

Dokka Bhushaiah Vs. the State of A.P., Represented by Public Prosecutor

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Court : Andhra Pradesh

Decided On : Nov-28-2006

Reported in : 2007CriLJ1499

Judge : A. Gopal Reddy, J.

Acts : Indian Penal Code (IPC) - Sections 354, 376 and 511; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Appeal No. 1466 of 2000

Appellant : Dokka Bhushaiah

Respondent : The State of A.P., Represented by Public Prosecutor

Advocate for Def. : Additional Public Prosecutor for Respondent No. 1

Advocate for Pet/Ap. : T. Bali Reddy, Adv.

Judgement :

A. Gopal Reddy, J.

1. The appellant-accused Dokka Bhushaiah was put to trial for the offence punishable under Section 376 read with Section 511 I.P.C in S.C.No.767 of 1999 by the Additional Assistant Sessions Judge, Tenali. He was found guilty of the offence and sentenced to undergo Rigorous Imprisonment for a period of ten

years and to pay a fine of Rs. 1,000/- in default to suffer Simple Imprisonment for a period of three months by the impugned judgment dated 30.8.2000.

2. Being aggrieved by the aforesaid conviction and sentence recorded by the Assistant Sessions Judge, the appellant has referred this appeal.

3. The prosecution story as unfolded during the course of trial briefly stated as under:

4. Dokku Venkateswara Rao (P.W.1) is the father of the victim girl Dokku Krishna Kumari (PW2), aged about 11 years, who filed a complaint before the Police on 10.11.1998 at 10.00 p.m. alleging that on the said date when P.W.2 was alone in the house, the accused residing in the same Village, took her to a cattle shed in front of their house, inserted cloth in her mouth and felled her down and then he fallen on her and pressed her breasts with his hands and bitten her cheeks, lifted her langa and attempted to commit rape on her. In the meanwhile, on seeing Dokku China Venkateswara Rao (PW3), the younger brother of P.W.1, the accused ran away. Then P.W.3 and his wife brought the victim girl to P.W.1 and when asked what happened P.W.2 narrated the incident.

5. P.W.5, Sub-Inspector of Police, Nagaram P.S. on receipt of the aforesaid complaint, registered it as a case in Cr.No.64 of 1998 for the offence punishable under Section 376 read with Section 511 IP.C and issued Ex.P.3 F.I.R., sent the victim girl to the Government Hospital, Repalle for medical examination. He recorded the statements of P.Ws. 1 and 2 and rushed to the scene of offence and secured the presence of P.W.3 and Dokku Nagamalleswari and recorded their statements and found that accused was absconding. After completion of the investigation and receipt of the relevant documents, laid the charge sheet for the above offence.

6. The accused denied the charge and claimed to be tried.

7. In order to prove the case of the prosecution, prosecution examined P.Ws.1 to 5, marked Exs.P.1 to P.3. No oral evidence was adduced on behalf of the defense but contradictions in 161 Cr.P.C statements of P.Ws.2 and 3 were marked as

Ex.D.1 to D.5.

8. The learned Assistant Sessions Judge on completion of the trial and after analyzing the oral and documentary evidence, found that the evidence of P.Ws.1 to 3 is cogent and convincing with regard to occurrence of the incident proper and the same cannot be brushed aside on the ground of interested witnesses and accordingly convicted the accused for the offence punishable under Section 376 read with Section 511 I.P.C. and sentenced him to undergo imprisonment as stated above. Hence the present appeal.

9. Sri T. Bali Reddy, learned Senior Counsel appearing for the appellant would contend that the evidence of the doctor do not support ocular evidence for the offence alleged and in the absence of any other evidence, conviction of the appellant solely on the evidence of prosecutrix (P.W.2) is not proper. He would further submit that the alleged offence is alleged to have taken place in the cattle shed where two she-buffalos were tied and the clothes of victim girl have not been spoiled which itself shows that the case has been fabricated on account of civil disputes pending between himself and P.W.1. Placing reliance on a passage on 'indecent assault' under Chapter 17 - Sexual Offences - at page 339 of the Book 'The Essentials of Forensic Medicine and Toxicology' 16th Edition, written by Dr. K.S. Narayan Reddy, learned Counsel would submit that, at the most, the offence is punishable under Section 354 I.P.C. for indecent assault and not for the offence punishable under Section 376 read with Section 511 I.P.C.

