

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL APPEAL No.1052 of 2016

JUDGMENT:

This appeal is filed by appellant/accused aggrieved by the judgment dated 28.10.2016 in S.C. S.T Sessions Case No.39 of 2014 passed by the Special Judge for trial of cases under SCs & STs (POA) Act, 1989-cum-VIII Additional District and Sessions Judge, West Godavari, Eluru, whereby the learned Judge convicted the accused for the charge under Section 376 r/w 511 IPC and under Sec.3(1)(xi) of SCs & STs (POA) Act, 1989 and sentenced to undergo SI for 3½ years and to pay fine of Rs.500/- in default to undergo SI for two weeks for the first count and to undergo SI for two years and to pay fine of Rs.500/- in default to undergo SI for two weeks for the second count and directed that both the sentences to run concurrently.

- 2) The prosecution case is thus:
 - a) Nalli Durga Rani—PW1 who is the resident of Vempadu Village, Dwaraka Tirumala Mandal working as Anganwadi Aya and she is the victim in this case; PW2 is her husband. PWs.3 and 4 are residents of the same village and her relations.
 - b) On 29.01.2012 at about 11:00AM, when PW1 was going alone into the fields, accused—Doppasani Pavana Krishna with an evil intention of enjoying her, followed her, embraced and closed her mouth, forcibly took her into the maize garden of Boyina Pothuraju and made

her fall down and attempted to rape her; when she raised screams, he left her and threatened that he would kill if she revealed the issue to anybody and fled away from there; PW1 came back to the village weeping and complained the matter to PW3; immediately he sent that message to PW2 and after his arrival, PW3 advised PWs.1 and 2 to give report to the police about the occurrence; on the same day at about 1:00 PM, PWs.1 and 2 approached PW.4, who is their caste elder and complained the matter who in turn summoned the accused and questioned; the accused admitted his guilt; then, PW3 advised them to lodge a report to the police and accordingly, on the same day i.e, on 29.01.2012, PW1 lodged a written complaint to the police.

c) The S.I of Police, Dwaraka Tirumala PS received the report and registered the same as Crime No.14/2012 under Section 376 r/w 511 and 506 IPC and Section 3(1)(xi) of SC & ST (POA)Act, 1989 and handed over the file to PW6—Sub-Divisional Police Officer, Eluru for investigation.

d) On appearance of the accused, the trial Court framed charges under Sections 376 r/w 511 and 506 IPC and Section 3(1) (xi) of SCs & STs (POA) Act, 1989 against the accused and conducted trial.

e) During trial, PWs.1 to 7 were examined, Exs.P1 to P9 were marked and MO1—broken red colour bangle pieces were exhibited on behalf of prosecution. Exs.D1 to D3 were marked on behalf of defence.

f) After completion of trial, the accused was examined under Section 313 Cr.P.C. and incriminating circumstances revealed in the prosecution evidence were put to him and the accused denied.

g) A perusal of the judgment would show the trial Court basing on the evidence on record found the accused guilty for the charge under Section 376 r/w 511 IPC and Section 3(1) (xi) of SCs & STs (POA) Act and sentenced him as stated above.

3) It is to be noted that as per the orders of the Hon'ble Apex Court in Special Leave to Appeal (Crl.) No.388 of 2017 dated 06.02.2017, this matter is taken up for hearing. Heard arguments of Sri I.V.N.Raju, learned counsel for petitioner and learned Public Prosecutor for the State (Andhra Pradesh).

4) Severely fulminating the judgment of the trial Court convicting the accused, learned counsel for appellant would argue that the trial Court committed grave error in placing implicit reliance on the sole testimony of the PW.1 which was fraught with many inconsistencies and discrepancies besides being uncorroborated on material particulars by the other witnesses.

