
(1999) 06 AP CK 0056
In the Andhra Pradesh High Court
Case No : Criminal A. No. 190 of 1994

Tota Tirupathaiah

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 29-06-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (1999) 3 ALD 730 : (1999) 2 ALD(Cri) 16 : (1999) 2 ALT(Cri) 133

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Mr. C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. This appeal is directed against the judgment of the learned Assistant Sessions Judge, Nagarkurnool dated 30-12-1993 rendered in SC No.70 of 1993 under which the appellant accused has been convicted for the offence u/s 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of 8 years and to pay a fine of Rs.3,000/-, in default to suffer imprisonment for a period of six months.

2. The facts relevant to the appeal may be stated briefly as follows:

The Victim, S. Chennamma (PW1) is aged about 40 years and has two sons. The eldest son was living in a different village away from her and her second son was looking after their agriculture. On the night of 3-2-1990 she was sleeping in her house all alone with her younger son, S. Ravi (PW7) was in the field. According to PW1, while she was sleeping in her house alone, the accused-appellant went to her house and called her by saying "amma, amma" (mother, mother). Presuming that her son, Ravi, had returned from the field and was calling her, she opened the door. Suddenly, the appellant entered into her house and caught her by the neck and pushed her down, due to which she fell down on the ground. The appellant then caught hold of her neck with one hand and lifted her saree with the other hand and raped her. She struggled but the accused threatened her

with dire consequences if she leaked out the matter of rape. Due to which she kept quick to save her life in the hands of the accused. Thereafter, the accused went away. According to her, on the following day, she informed about the incident to her son, PW7 and Sayamma (PW2). She also informed her brother-in-law, PW3, S. China Anjiah, about the incident. On the second day, she went to the police station, Bijinapalley and submitted a complaint Ex.P1 on which PW10, the then Sub-Inspector of Police, Bijinapally registered a case in Crime No.18 of 1990 u/s 376 of IPC and issued FIR Ex.P6 and he informed the Inspector of Police, Nagarkarnool on V.H.F. set and later the Inspector of Police, (PW11) took up investigation. During investigation, he examined PWs.1, 2 and 7 and he also seized one saree of PW 1 in the presence of panch witnesses PWs.8 and 9. However, PWs.8 and 9 did not support the prosecution case during the trial. He sent the victim to the Government Hospital, Mahaboobnagar for examination. The Doctor, PW5, examined PW1 and found no injuries and no marks of recent sexual intercourse. The Inspector of Police, PW11, visited the scene of offence on the same day and he sent the langa and saree of the victim to the Chemical Examiner through Court and obtained report Ex.P7 from the Chemical Examiner. With this material, the charge-sheet was filed.

3. As seen above, the prosecution seeks to rely on the evidence of the victim, PW1, the evidence of PWs.2, 3 and 7 that soon after the incident she informed about it to these witnesses. The prosecution also relies on the evidence of PW6 who examined the appellant and certified about his potency. Thus, PWs.1 to 11 were examined on behalf of the prosecution and Exs.P1 to P8 and MOs.1 and 2 were marked. On behalf of defence, no evidence was adduced. However, Ex.D1, stated to be contradiction in the statement of PW3 with her earlier statement to the police, was marked.

4. On this evidence, the learned Sessions Judge believed the evidence of the prosecution witness, PW1 and convicted the accused u/s 376 of IPC and imposed sentence as stated above. It is this judgment which is now challenged in this appeal.

5. The question for consideration is whether the prosecution has proved the guilt of the accused beyond all reasonable doubt?

6. It is true that the solitary evidence of prosecutrix in the case of rape can be believed without any corroboration if her evidence satisfies the test of probability and credibility and does not suffer from any serious infirmity.

7. The learned Counsel for the appellant contends that in this case the version given by PW1 is highly improbable -and it constitutes significant improvement over her earliest version as given in the first information report, Ex.P1 and her statement given to the police during investigation. It is also pointed out that PW1's evidence does not receive corroboration from any other circumstances brought out from record. It is, thus, contended that the learned Assistant Sessions Judge committed a grave error in acting upon the evidence of PW1 and

recording the conviction of the accused. The learned Public Prosecutor on the other hand contends that the evidence of PW1 is unimpeachable and does not suffer from any infirmities and as such the findings of the trial Court are justified.

