the deceased about the sexual assault committed by the accused was not found to be abnormal in the circumstances. P.W. 2 was afraid of the accused and he was also afraid that if he were to reveal the incident of rape to P.W. 1, the latter might beat his wife the deceased Tulisamma. The conduct of P.W. 3 in not informing others about the incident was also found by the learned Session Judge as not casting any suspicion about his claim that he was present at the scene. The threat administered by the accused was found to be the cause that deterred P.W. 3 from disclosing the incident. As regards the charge u/Ss. 302 and S. 201, IPC, the learned Sessions Judge disbelieved the evidence of P.W. 4 on the ground that he did not disclose the same to anyone. He was not present at the inquest. His 161 Cr.P.C. statement was recorded only on 1-4-89. The belated testimony of P.W. 4 was found by the learned Sessions Judge to be unsafe for recording a conviction against the accused u/Ss. 302 and 201, IPC.

4. Sri Padmanabha Reddy, learned Counsel for the accused contends that the evidence on record does not warrant the conviction of the accused for the offence u/S. 376, IPC; the evidence of P.Ws. 2 and 3 is not entitled to any credence; they did not disclose the offence of rape to P.W. 1; nor to any one else till the next day; the very prosecution case that in the presence of P.Ws. 1(2) and 3 the accused committed rape is palpably unbelievable and contrary to normal human conduct; no person would commit rape in the presence of others;

the medical evidence does not accord with the ocular evidence of P.Ws. 2 and 3 who stated that the accused administered blows on the hands and the legs of the deceased Tulisamma and that the Doctor in her examination did not find any corresponding injuries on the person of the deceased.

5. In opposition to the above submissions, the learned Public Prosecutor contends that the presence of P.Ws. 2 and 3 at the scene of offence was properly accounted for and there are sufficient reasons for P.Ws. 2 and 3 in not disclosing to outsiders about the sexual assault committed by the accused on the deceased. The injuries found on the person of the deceased, as testified by the Doctor, fully corroborate the oral testimony as to the commission of rape.

6. The deceased Tulisamma was a grown-up woman, aged 27 years. When she was subjected to rape, would it be possible to assume that she meekly submitted without offering any resistance, contends Sri Padmanabha Reddy. He also contends that it is impossible to commit rape single handedly on a grown-up woman; she must have offered resistance if against her wish she was subjected to sexual intercourse and the absence of injuries on her person indicating any resistance by her is clearly suggestive of the fact that either she had consented for the act, or more than one person was involved in the commission of the offence. We cannot agree with these contentions. The evidence of P.W. 2 clearly shows that the accused beat the deceased indiscriminately with the butt-end of the sickle, removed her saree and inserted the same in her mouth. He made her lie flatly and after removing his underwear sat on feet and then committed the offence. P.W. 2 witnessed the incident at a distance of about ten yards. When the accused removed the saree of the deceased and gagged her mouth with it, she was suffocated and in that condition it was impossible for her to offer any resistance. She must have been under a very great physical disability to offer any resistance. A sense of shame that must have overpowered her when her saree was removed must have added to her misery. Placed in those circumstances, it is impossible to imagine that any woman would have offered resistance. The accused is a young man aged thirty years and being a labourer his physical condition was such that he could overpower his victim. The manner in which the rape was committed on her clearly left no scope for the victim to resist the act. One other factor which cannot be lost sight of, is that the accused was armed with a sickle. It is true that no corresponding injuries on the hands and legs of the deceased were found by the Doctor when she conducted post-mortem. She found only one injury. When P.W. 2 examined he stated that the accused beat the deceased with the butt-end of the sickle of hands and legs. He did not say that he noticed any injuries on those parts. Whether there are injuries on hands and legs or any other part of the body, it was difficult for P.W. 2 to observe minutely. Of the three external injuries, injury No. 2, a contusion behind left-ear is, in all probability, was the result to the injury caused by the butt-end of the sickle.

