

(2004) 08 AP CK 0023

Andhra Pradesh High Court

Case No: Criminal Appeal No. 1277 of 1999

Devalla Raghavulu

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision: Aug. 23, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 376(2)

Citation: (2005) 1 ALD 27 : (2005) 1 ALD(Cri) 27 : (2005) 2 ALT(Cri) 9 : (2005) CriLJ 1041 : (2005) 2 RCR(Criminal) 344

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

Bench: Single Bench

Advocate: Z. Veerabhadra Rao, for the Appellant; Public Prosecutor, for the Respondent

Judgement

P.S. Narayana, J.
Heard the Counsel.

2. The appellant-accused preferred the present appeal aggrieved by the judgment dated 8-7-1999 in Sessions Case No. 353 of 1996 on the file of the Assistant Sessions Judge, Kavali, wherein he was convicted for an offence u/s 376(2)(f), IPC and sentenced to undergo Rigorous Imprisonment for a period of ten years and also to pay a fine of Rs. 150/-, in default, to undergo Simple Imprisonment for one year.

3. The case of the prosecution is that the accused is a resident of Musunur Village. P.W. 1-Vallepu Sarojanamma is also a resident of Musunur village. P.W. 2 by name Vallepu Ramanamma (hereinafter called as victim girl) is the daughter of P.W. 1. The victim-girl is a dumb girl and aged about 11 years and as such she is a minor. On 18-6-1996 at about 1.00 p.m. while victim girl was returning to her house after attending calls of nature, the accused cast his evil eye on her and intended to satisfy his lust. With the same evil intention the accused took her to his house by catching hold of her hand. P. Ws.3 and 4 by names Pallapu Dhanamma and Devalla

Malakondaiah respectively noticed the accused taking away the victim girl towards his house. On 18-6-1996 at 1.00 P.M., the accused committed rape against the victim girl after laying her on a cot in his house. Due to sexual assault, the victim girl sustained lacerated injury on her vagina wall and there was heavy bleeding from her vagina. As a result of which the skirt of the victim girl stained with blood. The shirt worn, by accused, his towel and one blanket also with blood stained. Some blood drops also fell on the ground in front of the house of the accused. Later the victim girl went to her house. P.W. 1 learnt about the offence through P.W. 2, went to the house of accused and questioned him about the offence. She also noticed blood-stains on his shirt. P.W. 4 also accompanied P.W. 1 to the house of accused. P.W. 1 gave report to Kavali Rural Police on the same day at 5:00 P.M. and the same was registered as a case in Crime No. 82 of 1996 u/s 376(2)(f), IPC by P.W. 16 (N. Ramanaiah, H.C. 1167). P. W. 17 (B. Vasudeva Reddy) Inspector of Police investigated the case. During the course of investigation, the victim girl pointed out the scene of offence to P.W. 17. On 19-7-1996 at 7-00 a.m., he inspected the scene of offence in the presence of mediators and seized blood-stained shirt and towel and blanket of the accused under cover of mahazar. The blood-stained clothes were observed (preserved) by the Medical Officer for the purpose of chemical examination. P.W. 14 (Dr. C. Indiramma, W.A.S.) opined that P.W. 2 was subjected to intercourse. On 30-8-1996, P.W. 17 arrested the accused. P.W. 15-Medical Officer examined the accused and issued certificate. Thus the accused is liable for punishment u/s 376(2)(f), IPC.

4. The charge-sheet was filed before the Additional Judicial Magistrate of I Class, Kavali and the same was registered as P.R.C. No. 36 of 1996. The learned Additional Judicial Magistrate of I Class, committed the case to the Court of Session, Nellore and the learned Sessions Judge, Nellore made over the same to the learned Assistant Sessions Judge, Kavali.