10. Learned Additional Public Prosecutor, placing reliance on the decision of the Supreme Court in State of Madhya Pradesh v. Dayal Sahu : 2005 CriLJ4375 , on the other hand, would contend that the evidence of P.W.2 alone is sufficient to convict the accused for the offence punishable under Section 376 read with 511 I.P.C. because there was an attempt on the part of the appellant-accused to commit rape on the victim girl and the evidence let in by the prosecution corroborates about the commission of the offence and as such the lower Court has rightly convicted and sentenced the accused.

11. In view of the rival submissions as noted above, the point that arises for consideration is whether prosecution has been able to bring home the guilt of the

accused beyond reasonable doubt and the conviction and sentence recorded by the Assistant Sessions Judge are liable to be set aside or modified? P.W.1 who is the father of the victim girl stated that on 10.11.1998 at about 8 p.m. his daughter (PW2) was alone at the house and at that time he went to milk centre to handover milk and the mother of the victim girl went to Mangalapuram of Krishna District for attending ceremonies of her mother who died. When he was waiting at the milk centre, his younger brother P.W.3 came there along with his daughter and where P.W.2 informed him that accused came to the house while she was alone and dragged her to his cattle shed situated at a distance of about 20 yards from his house and fell her down and inserted cloth in her mouth, removed her langa and attempted to rape her. When P.W.3 heard the voice (mulugudu) of P.W.2, he informed the same to his wife and then both of them came to his daughter and that on seeing them the accused ran away. Then P.W.2 was brought to the milk centre. He took his daughter and his brother to Nagaram Police Station and gave Ex.P.1 report. In the cross-examination he stated that ten days prior to the incident his wife went to her parents house and accused is his junior paternal uncle. While he was returning from the milk centre, his brother and his daughter came opposite to him and met him on the way. The extent of the cattle shed is 6 1/4 yards. The accused got three she buffalos and denied the suggestion that there are civil disputes pending between him and the accused with regard to boundaries of cattle shed and due to the said disputes he and his brother foisted a false case though no incident had taken place.

12. P.W.2, the victim girl deposed that at about 8.00 p.m on the date of the incident when she was alone in the house, the accused came to his house and took her to his cattle shed by embracing her, he fell on her, pressed her stomach, removed her petty coat and attempted to rape her and also bitten on her cheeks. In the meanwhile her paternal uncle P.W.3 saw the same and came to her and on seeing him the accused ran away. Wife of P.W.3 also came there and asked her what had happened. Then P.W.3 took her to his house and sent word to her father (PW1). Then herself, her father and her paternal uncle went to Nagaram, got a report drafted and gave it to the police. From there, they were referred to the Government Hospital Repalle and as the lady doctor was not available in the hospital they went to the house of the doctor and after examination by the lady

doctor they returned home. In the cross-examination, she admitted that their house and the house of P.W.3 are adjacent to each other. At about 8 p.m. accused took her to the cattle shed when her father went to milk centre at about 7.30 p.m. The accused inserted cloth in her mouth and embraced her and took her to the cattle shed from her house. There were two she buffaloes in the cattle shed at that time and her clothes did not spoil due to earth and she did not sustain any bleeding injury due to accused biting on her cheeks and there were also no scratches on her cheeks and stomach. While she was weeping in low voice, her junior paternal uncle who was washing his feet came there and on seeing him the accused ran away. The accused used to visit their house frequently prior to the incident and the same has been stated before the Police. She admitted that she did not state before the police as in Ex.D.1 that while she was studying in the verandah, the accused took her to the cattle shed and also denied that she stated as in Exs.D.2 and D.3.