7. The presence of P.Ws. 2 and 3 at the scene of offence was properly accounted.

P.W. 2 a Dhobi boy is a child witness aged fifteen years. He and his brother were engaged as coolies to pluck cotton in the field of P.W. 6. The evidence of P.W. 6 is to the effect that he engaged P.Ws. 2 and his brother to pluck cotton in his field and the wage agreed to be paid was Re. 1/- per Kg of cotton plucked. The presence of P.W. 3 was also properly accounted for at the scene of offence. He is the owner of the adjacent land. He requested P.W. 6 Nagi Reddy to permit him to take out water to his field from the pump-set installed at the land of P.W. 6. The evidence of P.W. 6 is to the effect that he granted permission to P.W. 3 to take water from his pump-set. On the date of the incident, P.W. 3 was at the land of P.W. 6. He operated the engine for some time and when it developed trouble he stopped working. At that time he happened to witness the incident. It is true that he did not mention the act of rape to any one; he was afraid that the accused might kill him. He does not belong to the caste of PW 1 and the accused. His daughter ran away with a Reddy boy. Obviously he did not want to involve himself in the incidents associated with people of another caste. That might also be one of the reasons which prevented him from disclosing immediately to anyone what he had seen. In the case of PW 2 the reasons for his not disclosing the incident are very sound. He is aged 15 years. He developed fear on witnessing the incident. The fear that the accused might kill him must have operated in his mind. On that very day in the evening he went to the house of PW 1 and informed him that Tulisamma was beaten by the accused. It is true that he did not inform PW 1 that Tulisamma was sexually assaulted. According to him, he did not inform PW 1 about the sexual assault, lest PW 1 might beat his wife. PW 2 belongs to Dhobi caste and the prosecution party are Reddies. The age of PW 2, his caste, his vocation being a cooly and the threat that the accused might kill him are all valid reasons which had prevented him from disclosing to PW 1 about the rape committed by the accused.

8. In Ex. P1 the statement of PW1 which was recorded at about 11 a.m. on the very next day, it is mentioned that he was informed by PW2 that the accused attempted to commit the offence of rape on Tulisamma. The contention of the learned counsel for the appellant is that although it is mentioned in Ex. P1 about the attempted commission of rape, in the evidence PW2 admitted that on the date of the incident in the evening when he met PW1 he did not inform about the accused committing rape. In our view, nothing of importance turns upon this discrepancy. By the time of Ex. P1 the entire facts leading to the commission of offence came to light. In that context it was but natural for PW1 to mention in the report that PW2 informed him about the attempted commission of the offence of rape by the accused.

9. How witnesses react when they witness crimes cannot be stated in legal principles of universal application. Human nature, it cannot be predicated, will react in a particular manner in a particular circumstances. Different persons react differently to incidents they witness. A person may be dumb-founded on seeing a crime, another person may shout for help and a third person may go to the rescue of the victim and yet, another person may run away from the scene out of

fear and may not reveal what he had seen to anyone. It is totally unrealistic for any court of law to lay down, as a principle of law of universal application that when a person witnessed a crime he would definitely go out and disclose to others what he had seen. There is no such presumption and no uniform pattern of reaction can be attributed to human beings. Dealing with different attitudes of witnesses when they happen to witness crimes, Chinnappa Reddy, J. speaking for the Division Bench, observed in *Rana Partap and Others Vs. State of Haryana*, , as follows at page 1274 :

"Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Everyone reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

In *State of Orissa Vs. Mr. Brahmananda Nanda*, , the Supreme Court sustained the acquittal on the ground that one of the eye-witnesses for one and half-day after allegedly witnessing the incident, did not come out with the name of the assailant. As already observed above, there cannot be any hard-and-fast rule as to how the witnesses react in different situations to the different types of incidents they witness. In a given set of facts a Court may come to the conclusion that silence on the part of the witnesses is fatal to the case of the prosecution. But that observation cannot be made applicable to a case involving different set of facts. In *Pratap Misra and Others Vs. State of Orissa*, , a pregnant woman was alleged to have been raped by four persons and no injuries were found on any of them. The Court had not ruled out the possibility of the victim's consent. We are unable to agree that the aforesaid case is of any assistance to the accused in the case before us. We have already stated the reasons why the deceased could not offer any resistance. Whether there are injuries on the person of the accused could not be ascertained for the reason that he was arrested on 20-4-89 whereas the offence was committed on 27-3-89. After such a long lapse of time, there could not be any traces of injuries. The medical evidence, in our view, corroborates the ocular evidence of PWs 2 and 3. The external injuries found on the deceased when the doctor conducted autopsy on 29-3-89 were :

1. Laceration of both lips present;
2. Contusion present behind the left ear;
3. Incised wound present, size 1/2" x 1/2" on the left external ear lobule.

