

**Reepik Ravinder Vs. State of Andhra Pradesh Represented by Public Prosecutor**

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**Court :** Andhra Pradesh

**Decided On :** Aug-07-1990

**Reported in :** 1991CriLJ595

**Judge :** Bhaskara Rao, J.

**Acts :** [Juvenile Justice Act, 1986](#) - Sections 2, 21 and 22; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 360 and 361; ;Probation of Offenders Act

**Appeal No. :** Cri. Appeal No. 565 of 1989

**Appellant :** Reepik Ravinder

**Respondent :** State of Andhra Pradesh Represented by Public Prosecutor

**Advocate for Def. :** Public Prosecutor

**Advocate for Pet/Ap. :** N. Krishna Rao, Adv.

**Judgement :**

1. This is an appeal filed by the sole accused, who was convicted under S. 376, I.P.C., and sentenced to suffer rigorous imprisonment for ten years and also to pay a fine of Rs. 500/-.

2. The brief facts of the case as spoken to by P.Ws. 1 to 4 and 10 are : P.W. 2, a minor girl of seven year, is the daughter of P.Ws. 1 and 3 while P.W. 4 is her maternal grand-mother. They are all residents of Hanamkonda. On 6-5-1987, the date of offence, P.W. 2 was sitting outside the house and taking food. At that time, the accused came there and called her stating that he would give her curry. He took her into his house. There he committed rape on her. Immediately after that P.W. 2 came back to her house and informed of the incident to her mother, P.W. 3, and grand-mother P.W. 4. P.Ws. 3 and 4 observed blood coming out of the vagina of P.W. 2. P.W. 2 though is a girl of 7 years, the Court below after putting some questions found her to be fit for examination. In her statement she narrated the whole incident. P.Ws. 3 and 4 corroborated the statement of P.W. 2 in all material particulars. It is further in the evidence of P.W. 3 that immediately after being informed of the incident, she sent for P.W. 1, who came and gave the report, Ex. P-1, to the police. Thereafter P.W. 10, the doctor, examined P.W. 2 and found :

- '1. Seminal stains present on the medial aspect of the right and left thigh,
2. Bloodstains present on the external genetalia,
3. Hymen torn irregularly,
4. Fresh tears present
5. Cervix is in tact.'

In the opinion of P.W. 10, evidence of rape is present in the victim. Thus, the evidence of P.Ws. 1 to 4 and 10 establishes the case of the prosecution that the accused had committed rape on P.W. 2. I am not, therefore, able to accept the submission of Mr. Krishna Rao that no offence is made out by the prosecution to warrant his conviction under 376, I.P.C. I accordingly confirm the conviction.

3. As regards the question of sending the accused to prison, Mr. Krishna Rao, the learned counsel submitted that, the accused was about 15 years on the date of commission of the alleged offence and this is clear from the evidence of P.W. 12, the Doctor that examined the accused to determine his age. In view of his age, Mr.

Krishna Rao, contended that the accused is to be sent to Borstal School and not at all to the prison.

4. It is in the evidence of P.W. 12, the Doctor, that on an examination of the physical, dental and radiological aspects of the accused he found him to be about 16 to 17 years. In his cross-examination he deposed that the accused may be '15' years old at the time of commission of the offence. In view of this, as submitted, it is to be taken that the accused was '15' years on the date of the offence by giving benefit to the accused. The accused, thus, is a juvenile as defined by S. 2(h) of the [Juvenile Justice Act, 1986](#). Further, as ordained by S. 22 of the said Act notwithstanding anything to the contrary contained in any law, no juvenile shall be sent to prison even as a measure of default sentence, much less through a direct sentence of imprisonment. According to S. 21 of the Act, where a juvenile is found to have committed an offence punishable with imprisonment, the Court, if thinks it expedient to so deal with the juvenile, may order him to be sent to a special home. The section also envisages release on admonition, release on probation of good conduct etc.

5. Mr. Krishna Rao, submitted that discovery of the causes that led to the commission of the offence is an essential factor before inflicting the punishment and in this behalf he took me through the FOREWORD by His Lordship, Chinnappa Reddy, J., to the Hand Book 'Compendium of Criminal Law' by M. R. Reddi. The relevant portion in the FOREWORD runs :

'Criminal Law is generally thought to be concerned with the detection, trial and punishment of the offender. But, that is not everything. While that may be the immediate object of the Criminal Law, its ultimate goal, undoubtedly, is the creation of a society free from fear of injury .... If this is remembered, it will be immediately realised that punishment need not be the only end of Criminal Law. Reformation of the offender, wherever and whenever it is possible may well serve the ultimate object. Nor is it possible to attain a fear-free society by mere infliction of punishment ..... Criminal Law should, therefore, aim not merely at the detection, trial and punishment of the offender, but also at the discovery of the causes leading to the commission of the offence.

In this background of the Foreword the learned counsel Mr. Krishna Rao submitted that the accused was working as an Attendant in a Lodge in Hanamkonda where different types of people stay and this boy had occasions to witness acts of adults while supplying their requirements in the rooms and the adult pictures, Blue in nature telecast through videos. This type of working and living had its own impact on the mind of the accused and generated the instinct to practise the act that culminated in the offence. This, surely, is no excuse to free him from the clutches of Conviction but certainly stares at as a persuading factor in imposing the sentence. At the same time, the accused being a juvenile cannot be committed to prison. Further, S. 361 of the Criminal Procedure Code mandates assigning special reasons by the Court for not dealing with the accused under S. 360, Cr.P.C., under the provisions of the Probation of Offenders Act or the Children Act or any other law for the treatment, training or rehabilitation of youthful offenders. Section 361 is incorporated by the Criminal Procedure Code of 1973 for the first time in order to avoid rendering such offenders hardened criminals by keeping them along with other criminals in regular prisons. Further, an inordinately long prison term is sure to turn such offender into obdurate criminals. That primarily seems to be the reason behind the incorporation of S. 361, Cr.P.C. envisaging a treatment-different in matters of crime and punishment. Unfortunately in spite of this statutory provision, the Court below failed to comply with S. 361, Cr.P.C., even suo motu if it is not so addressed by the counsel. Whether or not a submission is advanced in the light of S. 361, Cr.P.C., it is the mandatory duty of the Courts to comply with the mandate thereunder suo motu. Earlier also, this Court had regretfully noticed the failure in a different case reported in Guvvala Kotaiah v. State, (1989 (3) ALT 395). It appears that time is ripe to caution the Courts by means of some Circular to invariably follow and comply with the mandate enshrined in S. 361, Cr.P.C.

6. It is apposite to notice here that S. 19 of the [Juvenile Justice Act, 1986](#) mandates the police to inform the probation officer also besides the parents of the juvenile under arrest, about the arrest in order to enable him to obtain information regarding the antecedents, etc. of the Juvenile to assist the Juvenile Court for making the inquiry.

7. In view of the above, while confirming the conviction imposed under S. 376, I.P.C. against the accused, I direct sending of the accused to the A.P. Borstal School for a period of three years considering the present age of the accused to be 18 years. The sentence of imprisonment and fine are accordingly set aside. With this modification, the appeal is dismissed. The fine amount, if paid, shall be refunded.

8. Appeal dismissed.

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