

Mohd. FaizudddIn Vs. State

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Court : Andhra Pradesh

Decided On : Nov-18-1998

Reported in : 1999(1)ALD298; 1999(1)ALT556

Judge : Vaman Rao, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 342 and 376; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3, 3(1), 3(2) and 4; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 164 and 313

Appeal No. : Crl. A No. 1064 of 1998

Appellant : Mohd. Faizudddin

Respondent : State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Mr. Mohd. Osman Shaheed, Adv.

Judgement :

1. This appeal is directed against the Judgment of Addl. Sessions Judge, Medak at Sangareddy dated 29th July 1998 rendered in SC No. 19 of 1996 convicting the appellant-accused for an offence under Section 376 IPC and under Section 3(1)(xii) read with 3(2)(v) of SC and ST (PA) Act and sentencing him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.3,000/- and in default of

payment of fine to undergo rigorous imprisonment for two years.

2. The facts relating to this appeal may be stated briefly: The accused has been working as a Forest Guard at Gummaddala village in Chennaram Mandal, Medak District. The complainant P. Narayana PW1 and his wife Pochamma and their daughter (victim) PW3 are the residents of that village. They belong to Scheduled Caste. PW3 was working as maid-servant in the house of the accused for eight months prior to the incident. Four months prior to the incident, the wife of the accused went to her parents house for delivery. According to PW3 she used to clean vessels and attend to other domestic work in the house of the accused and the accused used to pay Rs.50/- per month. After the wife of the accused went to other place for delivery, one day between 3 to 4 p.m. while she was attending to the work, the accused laid her on the cot and by force raped her. After opening the doors of the room she went to her mother PW2 and narrated the incident. Three days after the incident, PW1 enquired as to why she was not going to the work at the house of the accused, when PW3 declined to work at the house of the accused, her father PW1 beat her, then PW3's mother PW2 Pochamma intervened and narrated to PW1 the incident of rape on PW3 by the accused. According to the prosecution, four months after the incident, PW1 took PW3 victim girl to the police station and gave complaint Ex.P1. This was on 4-1-1995 at about 9.15 a.m. PW6 the Sub-Inspector of Police registered case in Cr.No.2 of 1995 under Sections 342, 376 IPC 3 and 4 of SC and ST (PA) Act, 1989 and issued First Information Report Ex.P4. He recorded the statements of PWs. 1 to 3 and sent PW3 the victim girl to the Government Hospital for examination. Thereafter PW5 the Circle Inspector of Police took over the investigation and arrested the accused on 11-1-1995 at 10 a.m. at Narsaraopet. He gave requisition to Munsif Magistrate, Sangareddy at Medak for recording the statement of PW3 under Section 164 Cr.PC who recorded the same under Ex.P3. The successor of PW5 filed charge-sheet. The Civil Assistant surgeon, Government Hospital, Narsaraopet examined PW3 on 6-1-1995 and issued medical certificate Ex.P6.

3. It is seen from the record that PWs.1 to 7 and Exs.P1 to P6 have been marked on behalf of the prosecution. On behalf of the accused no evidence has been adduced but Ex.D1 is marked as a contradiction in 161 Cr.PC statement of PW2.

On this evidence, the learned Sessions Judge held that the prosecution has proved the charge against the accused beyond all reasonable doubt and convicted the accused and sentenced as stated above.

The question for consideration is:

'Whether the prosecution has succeeded in bringing home the Charge against the accused beyond all reasonable doubt and whether the judgment under appeal can be sustained?'

4. It is apparent that the only evidence the prosecution relies upon and on which the conviction of the accused is passed is that of victim girl PW3. The victim PW3, is said to be 14 years old. The fact of her age is not mentioned in the charge framed against the accused. The fact that PW3's age was 14 years was not put up in the questions to the accused under Section 313 Cr.PC. The only evidence as to the age of the victim girl is the statement of PW1 who stated that his daughter was aged about 14 years. However, it may be noted that the figure ' 14' indicating age has been added after striking out some other figure. The correction is not attested by anyone. Except this there is no evidence as to the age of the victim girl. PW7 the doctor who examined her does not state anything about her age in his evidence given in the Court. However, in Ex.P6 the column meant for age, '14 years' has been shown as her age. This may not be crucial inasmuch as it is not the case of the accused that he had intercourse with the victim with her consent.

