
(2011) 09 AP CK 0081

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1289 of 2006

Reddy Mahesh @ Reddeppa

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 375, 376, 376(2)

Citation : (2012) 2 ALT(Cri) 54

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : O. Manohar Reddy in Criminal Appeal Nos. 1289, 1290 of 2006 and Sri. G.V. Ramana Reddy in Criminal Appeal No. 814 of 2007, for the Appellant;

Final Decision : Dismissed

Judgement

R. Kantha Rao

1. These Criminal Appeals are filed against the judgment dated 18-9-2006 passed by the Additional Sessions Judge, Hindupur, Ananthapur district in SC. No. 57 of 2003.

2. The appellants were tried by the learned Additional Sessions Judge for the offence u/s 376(2)(g) of IPC. They were found guilty were convicted for the said offence and sentenced to undergo Rigorous Imprisonment for ten years and to pay fine of Rs. 1000/- each, in default to undergo simple imprisonment for one month each for the offence u/s 376(2)(g) of IPC.

3. "Against the said order of conviction and sentence, A-1 preferred Criminal Appeal No. 814 of 2007, A-2 preferred Criminal Appeal No. 1290 of 2006 and A-3 preferred Criminal Appeal No. 1289 of 2006.

4. Heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor representing the State.

5. Briefly stated the prosecution case is as follows:

PW-1 the victim girl was married to one Sivappa of Diguwapalli village in Ananthapur district. There was some dispute between PW-1 and her husband and on account of the said dispute, PW-2 her father brought her to his house about three months prior to 30-1-2002. It is said that the three accused developed sexual zeal towards PW-1 and they" were contemplating to have sexual intercourse with her.

While so, on 30-1-2002 at about 07:00 p.m. while PW-1 was returning after answering calls of nature, all the three appellants surrounded her, threatened her and fell her down and had sexual intercourse with her forcibly against her will and without her consent. By putting her under fear, all the three appellants gang raped her one after another. On noticing PW-2 the father of the victim girl coming towards bricks kiln nearby the place of occurrence which is an open place all the appellants left her. On hearing the cries of PW-1, PW-2 went there and the victim girl narrated him about the incident. PW-2 tried to catch hold all the appellants but in vain.

Thereafter, he took her to Nallamada Police Station and basing on her report Ex.P-1 the police registered a case in Cr.No. 4 of 2002 under. section 376 r/w section 34 of IPC. The offence was investigated into and after completing the investigation, a charge sheet was laid against the appellants.

6. In the course of the trial before the learned Additional Sessions Judge, the prosecution in order to prove the guilt of the appellants examined PWs 1 to 12 and marked Exs.P1 to P-15 and MO-1.

7. PW-1 stated before the learned Additional Sessions about the appellants catching hold of her and putting her under fear and committing rape one after another without her consent and against her will. PW-2 who is no other than the father of the victim girl stated in his deposition that he rushed to the place of occurrence on hearing the cries of PW-1 and on seeing him the appellants fled away. Though as per medical evidence no injuries were found on the private parts of PW-11 the doctor, who examined her found the following external injuries on her body.

(i) 1/2 cm., laceration present over the finger webs between the left middle and ring finger surface dry;

(ii) Small abrasion present left thenar space

(iii) Pain and tenderness with swelling present over the right foot.

Human semen and spermatozoa are detected in cervical swabs and cervical smears.

8. The learned trial Court convicted the appellants for the offence u/s 376(2)(g) of IPC and sentenced them to punishment as mentioned hereinabove.

9. Now the point for determination in this criminal appeal is whether the order of conviction and sentence passed by the learned Additional Sessions Judge can be

sustained ?

10. One of the contentions urged by the learned counsel appearing for the appellants is that none of the independent witnesses supported the prosecution, according to the prosecution, at the time of incident a marriage function was going on between Vignan School and the recreation club, which is situated at some distance to the place of occurrence a brick kiln was also there and some people were said to be present there. If it is so, according to the learned counsel there is some possibility of some independent witnesses to witness the incident and in the absence of evidence from independent source, it is quite unsafe to convict the appellants basing on the evidence of PWs 1 and 2, who are the daughter and father.

