
(2004) 08 AP CK 0024

In the Andhra Pradesh High Court

Case No : Criminal A. No. 1552 of 1997

The Public Prosecutor

APPELLANT

Vs

Yejjala Ramaswamy

RESPONDENT

Date of Decision : 06-08-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 450

Citation : (2005) 1 ALD(Cri) 230 : (2004) 2 ALT(Cri) 727 : (2004) CriLJ 4528

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Public Prosecutor, for the Appellant; Pottigari Sridhar Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard the learned Additional Public Prosecutor and also Sri Pottigari Sridhar Reddy, learned Counsel, representing the respondent-accused and perused the material available on record.

2. The State, aggrieved by the acquittal of the accused recorded by the Assistant Sessions Judge, Bobbili, in Sessions Case No. 37 of 1996, dated 13-12-1996, had preferred the present appeal.

3. The Learned Additional Public Prosecutor would contend that the evidence of P.W. 1 is well supported by the evidence of P.Ws. 2, 4 and 5 and the Investigating Officer P.Ws. 6 and 7. The version of the prosecution is consistent with the report given by P.W. 1 to the Police, which was marked as Ex. P-1. The medical evidence also corroborates the prosecution version. He also contended that when the accused was charged with Section 450, I.P.C. also apart from 376 I.P.C., the learned Judge had not considered the charge u/s 450, I.P.C. at all.

4. On the contrary, Sri Pottigari Sridhar Reddy, learned counsel for the respondent-accused had taken this Court through the evidence of P.Ws. 1 and 2 and also the findings recorded by the learned Judge and would submit that in the

light of the fact that the victim-prosecutrix is an aged women having children and the allegation being one of having forcible sexual intercourse, the complete absence of injuries on the person of victim would definitely point out that she was a consenting party. The learned counsel also had explained the scene of offence and the probabilities of the case and would submit that the acquittal is well justified.

5. The facts, in brief, are that the Inspector of Police, Salur Police Station, had laid the charge-sheet against the accused under Sections 450 and 376, I.P.C. alleging that the victim, de facto complainant and the accused are the residents of the same locality i.e., Jeegiram village. On 5-8-1995 at about 12-00 noon while the victim alone was present in her house and cooking food in the backyard of the house, the accused, trespassed into the house from the front door, bolted the door from inside, went to the backyard, caught hold of her, closed her mouth, lifted her and carried her into the house, closed the back door of the house and had sexual intercourse with force against her Will and consent. During the course of sexual intercourse, he pulled the blouse of the victim, due to which the buttons of the blouse were detached. While so, the husband of the victim, came from the field, tapped the door from front side by calling the victim, and as there was no response, went to the backyard, pushed the door, found both the victim and the accused in a composite position and the accused was committing rape on the victim by having sexual intercourse with her. On seeing the husband of the victim, the accused woke up from the victim and ran away by removing the bolt of the front door. Then, the victim informed the entire incident to her husband by saying that she was not at fault and the accused was responsible for the offence. When the victim was weeping, the neighbours questioned her and she informed the incident to them and on the same night, the husband of the victim went to the village elders and informed the incident and requested to raise a dispute. On the next day, when the village elders called for the accused, the accused was not present. Later, on the next day, they sent for the accused and when they questioned the accused, he denied the offence and the elders did not settle the matter, and on the next day i.e., on 8-8-1995 both the victim and her husband went to the Police Station and the Police recorded the statement of the victim and registered a case in Crime No. 47 of 1995 u/s 376, I.P.C. and took up investigation.

6. The learned Judicial First Class Magistrate, Salur, had taken the charge-sheet in P.R.C. No. 13 of 1995 and committed the same to the learned Sessions Judge, Vizianagaram, and the learned Sessions Judge had made over the matter to the Assistant Sessions Judge, Bobbili.

7. P.W. 1, who is the victim, is the de facto complainant. P.W. 2 is the husband of P.W. 1. P.W. 3 is the village elder. P.W. 4 is the Doctor who examined the victim. P.W. 5 is the Doctor who examined the accused. P.W. 6 is the Sub-Inspector of Police, who registered the crime and taken up investigation. P.W. 7 is the Inspector of Police, who investigated into the case and filed charge-sheet. Ex. P-I

is the statement of P.W. 1. dated 8-8-1995, recorded by the Sub-Inspector of Police. Ex. P-2 is the medical certificate of P.W. 1 issued by P.W. 4. Ex. P-3 is the wound certificate of the accused issued by P.W. 5. Ex. P-4 is the printed F.I.R. dated 8-8-1995. Ex. P-5 is the rough sketch of the scene of offence. Ex. P-6 is the letter of advice, dated 12-8-1995, forwarding the material objects to the expert by the Circle Inspector of Police. Ex. P-7 is the report of the F.S.L., Visakhapatnam, dated 4-9-1995. M.O. 1 is the petty coat of P.W. 1. Ex. D-I is the contradiction in the 161, Cr. P.C. statement of P.W. 1.

