

(2001) 08 AP CK 0133

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 661 of 1995

Tangirla Ramana @ Venkata Ramana

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2001) 2 ALT(Cri) 468

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : V.V.L.N. Sarma, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V. Eswaraiah, J.—The appellant filed this Criminal Appeal against the judgment dated 19/10/1995 made in S.C. No. 49/1992 on the file of the learned II Additional Sessions Judge-cum-Special Judge for Cases triable under S.C & S.Ts (P.A) Act, 1989, Krishna Division, Vijayawada, in holding the accused-appellant guilty u/s 376 IPC and sentencing him to undergo RI for seven years.

2. The case of the prosecution is that the victim girl - PW-1 and her brother (PW-2) belong to Gopavaram village of Musunuru Mandal. Dharmayya (PW-2) was studying B.L., at Machilipatnam. PW-1 was staying with her brother (PW-2) at Machilipatnam as she was preparing for X class examination. PW-2 went to his native place on some personal work. Taking the advantage of the absence of PW-2, the accused entered into the house and committed rape on PW-1 at Masula on 16/06/1991 at about 4-00 p.m. and while the accused was committing rape, her brother (PW-2) entered into the house and on seeing him, he ran away leaving his cut drawer (M.O.4) at the scene of offence. She narrated the incident to her brother and both of them have reported the matter to the Chilakalapudi P.S. and the Head Constable, who was examined as PW-9, recorded the

statement of PW-1, which is marked as Ex.P-1. PW-1 in Ex.P-1 stated that she had failed in three subjects in X class previously and with an intention to write the examination she came to Masula where her brother PW-2 was staying at Chilakalapudi. Two days prior to the incident, her father wrote a letter asking her brother to go to their native place and thereupon her brother proceeded to their native place and they were having two keys one key was with her brother and the other key was with her. One day prior to the incident she locked the door and went to the house of Veera Raghavaiah - PW-4 and she has lost the key and when she informed the same to PW-4, then PW-4 came to her house and opened the door from rear side and advised her not to break open the lock and to use the rear door till her brother comes. On 16/06/1991 at about 4-00 p.m. evening she was at her house and was busy with preparation of food for her brother as he was expected on that day, and she was sitting on the mat and preparing food. In the meanwhile, the accused residing in the neighbourhood of the house came to her house and bolted the door and gagged her mouth and forcibly threw her on the mat and removed his underwear and while stating not to shout and after lifting her petticoat put his pennies in her private part and committed rape on her forcibly. While the accused was committing rape on her, her brother was about to enter into the house by opening the lock and on seeing him the accused ran away leaving his underwear at the scene of offence itself. She narrated the incident to her brother - PW-2 about the commission of rape by the accused. While she was being raped by the accused, blood came out from her private parts and fell on her petticoat and half saree (voni) and also on the mat. A complaint was given on the same day evening i.e., about 10-00 p.m. on 16/06/1991. On the said complaint, FIR (Ex.P-13) is registered and she was sent to the medical test and the case was investigated. The accused was arrested on 13/02/1991 i.e., after 27days and he was also subjected to medical test but there was no opinion with regard to semen taken from the accused.

3. PW-1 was examined by lady doctor on the same day night with reference to the history of being raped eight hours ago and she found no injuries on the body of the genitalia. On vaginal examination, vagina was admitting two fingers without any pain. There was no bleeding. Uterus was of normal size. Hymen was not intact with presence of old tears, it was not tender. She collected 4 vaginal smears, cervical swabs and hair for chemical analysis. After receipt of chemical analysis report, she gave her final opinion that there was no sign of rape. The wound certificate is marked as Ex.P-2 and Ex.P-3 is the report of the Chemical Examination and Ex.P-4 is the final opinion of the doctor. No doubt spermatozoa was found on M.O.1. She stated in her cross-examination that the blood detected on M.Os. 1 and 2 can be on account of menstruation and there was no fresh tearing of hymen and there were no fresh injuries in any part of vagina. Doctor further stated that tallying of count of sperms found on the clothes M.Os. 1 and 2 and the count of sperms of the accused was not done, and therefore, she could not say that the spermatozoa found on the clothes M.Os. 1 and 2 were that of the accused. Though the sperm was sent to the chemical examination, it was

stated that it was not suitable for test.