5. It is pertinent to mention that the victim girl PW3's evidence does not find corroboration from any other evidence on record. The evidence of the doctor PW7 as stated by him in the Court and as recorded in the medical report given by him in Ex.P6 does not disclose any evidence of rape. The doctor has not found any injuries on the victim girl. He found the private parts of the victim girl quite normal. In fact under the head 'opinion' in Ex:P6, PW7 specifically recorded opinion that there was no evidence of rape.

6. The question is whether the solitary statement of the prosecutrix in this case can be believed as the basis for convicting the accused for an offence under Section 376 IPC.

7. It is true that the prosecutrix in a rape case cannot be considered as an accomplice and there is no rule of law that her evidence can never be believed without corroboration. The real question is whether the solitary evidence of the victim inspires confidence, appears probable and under the circumstances can be considered as worthy of credit even without any corroboration.

8. In this case the report of the offence has been made after an inordinate delay of four months. It is true that in case of rape, considering the stigma attached to the victim and considering the social inhibitions of the parents of the victim mere delay in itself cannot be considered fatal in prosecution for rape. But when there is inordinate delay, there must be proper and satisfactory explanation for the delay. PW1 who is the father of the victim girl who is said to be a minor, under the circumstances must be considered as the person who takes the final decision as to reporting about the rape of his daughter to the police. In his evidence PW1 has not offered any explanation for the delay at all. On the other hand, a reading of his deposition in examination-in-chief, in which he mentions about his going to the police station along with PW3 to make a complaint would read as if immediately after he came to know of the incident from his wife, he went to the police station and gave complaint. It is in the evidence of PWs.1 and 2 that PW1 himself was informed about the incident three days after the incident. It appears, when PW1 observed that his daughter PW3 was not going to the house of the accused to attend domestic work, he took PW3 to task and beat her. It is under these circumstances, his wife PW2 intervened and disclosed about the incident. The relevant statement of PW1 is extracted below:

'Then my wife informed with regard to the incident that the accused raped her (i.e., victim) as such, she stopped going to his house, whereupon I left along with my daughter (victim) to the police station, Chennaram, I gave complaint to the police which was drafted by my villager by name Gangi Reddy.'

This would show that three days after the incident he was informed and immediately thereafter he went to the police station and reported. But this is contrary to the prosecution case itself. My specific case of the prosecution is that the offence of rape was reported at the police station four months after the

incident. PW2 the wife of PW1 and mother of the victim girl PW3 in her evidence stated that the victim i.e., her daughter stopped attending to the work at the house of the accused for a period of three days, upon this she enquired with her daughter as to why she was not attending to the work at the house of the accused, it was then PW3 disclosed to PW2 that the accused raped her forcibly by putting her on the cot by closing the doors of the room. According to PW2 thereafter she narrated this incident to her husband. According to PW2 she informed about this incident to her husband two days after she was informed by PW3 when her husband PW1 reprimanded his daughter for not going to the work at the house of the accused. According to PW2 her daughter informed about the incident on the date of incident. Even according to the tenor of deposition of PW2 in her examination-in-chief, it would appear that on being informed about the incident, her husband, PW1 together with PW3 went to the police station to make a report. Though PWs.1 and 2 do not specifically state after how many days PW1 went to the police station and gave report, but the tenor of their deposition shows as if PW1 gave report on coming to know of the same after four days. But in fact the report was lodged at the police station four months after the incident. Thus there is absolutely no explanation offered either by PW1 or 2 as to under what circumstances there was such a delay in giving report at the police station. The learned Counsel appearing on behalf of the Public Prosecutor however points out that the victim girl PW3 herself gave explanation for the delay. It is true that PW3 in her statement stated, which is extracted below;

'After knowing the incident to the public then PW1 took me to the police station and gave complaint to the police.'