8. The case of the prosecution is that P.W. 1 was originally a resident of Sunki village. After the death of her parents, she was staying with her paternal uncle in the same village, and as her paternal uncle was not looking after her, she went to Cheepuruvalasa village and from there she went to Kaviripali village where she attained puberty. There, she married one Shankararao of Dugger village. After some time, he gave divorce to P.W. 1. Then, she stayed in her brother-in-law's house for some time and as the behaviour of her brother-in-law towards her was not good, again she went back to Cheepuruvalasa village and was living there by doing cooli work. At Cheepuruvalasa village, one Gurram Simhachalam mediated the marriage of P.W. 1 with P.W. 2 of Jeegiram village. At the time of her marriage with P.W. 2, P.W. 2 was 30 years aged than her and she begot two children through P.W. 2. Her version is that on the date of incident i.e., on 5-8-1995, the husband of P.W. 1 went to the field for cutting fire wood and the children of P.W. 1 went to school and by that time P.W. 1 was six months old pregnant, and at about 12 noon, while she was cooking food in the backyard of her house, having left the doors opened, the accused, entered into her house from front door, closed the door by bolting the same from inside, went to P.W. 1, caught hold of her, closed her mouth, lifted her into the house, removed her jacket by force, placed her on the floor, closed the doors of the back yard and had sexual intercourse with her against her will and consent. At that time, P.W. 2- the husband of P.W. 1 had come to the house and tried to open the doors from front side and when it was closed and as there was no response from inside, he went to the backyard and pushed the doors and found both P.W. 1 and the accused in a composite position that P.W. 1 was on the ground from her back and the accused is committing rape on her by having sexual intercourse with her. On seeing P.W. 2, the accused woke up from P.W. 1 and ran away by opening the front door. P.W. 2 suspected the character of P.W. 1 and asked her to go away from his house to her relations and that he is not willing to continue his life with her. Then, P.W. 1 stated to him that she was not at fault and the accused was responsible for the offence and narrated the entire incident. The neighbours of her house also came to her and when she narrated the entire incident, they also stated to P.W. 2 that P.W. 1 was not having any bad character and requested him to continue his life with her as she is not at fault and that the accused was responsible. There was mediation in this regard. Inasmuch as the accused had not responded properly in the mediation, ultimately, P.Ws. 1 and 2 had gone to the Police and reported the matter. The evidence of P.Ws. 1 and 2 would be

crucial. The evidence of P.W. 3 is of general nature since he deposed about the mediation. Apart from the evidence of P.Ws. 1 and 2, the evidence of P.W. 4, the Doctor who had examined P.W. 1 is also material. P.W. 4 deposed that she was working as Woman Assistant Surgeon in Government Hospital, Bobbili, and that on 8-8-2004 she examined P.W. 1, who was brought by Salur Police and found the following injuries on her person. Uterus is 18-20 inches size. Feotal parts present. Pregnant colour positive. No external injuries. No injuries on private parts. Old irregular scar folds of hymen present. Vagina admitting two fingers, Vaginal smear examined, spermatozoa present. The report from F.S.L. Visakhapatnam shows items 1, 5 and 6. Semen spearmatozoa present. P.W. 4 was of the opinion that P.W. 1 was five months pregnant at that time and she was evident of habituated sexual intercourse and that there was evidence of intercourse. She had issued wound certificate to that effect i.e., Ex. P-2. P.W. 5 is another medical officer, who examined the accused on 8-8-1995. P.W. 6, who is the Investigating Officer, deposed that he was on duty in the Police Station when P.Ws. 1 and 2 came to the Police Station and reported the matter against the accused and that he had recorded the statement of P.W. 1 and registered the same as Crime No. 47 of 1995 of Salur Rural Police Station. The original F.I.R. is Ex. P-4 and that at the time of recording the statement of P.W. 1, she handed over M.O. 1 (Lunga), one jacket, one saree and he received the same. P.W. 6 also deposed that he examined P.Ws. 1 and 2 and recorded their 161, Cr. P. C. statements and proceeded to the scene of offence for investigation. This witness also deposed that the further case was investigated by the Circle Inspector. P.W. 7, the Circle Inspector of Police, deposed that on 8-8-1995 at about 12-00 hours, when he was at Parvatipuram, the S.I. of Police, Salur Rural, Informed him about the registration of this Crime, and immediately he left Parvatipuram and reached Jeegiram village at about 2-30 p.m., and by that time, the S.I. of Police examined P.Ws. 1 to 7 and sent the victim for medical examination i.e., to the hospital for treatment, and he had verified the investigation made by the S.I. Rural Police Station, Salur, and this witness had deposed about all the other aspects and filing of the charge-sheet. Apart from Exs. P-2 and P-3, Ex. P-7, F.S.L. report is also available on record.

