
(2021) 10 TEL CK 0025
In the Telangana High Court
Case No : Criminal Appeal No. 1883 Of 2009

State Of Andhra Pradesh

APPELLANT

Vs

Katka Nageswar Rao

RESPONDENT

Date of Decision : 21-10-2021

Acts Referred:

Indian Penal Code, 1860 — Section 354, 376

Citation : (2021) 10 TEL CK 0025

Hon'ble Judges : Dr. C.Sumalatha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Challenging the validity and the legality of the judgment dated 14.11.2008 rendered by the Court of the Assistant Sessions Judge, Khammam, in S.C.No.88 of 2008 the appellant approached this Court by way of appeal.

2. In the grounds of appeal, it is urged that the judgment of the trial court is contrary to law, weight of evidence and probabilities of the case; that the learned judge ought to have seen that the ingredients to constitute the offences punishable under Section 354 and 376 I.P.C. were made out by the prosecution; that the learned judge erred in disbelieving the evidence of prosecution witnesses which is cogent and reliable and the learned judge ought not to have acquitted the respondent/accused on the ground that no test identification parade was conducted, he did not consider the evidence of prosecution witnesses in correct perspective; and therefore, the appeal has to be allowed setting aside the judgment of the trial Court.

3. Reported to take it as heard by the learned Additional Public Prosecutor and also by the learned counsel appearing for the respondent-accused.

4. Now the points that arise for determination are:

(1) Whether the appellant established before the trial Court the guilt of the

respondent-accused for the offences punishable either under Section 354 I.P.C. or under Section 376 IPC beyond all reasonable doubt.

(2) Whether there exists any infirmity in the judgment of the trial Court either in appreciating the facts of the case or in applying the established principles of law to the said facts as contended by the appellant herein which in turn needs interference of this Court exercising the appellate jurisdiction.

POINT No.1:

5. The case of the prosecution as borne out by the charge sheet is that on 03.05.2007 PW.1 went to Wyra to bring household articles and after purchase, she boarded an auto and got down at Gubbagurthy Village and while she was proceeding on NSP canal by walk to reach her village and when she reached the drainage canal leading towards Anjanapuram village, the respondent-accused pounced upon her from bushes, hugged her, dragged her and when she raised cries Pw.3 and Pw.5 approached her and on seeing them the respondent/accused fled away.

6. Record discloses that initially a charge was framed for the offence punishable under Section 354 IPC against the accused and subsequently another charge was framed for the offence punishable under Section 376 IPC. The respondent/accused pleaded not guilty of those charges. The evidence of alleged victim i.e. PW.1 is that on 03.05.2007 at about 4 PM she got down from an auto at Gubbagurthy village and while she was proceeding on the Sagar canal bund and when she reached near branch canal, the respondent-accused approached her and by informing that only five minutes, he dragged her to the bushes and raped her and at that time, PWs 3 and 5 who were proceeding in that direction approached them and on seeing them, the respondent-accused ran away. PW.1 further that deposed that due to fear she was going by weeping and on the way Pws 3 and 5 came in the opposite direction and questioned her, on that she informed them about the incident. Pw.1 during the course of cross-examination reported that accused dragged her from the canal bund towards bushes and raped her. She admitted that accused raped her and when she came out by weeping and at that time, Pws3 and 5 came by that side. Pw.1 also deposed that she informed police that accused committed rape. She further deposed that Pw.3 informed the name of the accused. Pw.1 further deposed that her clothes were removed by the accused. The veracity of this version is highly doubted by the trial Court during the judgment. As rightly observed by the trial Court, PW.1 appears to have developed her version, when the same is compared with Ex.P.1 statement. In Ex.P.1 statement, which is the initial document disclosing the narration of facts, it is laid down that the accused dragged her forcibly towards the bushes and at that time, she raised cries and in the meantime Pw.3 and Pw.5 who were proceeding on a bicycle witnessed the incident and on seeking those persons, the accused left her and fled away and Pws 3 and 5 identified the accused. No satisfactory reason is put forth by the prosecution i.e. the appellant herein as to why Pw.1 failed to state about the alleged rape in Ex.P.1. The evidence of Pw.2 is

only hear-say. Therefore, it cannot be considered to be a substantive piece of evidence. Pw.3 in his evidence stated that while himself and Pw.5 were proceeding on a bicycle and at that time they heard the cries of a woman and they went towards the place from which they heard the cries and on seeing them the accused ran away and they found a woman and they also found that her clothes were with dust. Pw.3 during the course of cross-examination stated that when they saw, they found Pw.1 and accused in compromising manner. Pw.5 gave evidence to the effect that by the time himself and Pw.3 reached the place of incident they found Pw.1 along with the accused and her sari being removed and Pw.1 weeping. Neither Pw.3 nor Pw.5 gave evidence to the effect that Pw.1 informed them that the accused raped her. The contradictory statements and versions putforth by Pw.1 made her evidence highly doubtful and unreliable and therefore, the trial Court found respondent-accused not guilty of offence charged. Pw.1 in her chief examination itself at one stage stated that the accused raped her and on seeing Pw.3 and Pw.5 he ran away from the scene of offence and again took another stand in the chief examination. She deposed that while she was going weeping on the way Pws.3 and 5 approached her by coming in the opposite direction and on questioning she informed about the incident to them. Even the evidence of Pw.3 and 5 is not consistent. Pw.3 during the course of cross-examination stated that himself and Pw.5 chased the accused, Pw.5 did not state anything of that stand. In the same manner, when Pw.3 stated that they found Pw.1 with cloths dust, Pw.5 during the course of cross-examination stated that the sari of Pw.1 was found removed. Thus considering these discrepancies and unreliable material that was brought on record, the trial Court passed judgment of acquittal. Pw.1 proceeding from the scene of offence crying and meeting Pw.3 and Pw.5 on the way, Pws.3 and 5 chasing the accused are not found in Ex.P.1, complaint. Thus such unreliable material cannot form basis for convicting the respondent-accused. Therefore, this Court holds that the appellant-prosecution failed in establishing the guilt of respondent-accused beyond all reasonable doubt either for the offence punishable under Section 354 IPC or for the offence punishable under Section 376 IPC before the trial Court.

POINT No.2:

7. When the judgment of the trial Court is meticulously perused, this Court finds that the trial Court by considering all the aspects of the case, including the facts and the points that were discussed supra has come to just conclusion. None of the grounds urged stands for consideration in the light of the well reasoned judgment. Therefore, this Court holds that said judgment needs no interference.

8. In the result, the Criminal Appeal is dismissed confirming the judgment dated 14.11.2008 rendered by the Court of the Assistant Sessions Judge, Khammam, in S.C.No.88 of 2008. Pending miscellaneous petitions, if any, shall stand closed.