HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

*****

Criminal Appeal No. 914 OF 2011

Between:

Shaik Mohammed Khasim @ Khashu

... Appellant/
Accused Officer

And

The State of A.P. rep. by the Public Prosecutor,
High Court of A.P.,
Hyderabad.

... Respondent/
Complainant

DATE OF JUDGMENT PRONOUNCED: 19.06.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

1	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2	Whether the copies of judgment may be marked to Law Reporters/Journals	Yes/No
3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.A. No. 914 OF 2011

% Dated 19.06.2024

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... Appellant/
Accused Officer

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$ The State of A.P. rep. by the Public Prosecutor,
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! Counsel for the Appellant: Sri J.K.Ranjit Kumar

^ Counsel for the Respondents: Sri Suresh Goud
Assistant Public Prosecutor

>HEAD NOTE:

? Cases referred

[1] 2016 (4) SCC 140
[2] 2014 (2) SCC 395
[3] 2013 (4) SCC 206
[4] 2016 (1) SCC 696

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.914 OF 2011

ORDER:

1. This appeal is filed by the appellant/Accused, questioning the conviction recorded by the Special Sessions Judge for SC&ST (POA) Act –cum- Additional District and Sessions Judge, R.R.District, in S.C.No.73/2009 vide Judgement dated 18.07.2011, and sentencing him to undergo Rigorous Imprisonment for a period of eight years and also to pay a fine of Rs.1,000/- for the offence under Section 376 of the Indian Penal Code and to undergo Rigorous Imprisonment for a period of two months for the offence under Section 323 of the Indian Penal Code.

2. Heard.

3. Briefly, the case of the Victim-PW1 is that she was residing at Mythri Nagar, L.B.Nagar, Hyderabad, when the incident had taken place and that she was studying X class and aged 15 years. The appellant/accused was a tailor by profession and neighbour of the victim.

4. On 30.01.2009, at 6.00 a.m., victim-PW1 went to school and while returning home around 7.45 a.m., the accused forced her inside the shop and held her chunni asking her to lie down. Since PW1

refused, accused slapped her and when she tried to flee, the accused pulled down the shutter and forcibly committed rape on her.

5. According to PW1 *"The accused forcibly committed rape on me by inserting his male organ into my vagina. The accused while committing rape against me he also uttered the words as "Naa daggara padukove mala lanjadana".*

6. The victim received injuries on her lips and also other parts of the body and she became unconscious. Around evening, PW1 was taken in an Auto by accused and left at L.B.Nagar, instructing her to go home. PW1 went home and narrated the incident to the maternal uncle and parents, the next day. PW1 was taken to Police Station and Ex.P1-complaint was filed. The Police referred her to medical examination and age determination. After completion of medical examination, Police took her to the scene of offence. Investigation was conducted and wearing apparel of PW1 was also seized.

7. Having concluded investigation, the Police filed Charge Sheet for the offence **under Section 376, 323 and 342 of the Indian penal code and Section 3 (i)(xii) of SC/ST (POA) Act, 1989.**

8. In support of the prosecution case, PW1-victim and PW2 to PW8 were examined and Exs.P1 to P13 were marked. M.O.1 and 2 which

are wearing apparel of the victim were also brought on record by the prosecution.

9. Learned Sessions Judge found favour with the version of the victim girl and convicted the accused for the offences punishable under Sections 376 and 323 of the Indian Penal Code.

10. Learned Counsel appearing for the appellant submits that according to the version of PW1, she was a school student, however, she was wearing coloured apparel at the time of incident, which is doubtful. There is a delay of one day in lodging the complaint and on account of disputes between the family members, a false complaint has been filed deliberately. The prosecution ought to have examined the neighbours near the tailor shop. Since it is a busy area and it is highly improbable that the victim would have been dragged into the shop and kept inside the shop till evening hours. Further, counsel argued that the prosecution has failed to prove the age of victim girl as 15 years when the incident had taken place. On account of the discrepancies and lacunae in the prosecution case as stated above, the learned counsel sought reversal of the conviction.