9. On the strength of this evidence and on the facts, which had been deposed by P.Ws. 1 and 2, now it has to be appreciated whether the findings recorded by the learned Judge are to be disturbed by this appellate Court or the said findings are liable to be confirmed.

10. Section 375, I.P.C. defining rape reads as under :

"A man is said to commit "rape" who, except in the case hereinafter excepted has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:--

Firstly -- Against her Will.

Secondly -- Without her consent.

Thirdly -- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly -- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly -- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly -- With or without her consent, when she is under sixteen years of age."

11. Section 376, I.P.C. deals with punishment for rape.

12. Section 450, I.P.C. deals with house trespass in order to commit offence punishable with imprisonment or life, which reads as follows :

"Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine."

13. These are the offences with which the respondent-accused had been charged with. The scene of offence is the house of P.W. 1. It is not as though it is a lonely or a far away house, the evidence available on record shows that it is in the midst and several neighbouring houses are there. The time of offence also is to be noted. It is the version of the prosecution that as against this grown up woman-P.W. 1 who is having children, the accused entered into the house when she was in the backyard, he bolted the house by entering the house from front side, dragged her and forcibly had sexual intercourse with her. In substance, this is the version of the prosecution. No doubt there is some delay in giving report. The explanation given is that P.Ws. 1 and 2 wanted to convene mediation in this regard and in view of the same, the delay had occurred. Even otherwise, the medical evidence does not show any injuries either on the private parts or notable injuries worth mentioning on the person of P.W. 1 to suggest the offering of resistance in any way during the alleged act of having sexual intercourse. Here is a grown up woman having children, the scene of offence is just the house in the midst of several houses. It is pertinent to note that P.W. 2 knocks on the front door and since there was no response, he goes to the backyard. After entering the house, he finds the victim-P.W. 1 and the accused in composite position involving in the said offence and then the accused ran away that is the actual version of the prosecution. It is no doubt true that the defence is one of total denial. It is not for the accused to take a specific stand of consent and the consent may be inferred from the facts and circumstances of the case also. In a decision of the Apex Court in *Ram Nivas v. State of Karnataka* 1994 SCC (Cri) 503, it was observed where the prosecution case mainly resting on evidence of

prosecutrix and there was evidence of spermatozoa and there were no injuries found on prosecutrix or on accused suggesting forcible intercourse, prosecutrix being a grown unmarried woman, Doctor unable to give any opinion whether rape had been committed or not. The evidence of prosecutrix found to be highly untrustworthy, accused is entitled to benefit of doubt. In *Kuldeep K. Mahato Vs. State of Bihar*, , the Apex Court while dealing with the conduct of the prosecutrix and she being a consenting party in view of the facts and circumstances held as under (At page 4035):

"Then coming to the conviction of the appellant u/s 376, I.P.C., although both the Courts below have held after accepting the evidence of prosecutrix being truthful held that the appellant has forcibly committed the rape, we are of the opinion that the said finding is unsustainable. The prosecutrix had sufficient opportunity not only to run away from the house at Ramgarh but she could have also taken the help of neighbours from the said village. The medical evidence of Dr. Maya Shankar Thakur -- P. W. 5 also indicates that there were no injuries on the person of the prosecutrix including her private part. Her entire conduct clearly shows that she was a consenting party to the sexual intercourse and if this be so, the conviction of the appellant u/s 376, I.P.C. cannot be sustained. There is one more additional factor, which we must mention that it is not the case of the prosecutrix that she was put in physical restraint in the house at Ramgarh, with the result her movements were restricted. This circumstance also goes to negative the case of forcible intercourse with the prosecutrix by the appellant."