8. It is the version of PW1 that while her son had gone to sleep in the fields, she slept alone in her house on the crucial night. Her evidence is that when the accused knocked the door of her house, she opened it and he entered into the house. Considering the circumstance that she was sleeping alone it would appear improbable that she would open the door without ascertaining the identify of the person who knocked the door. PW1 's explanation as given in her evidence is that while knocking the door, the accused called her as "amma, amma" (Mother, Mother) and she thought that it was her son who was calling her and so she opened the door. If this is true, it sufficiently explains the conduct of PW1 in opening the door in the mid-night. But the version that the accused called her as "ainma, amma" and that she opened the door thinking that it was her son who had called her is an improvement over her earlier version. In fact, in the first information report, Ex.P6, the version is that the accused entered the hut and the version of the accused knocking the door and calling her as "amma, amma" on the part of the accused is not there at all. Thus, this part of the version is a complete improvement over her earliest version given in the first information report, it is the version of PW1 that the accused suddenly entered into her house, caught hold of her neck, pushed her down due to which she fell down and the accused caught hold of her neck from one hand and lifted her saree with another hand and raped her. It is also her version that she struggled during this. The fact that she struggled as stated by her would show that she resisted and that she was overpowered to by using force by the accused. In that case, it would be expected that the victim PW1 should have received at least some minor injuries or at least scratches during the struggle. But, the medical evidence completely negatives this, as PW6, the Doctor who examined her, has stated that he did not find any injuries on her. As to the fact of rape itself, the statement of PW1 does not find corroboration from the medical evidence at all. PW5, the Doctor, who examined PW1 and issued medical certificate, Ex.P2, clearly stated that he did not find any evidence of recent sexual intercourse. Thus, the medical evidence of PW6 is of no avail as a piece of corroboration to the evidence of PW1.

9. As admitted by P.W.1 during her cross-examination, there are number of houses around her house. If PW1 was Subjected by force, normally it would be expected that she would raise hue and cry to invite the attention of the neighbours. But, according to the prosecution, nothing of this had occurred. According to PW 1, the accused was in her house for about 20 to 30 minutes. The explanation given by PW1 for her failure even to raise hue and cry is that the accused did not give any chance to make even cry as he had caught hold of her neck by force in such a way that her voice could not come out and that there was no chance for her to utter any word. If the accused pressed her neck so forcibly that she could not even let out a cry, it is indicative of very strong pressure have been applied on her neck. In that case, it certainly must have been left some

marks of such pressure on her neck, but the medical evidence does not support this. PW1 herself admits that she did not receive any injuries on her body. Thus, PW1's version is improbable as her version that she could not raise cries.

10. According to the prosecution, the incident occurred on 3-2-1990. The complaint in Ex.P1 was lodged in the police station on 5-2-1990. Normally, delay in lodging FIR in cases of rape may not be considered fatal to the prosecution case in the light of the circumstance that the victims of such offences would feel embarrassment and may be discouraged to lodge any complaint as it affects their honour and reputation. But, PW1 in her cross-examination states that herself, her son and her brother-in-law went to the police station on the same day morning at about 10 or 11 a.m. According to her, on that day she stayed in the police station till the evening. According to PW2, the sister-in-law of PW1, PW1 narrated to her about the incident on the next day morning at 6.00 a.m. and thereafter herself and PW1 went to the police station and a report was given in the police station. According to PW3, the brother-in-law of PW1, he came to know about the incident at about 9.00 a.m. on 4-2-1990 through the son of the victim. PW7 is the son of PW1. According to him, he came to know about the incident when he returned from the field on the following morning and later he went to PW3 and informed him at 6.30 a.m. and thereafter they went to the house of Sarpanch, PW5, at 8.00 a.m. and informed about the incident and by 11.00 a.m., they went to the police station, Bijinapatly and gave a complaint. Obviously, this is on the following morning of the incident which occurred on the night of 3-2-1990.

11. Thus, according to this version, there was no hesitation on the part of PW1 to disclose about the incident of her relatives and to the Sarpanch. Thus, it is not a case where the victim avoided to disclose the incident. In fact, the version of the victim is that on the morning following the night of the incident, she informed her relatives, they went to the Sarpanch and she was taken to the police station on the very morning i.e., 3-2-1990. But, strangely the complaint was registered on 5-2-1990. It is not known what was the earliest version given by the PW1 at the police station on 3-2-1990. No explanation has been coming forth from the prosecution as to why when the report was given on 3-2-1990 itself, the first information report came to be registered on 5-2-1990. The criticism of the learned Counsel for the appellant is that though the incident was revealed on 3-2-1990, the earliest version was not taken up as the first information report and after considerable deliberations, a new report came to be registered on 5-2-1990. The said criticism cannot be brushed aside as imaginary, considering the delay in registering the first information report on 5-2-1990, when the incident was revealed on 3-2-1990. Considering the totality of the circumstances, it is not a case where the version given by PW1 can be believed implicitly. It is not a case where the evidence of PW1 is inherently probable and does not suffer from any infirmities. As stated above, the version of PW1 contains material improvement from her earlier version and is improbable. Further, the evidence of PW1 does not receive corroboration from any other piece of evidence including

the medical evidence. Under these circumstances, it is a case where the accused could be held to be entitled to benefit of doubt.

12. In the result, the appeal is allowed and the conviction and sentence imposed on the appellant (accused) for the offence u/s 376 of IPC are set aside. The bail bonds of the accused shall stand discharged.