a) In expatiation, firstly he argued that the prosecution miserably failed to establish the correct location of scene of offence as PWs.1, 5 and 6 have given different versions regarding the scene of offence. In Ex.P.1(report), it is mentioned, when PW.1 reached the corn field of Boyina Pothuraju, the accused came behind her and closed her mouth

and clasped her tightly and fell her down and tried to commit rape on her. So as per Ex.P.1, which is the earliest version of PW.1 regarding the incident, the offence took place in the corn field of Boyina Pothuraju. In her evidence, PW.1 stated that while she was on her way to the fields of PW.3, the accused came behind her and dragged her to the field of Boyina Pothuraju and tried to ravish her. PW.5 stated as if the scene of offence is the corn field belonging to Boyina Pothuraju. However, the PW.6—the Investigating Officer stated that the scene of offence is the pathway situated adjacent to corn fields and in Ex.P.6—sketch also the scene of offence was shown as pathway. Therefore, there is any amount of discrepancy regarding the location of scene of offence between PWs.1 and 5 on one hand and PW.6 & Ex.P.6 on the other. This discrepancy creates a grave doubt about not only the scene of offence but also the occurrence of offence itself.

b) Secondly, he would argue that if the version of PW.1 that the offence took place in the corn field of Boyina Pothuraju is true, the clothes of PW.1 should have been soiled with mud as PW.1 admitted that the fields of Pothuraju were covered with black soil and mud at that time. However, the I.O did not collect the mud stained clothes of PW.1 to establish that the offence indeed took place in the corn field of Boyina Pothuraju as claimed by PW.1. Further, the bangle pieces (MO1) which were allegedly recovered from the corn field of Boyina Pothuraju were surprisingly not stained with mud. Further, PW.1 admitted that at the alleged time of offence i.e, at 11:00am, farmers would be working in the

fields and if one raises cries from the fields of Boyina Pothuraju, it is audible to Mala Peta/SC colony. Therefore, he emphasised, the possibility of occurrence of incident at that place and time is highly impossible and unbelievable.

c) Thirdly, he argued that PW.1 did not correctly state the reason for her going through the scene of offence before incident. As per Ex.P.1, she was proceeding to “their field” for work. However, as per the version of PW.2, who is her husband, they do not own lands in Vempadu village but they have One Acre of land in Pangidigudam village. PW.2 further stated that passage (puntha) where the offence took place leads to the fields of Vempadu village. Learned counsel argued that the evidence of PW.2 would manifest that in the vicinity of scene of offence, PWs.1 and 2 have no lands. They own lands in Pangidigudam village which is a different village. In that view, the version of PW.1 in Ex.P.1 that before incident she was going to attend the work in their fields is an utter falsehood. While so, in her evidence she gave a go-by to Ex.P.1 and stated as if she was going to attend the work in the fields of PW.3 which he took on lease. Learned counsel vehemently argued that this is her another false version because, in her cross-examination she admitted that PW.3 has no leasehold lands in their village. Therefore, her proceeding to scene of offence at 11:00am on 29.01.2012 is totally unbelievable. Therefore her statement that at the scene of offence, the accused tried to ravish her is also unbelievable.

d) Fourthly, he argued, as per Ex.D1, while PW1 was proceeding to the fields, she was carrying lunch carriage and a crowbar along with her. Hence, there was every opportunity for her to defend herself with the help of crowbar and tiffin carriage by hitting the accused. Hence seeing those items in her hands, there was no occasion for accused to try to make an attempt to ravish her. Therefore, Ex.D1 would create a genuine doubt about the occurrence of the incident.

e) Fifthly, he argued that in an offence of this nature, generally the sole testimony of a prosecutrix can be believed by the Court if it infuses confidence in the mind of the Court as held by the Apex Court reported in *Mohd. Ali alias Guddu vs. State of Uttar Pradesh*¹. However, if the evidence of a prosecutrix suffers from infirmities, inconsistencies and discrepancies, the Court shall seek for corroboration of material particulars from the other evidence and convict the accused only if the other evidence lends support to her. In this case, he vehemently argued, due to the above discrepancies pointed out by him, the sole testimony of PW.1 is not believable and therefore, the evidence of other witnesses has to be looked into for corroboration. Their evidence also do not lend support to the version of PW.1. The evidence of PW.2 goes against her version and rules out the possibility of occurrence of offence at the alleged place. Similarly, the I.O (PW.6) differed with her in respect of the exact place of scene of offence. Then PW.4 did not support prosecution case at all. He stated that PW.2 never approached him and

¹ (2015) 3 SCC (Cri) 82 = (2015) 7 SCC 272

no Panchayat was conducted by him regarding the incident. All these would show that a false case was foisted against the accused due to political rivalry between PW.3 and accused. However, the trial Court convicted the accused without proper appreciation of the evidence on record. He thus prayed to allow the appeal and set aside the conviction and sentence.