11. Learned Counsel for the appellant relied on the Judgment of the Honourable Supreme Court in ***Tilak Raj v. State of Himachal***

Pradesh[1] wherein a lady of 40 years was having relationship with the accused. In the said circumstances, the Honourable Supreme Court upheld the verdict of acquittal by the trial Court.

12. He relied on the Judgment of Honourable Supreme Court in ***Hem Raj v. State of Haryana***[2] wherein the Honourable Supreme Court directed acquittal of the accused in the background of there being letters addressed to the accused by victim and further the alleged rape happened in the verandah when both of her brothers were sleeping in the house. The allegation was that the accused who is a neighbour, jumped the wall and raped her. In the said circumstances, the Honourable Supreme Court acquitted the accused.

13. He also relied on the Judgment of Honourable Supreme Court in ***State of Rajasthan v. Babu Meena***[3] wherein the Honourable Supreme Court while dealing with the acquittal recorded by the trial Court for the offence of rape, refused to interfere with the order of the trial Court.

14. Learned Counsel for the appellant also relied on the Judgments of Honourable Supreme Court in ***State of Madhya Pradesh v.***

[1] 2016 (4) SCC 140
[2] 2014 (2) SCC 395
[3] 2013 (4) SCC 206

Munna @ Shambhoo Nath[4] and also the Judgment rendered by the Honourable Supreme Court in ***State of Karnataka v. F.Nataraj*** in Criminal Appeal No.1439 of 2011, dated 07.10.2015. Both the cases have no bearing on the present facts of the case.

15. Learned Public Prosecutor on the other hand would submit that there is no requirement of any corroboration to the evidence of victim in a rape case when the evidence of the victim girl is convincing. In such cases, the evidence of PW1 would suffice and no grounds are raised by the defence to discredit the evidence of victim girl.

16. PW1 had specifically narrated regarding the incident of rape that was committed on her by using physical force. The victim was sent to the hospital for the purpose of medical examination. The doctor found that there is an injury which is an abrasion of both lips. Vaginal smears were also taken, placed on glass slides and sent for examination. Human semen and spermatozoa were detected.

17. The evidence of PW1 is convincing. She was subjected to rape on 30.01.2009 and in the evening she was taken to L.B.Nagar bus stand in an Auto and asked to go home. According to PW1, she was traumatised and she informed about the incident on the next day to her maternal uncle and also her parents. In the said background, the

[4] 2016 (1) SCC 696

delay of one day is clearly explained. Further, when the evidence of PW1 is convincing and medical evidence is corroborating with the version given by PW1 regarding the physical assault and also commission of rape, there is no necessity to seek corroboration from any independent witnesses as argued by the counsel for the appellant. Even accepting that the shop was in a busy place, according to the victim she was assaulted and she lost consciousness for some time. In the said circumstances, when it is not the case of the accused that at the time when the alleged assault or dragging the victim into the shop, there were any neighbours or anyone else present, the argument that independent witnesses were not examined by the Police during the investigation, does not hold water. Court cannot assume that people were present and that they were not examined, unless stated by witnesses.

18. The Judgments that are relied on by the learned counsel for the appellant though were passed in the allegations of rape, every case differs on facts. The facts that were dealt with by the Honourable Supreme Court in all the cases cited are totally different from the facts on hand. On the peculiar facts of those cases, the Honourable Supreme Court had dealt with the same and passed orders.

19. Accordingly, there are no grounds to interfere with the conviction and finding of the trial Court for the offence of rape and

assault punishable under Sections 376 and 323 of the Indian Penal Code which oral evidence is supported by medical evidence.

20. Accordingly, the Criminal Appeal fails and dismissed. The conviction recorded by the trial Court is confirmed. The trial Court is directed to cause appearance of the appellant/accused and send him to prison to serve out the remaining part of the sentence.

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

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K.SURENDER, J

Date: 19.06.2024
Note: L.R.copy to be marked
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