The doctor in her evidence stated that "vagina is lacerated and both labia minora and clitoria are lacerated. Oedema present surrounding the genitalia. The oedema is due to putrefaction." The cause of death, according to the doctor, was

due to "asphyxia consequent to crush injuries to both; the lungs and to some extent due to drowning". Ex. P5 is the post-mortem certificate. In the cross-examination the doctor stated that "on account of laceration only on the labia minora, it cannot be said that there is intercourse." The doctor also stated that "as I felt that the presence of spermatozoa could not be detected by preserving vaginal swabs, I did not collect them." As the body was filled with water, I felt that no purpose would be served by preserving vaginal swabs. I cannot cite an authority for the said opinion."

The learned counsel for the accused contends that the medical evidence does not establish the offence of rape. We are unable to agree. In the chief-examination, the doctor stated that laceration was due to intercourse. The veracity of that statement is not in any (way) affected by the admission in the cross-examination that on account of laceration only on the labia minora, it cannot be said that there was intercourse. The type of injuries found on the person of the deceased, coupled with the oral testimony of PW 2 clearly show that the deceased was subjected to rape. There could not have been laceration on the vagina in the absence of violent intercourse. The learned counsel suggested that as the deceased was a grown up married woman, perhaps, she had sex with her husband in the morning and that accounted for the vaginal laceration. We cannot accept this for the reason that as a grown up woman the deceased was accustomed to family life with her husband. In the normal course when there was intercourse, there is no possibility for vaginal laceration. Unless the act was performed violently there is no possibility for such an injury. As the body was floating in the water for nearly 18 hours, the doctor very rightly felt that no purpose would be served by collecting the vaginal swabs. There is no possibility for the presence of spermatozoa when the body was in water for such a long time. We have not come across any medical authority to the effect that despite the body being in water for nearly 18 hours, the spermatozoa would still be present and it was possible to detect traces of spermatozoa by collecting the vaginal swabs.

10. As to the theory that in the presence of PWs 2 and 3 the accused could not have committed the offence of rape. In the face of the evidence of PWs 2 and 3, which is natural and cogent, we cannot, on the abstract reasoning that a person would not commit rape in the presence of others, acquit the accused. We must mention in this context that the deceased told her husband that the accused came to her house in the absence of her husband and asked her to have intercourse, with him offering Rs. 2,000/-; she retorted that she would give Rs. 3,000/- If he were to send his wife to have intercourse with her husband. This motive was, in our opinion, sufficient to enrage the accused to wreak vengeance. There was chilli crop on the land and it is not possible for any one to witness what was happening, unless one was close-by. Perhaps the accused thought that the best opportunity came on that day to satisfy his lust and at the same time to wreak his vengeance. The presence of PW 2, a boy of fifteen years, and PW 3 another person at the oil engine nearby, perhaps the accused thought, were not

obstacles in his way to achieve his objective.

11. For these reasons we affirm the conviction. So far as Crl. Appeal No. 396/91 is concerned, the appeal preferred by the State against the acquittal of the accused for the offences under Ss. 302 and 201, I.P.C., we do not find any sufficient reasons to differ with the view taken by the learned Sessions Judge. PW 4 claimed to have seen the accused throwing the victim into the well. He did not inform any one. He was not examined at the inquest. His 161, Cr.P.C. statement was recorded on 1-4-89, nearly four days after the incident. It is true that the body was found floating in the well. Whether the deceased, out of shame and humiliation committed suicide by falling into the well, or whether some one threw her into the well. It is difficult to find out on the basis of evidence on record. If PW 4's evidence is excluded, there is nothing to suggest that the death of the deceased was the result of homicide and that the accused was responsible for throwing her into the well and therefore, we dismiss the appeal.

12. The accused is aged about 35 years. He appears to have committed the offence of rape out of vengeance. He has a wife and two children to look after. There does not appear to be any earlier record of crime against him in the past. Taking all the circumstances into consideration, we are of the view that rigorous imprisonment for a period of seven years would meet the ends of justice. In the result, Crl. Appeal No. 369/91 preferred by the State is dismissed. The conviction recorded under S. 376, I.P.C. by the learned Sessions Judge is affirmed, but the sentence is reduced from ten years to seven years rigorous imprisonment. Subject to the above modification, Crl. Appeal No. 846/90 is dismissed.

13. Order accordingly.