5. The learned Judge recorded the evidence of P.Ws. 1 to 15 and marked Exs. P1 to P 10, Exs. D1 to D 4 and also M.Os, 1 to 6, and ultimately, came to the conclusion that the accused is guilty of an offence u/s 376(2)(f), IPC, and sentenced him to undergo Rigorous Imprisonment for a period of ten years and also to pay a fine of Rs. 150/-, in default, to undergo Simple Imprisonment for one year.

6. It is an unfortunate case, where the victim girl-P.W. 2 is mentally retarded and is incapable of speaking and hence, the Court had dispensed with the administration of oath and the victim-girl is also a dumb witness, and hence, the Court had taken the assistance of one Bala Kotamma w/o Uppu Venkaiah of Musunur Village and who is also neighbour of the witness, and the said Bala Kotamma informed to the Court that she was not able to understand the signs and gestures of the witness. The mother of the victim girl P.W. 1 stated before the Court that nobody is able to understand the gestures of P.W. 1, except herself, and hence, the Court secured the address of a qualified professional in the field of Mental Retardation Rehabilitation

Centre viz., the Deputy Director of Takur Hariparasad Institute for Mentally Handicapped, Rajahmundry, to assist the Court in recording the gestures of this witness.

7. Sri V. S. T. Krishna s/o V. Appala Charyulu, a qualified Professional in understanding the gestures of dumb witness and mentally retarded persons, attended the Court on receiving summons from the Court and assisted the Court in recording the evidence of P.W. 2-Victim-girl. Thus, the evidence was recorded and the findings had been recorded by the learned Judge in detail.

8. The case of the prosecution is that on 18-6-1996 at about 1-50 P.M., the accused committed rape on a minor dumb girl-Vallepu Ramanamma and thereby, committed an offence punishable u/s 376(2)(f), IPC. The prosecution relied on the evidence of P.Ws. 1 to 15, Exs. P1 to P 10 and also M.Os. 1 to 6.

9. P.W. 1 is the de facto-complainant and the mother of the victim girl. P.W. 2 is the victim girl. P.Ws. 3 to 5, 7, 10 to 13 are the witnesses, in whose presence P.W. 1 went to the house of the accused at the instance of P.W. 2 and questioned about the commission of the offence committed by the accused. Thus, these witnesses amply support the circumstances, which would corroborate the evidence of P.W. 2. It is no doubt true that P.Ws. 10, 12 and 13 turned hostile.

10. The prosecution also placed reliance on the evidence of P.W. 8, in whose presence the Investigating Officer seized the material objects. P.W. 6 is the Woman Assistant Surgeon in Government Hospital, Kavali, who examined P.W. 2 and she issued certificates Exs. P2 and P3 opining that P.W. 2 was subjected to sexual intercourse. P.W. 9-Civil Assistant Surgeon, Government Hospital, Kavali, examined the accused and issued a certificate Ex. P. 6 stating that the accused is sexually potent, P.W. 14-Head Constable had registered the case and issued F.I.R. to all the concerned. P.W. 15-Circle Inspector of Police had investigated the case and filed the charge-sheet.

11. It is not in controversy that P.W. 2 is a mentally retarded and dumb girl and she is unable to state the offence committed by the accused. P.W. 1 in her evidence deposed that the distance between her house and the house of accused is about one furlong. She deposed that at about one year eight months back at about 12-00 noon, P.W. 2 went to attend to the calls of nature by saying to her and she returned at about 2 P.M. and at that time she observed that her clothes were stained with blood and she was not in a position to stand firmly (Padatha Lestha Vunnadhi) and she was weeping, P.W. 1 further deposed that she had examined P.W. 2 by lifting her petticoat and observed the blood on her legs and at that time her daughter was holding pipperrments in her hand, and then she had taken her daughter inside the house and her neighbour by name Basavamma came, and observed the victim-girl and they found bleeding from the private parts. P.W. 1 also deposed that she questioned her daughter P.W. 2 as to how she sustained injury and on that P.W. 2