5) Per contra, while supporting the judgment learned Public Prosecutor would argue that the evidence of PW.1 is intrinsic and do not suffer any inconsistencies or discrepancies with reference to the other witnesses as argued and therefore, her sole testimony could be believed. In expansion, he argued that the scene of offence is the place which is a passage (puntha) leading to the fields of Vempadu village. On either side of the passage, there are lands, one of which is the corn field of Boyina Pothuraju. While PW.1 was passing on the passage and reached near the corn field of Boyina Pothuraju, the accused came behind her, caught hold her and dragged her to the nearby corn field of Pothuraju and there he tried to ravish her. Therefore, the attempt was commenced at the passage and aborted in the corn field of Pothuraju. While PW.1 narrated the incident as the corn field of Pothuraju, PW.6—the I.O described it as the passage since it was the starting point of the offence. Except this trivial discrepancy, he argued, there is no difference among the prosecution witnesses regarding the place of offence. The trial Court has rightly analysed this aspect and believed the version of PW.1.

a) Nextly, arguing on the necessity of PW.1 passing through the scene of offence, learned Public Prosecutor argued that admittedly PWs.1 and 2 do not have lands in the vicinity of scene of offence. However, PW.3 who is the husband of sister of PW.2 has lands in the vicinity of scene of offence. Further, their houses are adjacent to each other. Therefore, PW.1 was going to attend the work in those fields. Her version in Ex.P.1 that she was going to attend work in “our fields” should be understood in the context that she was going to the fields of PW.3 and not her own fields. Therefore, the occurrence of the incident cannot be doubted. He also argued that merely the I.O has not seized the soiled clothes of PW.1 and there is a discrepancy in the colour of the bangles spoken by PW.1, that may not be taken as a ground to discard her evidence. Finally, he argued that the defence side could not establish any political rivalry between the families of PW.1 and accused so as to implicate him in the case. He thus prayed to dismiss the appeal.

6) The points for determination in this appeal are:

(i) *Whether the prosecution could establish the guilt of accused beyond all reasonable doubt?”*

(ii) *Whether the judgment of the trial Court is factually and legally sustainable?”*

7) **POINT No.1:** The offence alleged against accused is the attempt to commit rape on PW.1. In a case of this nature, the law is no more *res-integra* for, in *Mohd. Ali alias Guddu*’s case (1 supra), the Apex Court has reiterated that if the testimony of prosecutrix is unimpeachable and

beyond reproach, conviction can be recorded without corroboration in material particulars, for she has to be placed on a higher pedestal than an injured witness. However, on studied scrutiny of the evidence, when the Court finds it difficult to accept the version of the prosecutrix, because it is not irreproachable, then there is a requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. Thus at the first place, the sole and uncorroborated testimony of a victim of a sexual offence can be acted upon, provided, evidence suffers no grave infirmities cutting across the very genesis of the prosecution case. If the Court entertains certain doubts with regard to the material particulars spoken to by her, it can resort to other direct and circumstantial evidence for corroboration. The instant case on hand is obviously based on the sole testimony of the prosecutrix in the sense, there were no other eye witnesses who could have witnessed the attempt said to have been made by the accused on her. Hence, keeping in view the above jurisprudence, the evidence has to be analysed.

8) The offence as per prosecution took place at 11:00am on 29.01.2012 and Ex.P.1—report was lodged at 8:30pm with SHO Dwaraka Tirumala PS. In Ex.P.1 which is the earliest version of the offence, PW.1 stated that she was working as orderly in Anganwadi centre of Vempadu and as 29.01.2012 being Sunday and Holiday, she was proceeding to “their fields” for attending the work at about 11:00am. When she reached the corn field of Boyina Pothuraju, the accused came behind her, closed her mouth and fell her down and tried

to commit rape. When she raised cries out of fear, he abused her and threatened with dire consequences if she revealed the incident to anybody and went away. She returned home weeping and informed to PW.3, who summoned her husband (PW.2) and advised to report to police.