4. PW-1 said to have been raped by the accused, deposed that her brother was expected on that fateful day, while she was sitting on a mat and cooking food for her brother, at that time, the accused entered into the house from rear side door and laid her on mat by closing her mouth with his hand, pulled her langa and committed rape. She also stated that the accused inserted his pennies into her vagina, at that time her brother unlocked with the key he was having and entered in side the house. By seeing him, she shouted as "Annayya". Then the accused ran away. PW-1 revealed the entire incident to her brother (PW-2). PW-2 informed the incident to the other locality people. In the cross-examination, she stated that when the accused closed her mount with one hand, she had attempted to ward off the hand of the accused with which he closed her mouth. She was sitting on the mat and the accused threw her on the same mat and the accused did not remove his hand from her mouth even while he removed his underwear and while the accused committing rape she tried to extricate herself. She kicked and pushed him. She tried to remove his hand from her mouth and even she tried to get up but she could not. After the accused threw her down and started committing rape, she lost her consciousness and could not do anything. She fell giddiness and that she did not know as to what was happening to her. Getting unconsciousness and giddiness was not stated before the police. She further stated that while he was committing rape on her she felt pain on her vagina and there was bleeding. She also stated that prior to the incident she was not having any sexual intercourse. She was cross-examined by the defence counsel stating that the accused was working in the godown where PW-4 was working and the accused and PW-4 belong to two different parties and that PW-4 is close to PW-1 and 2 and that by using her, PW-4 wanted to take revenge on the accused. PW-2 stated that when he was entering into the house after unlocking the door, he saw the accused running away from the rear door and he saw PW-1 lying on the mat and she got up and started weeping stating that the accused raped her. In the cross-examination, he has stated that immediately after unlocking the door, he saw the accused was running away and he did not observe from the door through which he ran away was bolted from inside or not and whether the accused ran away by opening the bolt. He also stated that neither himself nor PW-1 shouted when the accused was there. He admitted the fact that PW-1 was conscious when he entered the house after the accused ran away.

5. As far as age of the accused is concerned, he is above 16 years and therefore, the question of presumption of committing rape as if the victim is below 16 years does not arise in this case.

6. In the instant case, the evidence of PW-1 is not supported by any medical evidence. The question as to whether PW-1 is a truthful witness or not has to be considered in this case. PW-1 stated that she has resisted, struggled and got pain while rape was being committed on her but whereas this evidence is not at

all corroborated by the medical evidence as there were no injuries on her private part and her vagina is soft, not paining and the doctor who examined her was opined that PW-1 was having old traces of intercourse. Had there been any resistance or struggle, certainly she would have sustained some injuries on her person. The cut drawer said to have been left at the scene of offence is not connected to that of the accused. No examination was conducted on the said cut drawer as to whether it belongs to the accused. The matter was not sent for chemical examination and as per the doctor's evidence, the presence of spermatozoa is not tallied with that of the accused and when she stated that she could not state that the sperms found on the M.O.1 is that of the accused. It was observed by the Forensic Science Laboratory that the spermatozoa sent for examination is not suitable for test. In the absence of any tallying the count of sperm on M.O.1 and 2 belong to PW-1 with that of the accused and in the absence of any evidence connecting it to the accused, it is not possible to come a definite conclusion that a rape has been committed by the accused himself on PW-1. As a matter fact, doctor's opinion is that there was no sign of rape committed on PW-1 and the police Inspector who examined as PW-11 also stated that the medical evidence did not reveal that PW-1 was victim of rape. Even assuming that there was a sexual intercourse; it appears that it was with the consent of PW-1, as no signs of resistance or struggling was revealed as per the evidence available on record. I am, therefore, of the opinion that it is not safe to convict the accused on the aforesaid evidence available on record.

7. Accordingly, the judgment of the trial court is set aside and the appeal is allowed.

8. The bail bonds if any executed by the accused stand discharged.