11. It may be stated that the incident took place at 07:00 p.m., after the darkness had set in. The persons involved in the marriage function might be busy with the marriage function and since the place of occurrence is at a considerable distance from the brick kiln as well as the venue of marriage function, the incident might not have invited the attention of the persons present and on that score the testimony of PWs 1 and 2 cannot be doubted.

12. Moreover nothing has been brought on record by the appellants to prove that there was any enmity between them and PWs 1 and 2 though a vague suggestion was given to PW-2 in the cross-examination that the appellants were working in a wine shop and PW-2 was selling illicit liquor the appellants informed the same to the Police and keeping the said issue in mind, PW-2 got foisted a false case against them through PW-1. Except the bald suggestion no material was placed on record to substantiate the said version. Further PW-2 brought PW-1 to his house as her husband discarded her. In such situation one cannot expect PW-2 to make PW-1 instrumental in involving the appellants in charge of gang rape for trivial cause. Therefore, absolutely there is no basis for the defence theory and there are no valid reasons to discard the testimony of PWs 1 and 2.

13. In her evidence PW-11 who examined the prosecutrix on 31-1-2002 at about 04:00 a.m., stated that the age of the prosecutrix on the date of incident was 14 years. PW-8 another doctor, who determined the age of PW-1 by conducting the requisite tests opined that the prosecutrix was aged 14 years.

14. No specific suggestion was put to PW-8 or PW-11 that the prosecutrix was aged about more than 14 years on the date of incident. From the evidence, therefore, it is obvious that the prosecutrix though was married on the date of incident, was approximately 14 years of age. Therefore, the contention of the appellants that the sexual intercourse was with the consent of PW-1 is of no consequence. The prosecutrix being below aged 16 years, her consent absolutely becomes immaterial for determining the commission of offence of rape. Even if it is with her consent it amounts to rape as defined u/s 375(b) of IPC.

15. In the instant case, the prompt lodging of FIR by PW-1 also renders assurance to the truthfulness in the version of PWs 1 and 2. The offence was

committed at 07:00 p.m. on 31-1-2002 and the report was lodged by PW-1 in Naliamada Police Station at about 09:30 p.m. i.e., the report was given within 2 1/2 hours in the Police Station, which is at a distance of 1 1/2 KMs from the place of incident. Absolutely there is no delay in lodging the FIR and there is no scope whatsoever to introduce any distorted and concocted version after due deliberations and consultations.

16. Thus, in the instant case, the medical evidence discloses that there was sexual intercourse with the prosecutrix even though no external injuries were found on the person of PW-1 by the doctor who examined her. MO-1 the petty coat of PW-1 was seized by the police and was sent for chemical analysis to FSL Hyderabad. In the FSL report it is stated that semen and spermatozoa were detected on MO-1. The FSL report also shows that human semen and spermatozoa are detected in cervical swabs and cervical smears. Therefore, there is ample evidence to show that PW-1 was subjected to sexual intercourse. The mere absence of injuries on the private parts of PW-1, she being married woman is of no consequence and the medical evidence in this case cannot be said to be inconsistent with the testimony of PW.-1. As I have already said there was no enmity between the appellants and PWs 1 and 2 and therefore absolutely there was no scope for falsely implicating the appellants in the charge of this nature.

17. For all these reasons, I am of the considered view that the learned trial Court rightly appreciated the evidence let-in by the prosecution and did not commit any error in convicting the appellants for the offence u/s 376(2)(g) of IPC. As regards the sentence, PW-1 is an illiterate girl she is a labourer, discarded by her husband and was in a helpless condition. The learned trial Court rightly took a serious view for the nature of the offence committed by the appellants and sentenced each of them to undergo ten years Rigorous, Imprisonment and to pay fine of Rs. 1000/- each in default to suffer simple imprisonment for one month. According to me also, there are no grounds to take a lenient view to that of one taken by the trial court. The sentence passed against the appellants also requires no interference in this criminal appeal.

18. For the foregoing reasons, the conviction and sentence passed by the learned trial Court against the appellants are confirmed.

The Criminal Appeals filed by the appellants are dismissed.