9) In her evidence also PW.1 deposed more or less in similar manner but of course, indicating a different purpose for her going. She deposed that about four years ago, she went to “fields of PW.3 which were obtained on lease”, to attend the work and at about 11:00am, while she was on the way, the accused came behind her and dragged her to the fields of Boyina Pothuraju situated adjacent to the passage and he came upon her and pushed her into the corn field and tried to ravish; she escaped from his clutches; the accused left the premises by threatening that he would kill her if she informed the same to anybody; her orange coloured bangles were broken. She identified MO1—broken bangle pieces. She further stated that she returned house by weeping and informed PW.3 about the incident; PW.3 informed her husband (PW.2) over phone and her husband returned house at 12:00noon or 1:00pm and she disclosed the incident to him; he in-turn informed to PW.5 who is the elder of the village but she did not accompany her husband; then herself, PWs.2 and 3 went to PS and gave Ex.P.1—report.

a) In the cross-examination, she stated, they own One Acre of land in Pangidigudem village; her sister-in-law was given in marriage to PW.3

and their houses are adjacent to each other; the passage consists of black soil; the fields of Boyina Pothuraju and Munakala Rambabu, were covered by black soil; adjacent to the fields of Boyina Pothuraju and Munakala Rambabu SC colony of Vempadu village was situated and if one raises cries from the fields of Boyina Pothuraju, it would be audible to Mala Peta/SC Colony. She further admitted that one Sudharani, who is her younger sister by courtesy, filed a case against Dopasani Sambasivarao about 6 months prior to the present offence but she does not know whether Dopasani Sambasivarao is related to the accused; PW.3 has not obtained any land under lease; PW.3 scribed Ex.P.1 and obtained her signature and gave it to police and she does not know what was written in Ex.P.1; one will be pasted with mud if one proceeds through corn field and falls in the fields; it would take 20 minutes to go to Dwaraka Tirumala Police Station from their village; if an individual falls on ground and if her bangles are broken, certainly she would get hurt because of the broken bangle pieces.

10) The above is the evidence of PW.1 which needs scrutiny in the light of arguments raised by the appellant. As per Ex.P.1 as well as the depositions of PW.1, the offence took place in the corn field of Boyina Pothuraju. As per Ex.P.6—sketch, the said corn field is adjacent to the pathway. The first and foremost doubt expressed was relating to the purpose and necessity of PW.1 passing through the scene of offence. As already narrated supra, as per Ex.P.1, she was proceeding through scene of offence to attend the work “in their field”. According to PW.1 as well

as PW.2, they do not own lands in Vempadu but they own One Acre of land in Pangidigudem village which is at a distance of 2½ kms from Vempadu village. Therefore, as rightly argued by learned counsel for appellant, the question of PW.1 going to “their fields” through scene of offence is highly doubtful, nay does not arise. This doubt further intensifies when perused Ex.P.6. As per Ex.P.6, the houses in Harijanpet and the rasta leading Pangidigudem village are towards East of Vempadu village. Whereas the scene of offence is towards West of the village. Since PW.1 is a resident of Harijanpet, if at all she wanted to go to their own lands situated in Pangidigudem village, she could have proceeded from her colony to eastern side without the necessity of touching the scene of offence which is on the western side of the village. Probably visualising the contradiction between Ex.P1 and Ex.P6, PW.1 made an improvement in her evidence regarding the purpose of her going through the scene of offence. In her evidence, she stated that she was going to attend the work in the fields of PW.3 which he obtained on lease. The said statement was proved false by her own admission in the cross-examination. In the cross-examination she admitted that PW.3 has not obtained any land under lease. Further, in Ex.P.6—sketch, nowhere it is shown that PW.3 was having either his own lands or leasehold lands within the vicinity of scene of offence. Therefore, it is clear that PW.3 had no lands nearby scene of offence. That being so, the question of PW.1 proceeding through scene of offence for attending the work in the leasehold lands of PW.3 does not arise.