had shown her hand by signing towards outside and then, P.W. 1 had taken her daughter and went towards western side of the road as per the signs given by her daughter, and her daughter Ramanamma directly took away to the house of the accused and when she went to the house of the accused, the accused was present in the house and P.W. 1 observed blood-stained marks from inside the house to the outside of the house and she questioned the accused in the presence of Basavamma and then they had taken P.W. 2 to their village President. Subsequent thereto, P.W. 2 was taken to the Police Station and Ex. P1 was given. This witness no doubt was cross-examined at length. But the learned Judge had discussed the evidence of P.W. 1 at length at paragraph No. 11 and recorded the reasons as to why the evidence of P.W. 1 can be relied upon.

12. The evidence of P.W. 3 is the connecting link. P.W. 3 deposed that at about 1 1/2 years back, after returning from coolie work, she was sleeping in her varandah, at about 12-00 noon or 1-00 P.M. this witness observed the accused going away along with P.W. 2 and during the cross-examination P.W. 3 could not explain as to whether the accused was caught hold of the hand of P.W. 2 or not. However, P.W. 3 specifically deposed that they were proceeding side by side. The defence also cross-examined P.W. 3, suggesting that this witness was giving false evidence. But, however, the learned Judge after recording reasons, had believed the evidence of P.W. 3 which had supported the version of the prosecution.

13. Apart from this evidence, the other witnesses had also explained the circumstances and how they heard the weeping cries from the house of P.W. 1 and how they had seen P.W. 2 and what had transpired actually. No doubt, all these are post-incident events. But the post-Incident events had been explained in seriatim. This is an unfortunate case, where a helpless dumb child had been involved in such an act. The medical evidence also clearly supports the version of the prosecution. It is no doubt true that except signs and gestures P.W. 2 was unable to explain further and the Court after taking necessary assistance was able to understand the evidence of this dumb witness, well supported by the evidence of P.Ws. 1 and 3 and the other witnesses explaining the circumstances and also further corroborated by medical evidence. The circumstances recorded in detail by the learned Judge commencing from paragraphs 11 to 19 would only point towards the guilt of the accused and definitely, they negated the innocence of the accused. Hence, this Court has no hesitation in arriving at a conclusion that though P.W. 2 is only a dumb witness, in view of the evidence available on record, the prosecution was able to establish the guilt of the accused beyond all reasonable doubt.

14. In the light of the evidence of P.Ws. 1 to 15, Exs. P1 to P 9, Exs. D1 to D 4 and also M. Os. 1 to 6, this Court also had given anxious consideration to the portions marked in 161, Cr.P.C. statements of P.Ws. 3 to 6 and these witnesses in fact speak of the circumstances and these inconsistencies are not of such a nature to touch the trustworthiness of these witnesses. Hence, this Court does not see any reason to

interfere with the well considered findings recorded by the learned Judge and accordingly, the said findings are hereby confirmed.

15. It is really unfortunate that the accused is having a daughter of marriageable age and that he also hails from a family eking livelihood on cooly work and the whole family is dependent on him. It is equally unfortunate that this appellant-accused had involved himself in a heinous crime of this nature on an innocent unfortunate dumb girl. It is also brought to the notice of this Court that inasmuch as the appellant-accused was not released on bail, he has been in custody for about five years, taking the overall facts and circumstances into consideration, and also the fact that the whole family is dependant on the appellant-accused, who is also a cooly by profession, the conviction u/s 376(2)(i), IPC, no doubt is hereby confirmed.

16. In the result, the conviction imposed by the Assistant Sessions Judge, Kavali on 8-7-1999, against the accused for the offence u/s 376(2)(f), IPC in Sessions Case No. 353 of 1996 is confirmed. But so far as the sentence of rigorous imprisonment for a period of ten years is concerned, it is reduced to five years, and the payment of fine of Rs. 150/-, in default, to undergo simple imprisonment for one year is hereby confirmed.

Accordingly, the Criminal Appeal is dismissed subject to above modification.