This appears to be an effort to fill in the gap left by PWs.1 and 2. As stated above, it is PW1 alone or in consultation with PW2 who had to decide about reporting the matter to the police. When PWs.1 and 2 have not offered any explanation for inordinate delay of four months in reporting the matter to the police, the vague statement of PW3 that after public came to know of the incident PW1 gave report does not satisfy the requirement of satisfactory explanation. It is not known as to how the incident could be suppressed for four months and under what circumstances suddenly after four months it came to be known to the public. In the

absence of any such explanation it has to be held that inordinate delay remains unexplained.

9. This delay in itself considerably denudes the credibility of the version of victim PW3.

10. The contention on behalf of the prosecution that if the incident had not occurred, it is improbable that PWs.1 and 2 would make a false report to the police involving the honour of their daughter does not appear impressive. It is impossible to unravel the motives and circumstances under which the complaint of rape could be made even if it was not true.

11. Further, PW 1's statement remains absolutely uncorroborated. It is difficult to give credence to the evidence of PW2 that PW3 the victim informed her about the incident on the date of incident itself, because the fact that the victim girl PW3 informed about the incident on the same day to her mother PW2 is not borne out by any other material on record inasmuch as the report itself has been given four months after the alleged incident. In a case of rape, medical evidence assumes crucial importance and is often considered sufficient corroboration for the solitary evidence of the victim. But in this case, the Medical evidence far from affording any corroboration, pointedly indicates that there was no evidence of rape.

12. In this regard it may be pointed out that the learned Addl. Sessions Judge in para 16 of the Judgment while referring to the evidence of PWs.1 and 2 commented as if PWs.1 and 2 gave any specific explanation for the delay. The relevant portion in para 16 of the Judgment is extracted below:

'Further PWs.1 and 2 clearly stated that after their daughter disclosed the fact, they kept secret because if they go to the police station to give complaint, it becomes public and once it becomes news that the girl was raped, it becomes difficult to perform her marriage and with that fear they could not immediately go to the police station and lodge the complaint. Some how the incident spread in public, then they went to the police station and lodged the complaint Ex.P1.'

I have searched in vain for such a statement in the evidence of PWs. 1 and 2 given in the Court. They have not offered any such explanation. It is true however, that in the complaint Ex.P1, PW1 did state that he 'did not reveal this matter to anybody because her marriage would be a problem due to this issue. Since it is known to all, I request you, sir, to take legal action against Faizuddin.' A statement made in First Information Report at best can be used for corroboration of the evidence of the informant given in the Court. What is stated in the First Information Report does not constitute substantive evidence. At any rate, even this so called explanation really does not furnish any explanation, the essence of such an explanation is that for fear of revealing the incident to any outsider, they refrained from giving any complaint. Once it became known to the people, they thought it no longer necessary to keep it a secret and gave a report to the police. Thus the crux of the explanation is as to the circumstances under which the incident got revealed to the public when they themselves did everything in their power to keep it a secret. Not a word of explanation is available on this aspect. This explanation seems to have been given because an explanation was required to be given.

13. Thus in view of the above discussion and the state of evidence, it is not possible in this case to place implicit reliance on the uncorroborated testimony of solitary witness the victim girl. The inordinate delay of four months in reporting the matter to the police coupled with this utter lack of corroboration renders the evidence of PW3 unworthy of credit. Thus, it has to be held that the prosecution has not succeeded in bringing home the charge against the accused beyond all reasonable doubt for the offence under Section 376 IPC. When the charge under Section 376 IPC fails, the charge under Section 3(1)(xii) read with 3(2)(v) of SC/ST (PA) Act would automatically fail.

14. In the result the appeal is allowed. Accordingly, the accused is acquitted of the charge under Section 376 IPC and under Section 3(1)(xii) read with 3(2)(v) of SC/ST (PA) Act. The conviction and sentence imposed by the trial Court is set aside. The fine amount if paid shall be refunded to the accused. The appellant-accused shall be set at liberty if not required in any other case.