a) So, on a conspectus of the evidence on record, her statement of going either to “their fields” or “leasehold lands of PW.3”, through the scene of offence appear to be highly doubtful. This doubt casts a further doubt on the occurrence of the incident proper because, suspicious circumstances are shrouded around the occurrence of the incident. As per the admission of PW.1 and also as can be seen from Ex.P.6, the field of Boyina Pothuraju where the incident allegedly occurred is adjacent to SC Colony of Vempadu and if one raises cries from the said field, same can be audible to SC Colony. The incident was allegedly occurred in the broad daylight at 11:00am. Admittedly, the farmers would be working in their fields at that time. In this backdrop, it is highly doubtful whether any person dare to make a sexual assault on a woman when the scene of offence is very close to the residential area and shouts are audible to nearby fields where farmers were working and particularly, when she was carrying a crow bar with her. Therefore, the doubt regarding the occurrence of the incident intensifies.

b) Nextly, there were no visible injuries on the person of PW.1 though she claims, in the scuffle her bangles were broken which were said to have been recovered by police. Further, the soiled clothes of PW.1 were not seized to establish that the accused felled her down and made an attempt on her.

11) Due to the above suspicious circumstances, a doubt arises about the veracity of the prosecution case and it further intensifies with the evidence of PW.4. It must be noted that PWs.3 and 4 are the own

maternal uncles of PW.2. As per PWs.1 to 3, the incident was reported to PW.4, who summoned the accused and the accused admitted his guilt. However, PW.4 did not support prosecution case. Though he admitted his relationship with PWs.1 to 3, he stated that he does not know anything about the case and PW.2 never approached him and he did not summon the accused and the accused did not admit his guilt before him. This witness was declared hostile by the prosecution and learned Additional Public Prosecutor cross-examined him. It should be noted that PW.4 is the close relation of PWs.1 to 3 but he did not support the prosecution case. He is not an outsider and there is no special reason for him to help the accused, betraying his own relations. Therefore, his evidence further intensifies the doubt regarding the prosecution case. It is true that the accused did not bring forth any tangible direct animosity between PW.1 and accused. However, the admission of PW.1 to some extent shows that PW.3 is a political leader and the father of accused contested in Panchayat elections. Therefore, general differences among them cannot be ruled out. As per PW.1, it was PW.3 who scribed the report and presented to the police.

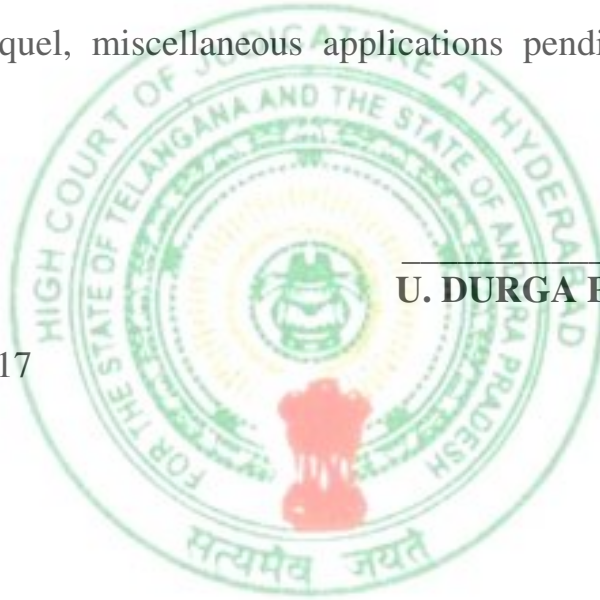
12) So when the facts and evidence are closely analysed, a penumbra of doubt casts on the prosecution case and therefore, it must be held prosecution could not establish its case beyond reasonable doubt. Therefore, the accused deserves benefit of doubt. Unfortunately, the trial Court failed to appreciate the evidence in proper manner.

13) **POINT No.2:** In view of the finding in point No.1, the conviction recorded by the trial Court is not legally and factually sustainable and the same is liable to be set aside.

14) In the result, this Criminal Appeal is allowed by setting aside the conviction and sentence passed by the trial Court in S.C. S.T Sessions Case No.39 of 2014. The appellant/accused is directed to be set at liberty forthwith by the concerned jail authorities, if he is not required in any other case.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 31.08.2017
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U. DURGA PRASAD RAO, J