Reliance also was placed in *Tukaram and Another Vs. The State of Maharashtra*, and in *Pratap Misra and Others Vs. State of Orissa*, , the Apex Court at page 1313 observed as under :

"In the first place, the admitted position is that the prosecutrix is a fully grown up lady and habituated to sexual intercourse and was pregnant. She was experienced inasmuch as she had acted as a midwife. It is true that the learned Sessions Judge was impressed with the demeanour of this witness, but that by itself is not sufficient to prove the case if the allegation of the prosecution suffers from Inherent improbabilities. The opinions of medical experts show that it is very difficult for any person to rape single handed a grown up and an experienced woman without meeting stiffest possible resistance from her. In the instant case, according to the evidence given by P.W. 1, A-1 entered the room and committed sexual intercourse with very great force and violence against her consent. Indeed if this was so we should have expected the stiffest possible resistance from her resulting in injury over the penis or scrotum of the accused or abrasions over other parts of the body caused by the nails of the prosecutrix. The accused were examined by P.W. 9 who did not find any injury over the penis or scrotum and he does not say that he found any injury on any other part of the body. This is rather an important circumstance which negatives the allegation of rape. The prosecutrix knew full well that the appellants had entered the room with evil intention from the fact that her husband was dragged away to the

verandah and the door was bolted by A-1. In these circumstances we fail to see why the prosecutrix should have silently abided to have the intercourse with the appellant without putting up any resistance, except shouting, particularly when the prosecutrix was a fully grown up lady and experienced not only in sexual intercourse but also in the art of midwifery. She knew that she was pregnant and if any violence was caused to her it may lead to abortion. This circumstance would naturally impel her to put up the stiffest possible resistance against A-1 who was single-handed and was not armed with any weapon which may have silenced the prosecutrix. The theory propounded by the learned Sessions Judge was that as the appellants were N.C.C. students and sturdy persons the prosecutrix may have found it futile to put up any resistance and may have decided to submit to the onslaught on her. Such a course of conduct is wholly improbable, particularly in the case of grown up and an experienced lady like P.W. 1. Taylor, in the Principles and Practice of Medical Jurisprudence, Vol. II, dealing with the cases of rape on a grown up woman observes as follows.

"Unless under the influence of drink or drugs or asleep or ill, a fully grown girl or adult woman should be able to resist a sex assault. We should expect to find evidence of struggle to avoid sexual contract or penetration, and may well feel uncertainty about the real nature of an alleged assault in its absence.

A false accusation of rape may sometimes be exposed by marks of violence being wholly inadequate or absent.....

Bruises upon the arms or the neck may be considered to constitute some evidence of a struggle; and impressions of finger nails are also significant. Bruises or scratches about the inner side of the thighs and knees may be inflicted during attempts to abduct the legs forcibly, and care must also be taken to examine the back, for the victim may have been pinned against the wall or floor. It is important to record these in detail, and to say, if possible, how fresh they are. The ageing of bruises is, as was indicated in Volume I, a matter of some uncertainty in the absence of microscopy.

Strong corroborative evidence of a struggle might be obtained from an examination of the accused for similar marks or bruises or scratches about the arms or face, and possibly even about his penis, though this is less likely.

"Though injury is most unlikely to the penis, a man may have had his face scratched or have been bitten during a sex assault. The clothing may bear some contact traces of the woman-hairs, vaginal secretion or blood, and, though of less significance, seminal stains."

The medical evidence, therefore, clearly discloses that the prosecutrix does not appear to have put up any resistance to the alleged onslaught committed on her by the appellants. From this the only irresistible inference can be that the prosecutrix was a consenting party which would be reinforced by other circumstances to which we shall refer hereafter."

In *Milind Ambadas Mhaske v. State of Maharashtra*, 1998 Cri LJ 1357, it was held that no doubt bad character of prosecutrix will not enable the accused to escape from culpability and rape is proved when sexual act is committed on a woman without her consent. There cannot be any controversy about this proposition. But, the evidence of P.Ws. 1 and 2, the probabilities in the case and that at the scene of offence, P.W. 1 not offering any resistance and not raising the cries and making a statement that accused had forcible sexual intercourse with her on P.W. 2 entering into the house, and the absence of injuries on private parts of P.W. 1 and the fact that P.W. 1 is a grown up woman having children, all these aspects put together will definitely go to show that the only inference that can be drawn from these probabilities would be that the prosecutrix-P.W. 1 was a consenting party. This was the finding recorded by the learned Judge after considering the evidence available on record.

14. Submissions at length were made by the learned Additional Public Prosecutor that nothing had been discussed by the learned Judge in relation to the offence u/s 450, I.P.C. When the purpose for which the accused is said to have entered the house of P.W. 1 itself does not constitute an offence falling u/s 376, I.P.C. this aspect may fall into insignificance and evidently that may be the reason why this aspect was not adverted to by the learned Judge. Even otherwise it will not alter the situation in any way and hence the mere non-consideration of charge u/s 450, I.P.C. may not be of any serious consequence and hence the findings recorded are not liable to be disturbed by this Court on that ground.

15. Hence, this Court, as appellate Court while deciding an appeal as against the order of acquittal is not inclined to disturb such well-considered findings and the said findings are hereby confirmed and accordingly, the appeal shall stand dismissed.