13. P.W.3 stated that on the date of the incident at about 8 p.m. he came to his house and was washing his feet, then he heard the low weeping (mulugudu) of P.W.2 and found the accused running away from the place. He informed the same to his wife and then himself and his wife brought P.W.2 to their house and asked her as to what had happened. She informed that accused attempted to rape her. Himself and P.W.1 went to Nagaraam Police Station and gave complaint to the police. Sub-Inspector of Police sent P.W.2 along with a constable to Repalle Government Hospital and that himself and P.W.1 also accompanied them to the hospital and as the lady doctor was not available in the hospital, they went to the house of the doctor. The lady doctor examined P.W.2. In his cross-examination, he deposed that he was convicted in a case on the allegation that he raped one Sujatha, a married woman. When he was washing his feet after return from outside, his wife came to the house from the neighbouring house and he saw the accused running away. When he went to P.W.1 there were no clothes in her mouth and he found scratches on her cheeks and brought P.W.1 to his house and informed P.W.1 about the incident.

14. P.W.4 the doctor who examined the victim girl stated that on examination she found no external injuries on her private parts or on her body and a known person

is alleged to have outraged her modesty by catching her skirt. Ex.P.2 is the wound certificate issued by her. In the cross-examination she stated that P.W.2 did not state before her that she was bitten on her cheeks.

15. P.W.5, Sub-Inspector of Police, Nagaram, who registered the crime on receipt of a complaint from P.W.1 deposed that he sent the victim girl to Government Hospital, Repalle for medical examination, recorded the statements of P.Ws.1 and 2, immediately rushed to the scene of offence and secured the presence of P.W.3 and Dokku Nagamalleswari and examined the scene of offence. He recorded the statements of P.W.3 and Dokku Nagamalleswari. The cattle shed is a small shed and at the time of his visit there was one she-buffalo in the shed. He deposed that P.W.2 stated before him as per Exs.D.1 to D.3 and P.W.3 stated before him as per Exs.D.4 and D.5.

16. From the evidence of P.W.2 and P.W.1, it is clear that the victim girl was alone in the house on the date of the incident, that the accused visited the house of P.W.1 and took her to the cattle shed by embracing her and fell on her and pressed her stomach, removed her petty coat and attempted to commit rape on her. Meanwhile on seeing P.W.3 who was washing his feet at his house which is adjacent to the house of P.W.1, accused ran away from the place and the victim girl informed about the incident to P.W.3 and his wife. Ex.P.1 complaint lodged with police also corroborates the evidence P.Ws.1 and 2 in all respects. Though no penetration has taken place, the evidence clearly discloses that an attempt was made by the accused for commission of rape on the victim girl. The discrepancies, if any, are only minor in nature and it will not shatter the evidence of the victim girl who clearly deposed about the incident proper. Her evidence alone is sufficient to come to the conclusion that there was an attempt by the accused to commit rape on her.

The Supreme Court in *State of M.P. v. Dayal Sahu* : 2005 CriLJ4375 on which reliance has been placed by the learned Additional Public Prosecutor, held that once statement of prosecutrix inspires confidence and accepted by the Courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which

necessitate the courts for corroboration of her statement. The Supreme Court further held: Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Non-examination of doctor and non-production of doctor's report would not cause fatal to the prosecution case, if the statement of the prosecutrix and other prosecution witnesses inspire confidence.

17. In view of the above decision of the Supreme Court, the contention of Mr. Bali Reddy, learned Senior Counsel that as the evidence of the doctor did not support the ocular evidence, conviction cannot be placed solely on the basis of the evidence of the prosecutrix has no merit. The unimpeachable evidence of P.W.2 in the instant case inspires confidence and her evidence can be accepted by the Court as trustworthy. Her version has not been demolished in the cross-examination and has been corroborated by P.Ws.1 and 3. The fact that the clothes of the victim girl have not been spoiled in the cattle shed is of no consequence.

Yet another contention of Mr. Bali Reddy that at the most the offence is punishable under Section 354 IPC for indecent assault has also no merit. He placed strong reliance on the passage on 'indecent assault' made in the book 'The Essentials of forensic Medicine and Toxicology' (16th Edition 1997, page 339) written by Dr. K.S. Narayan Reddy wherein 'indecent assault' was described as under:

Indecent assault is an offence committed on a female with the intention or knowledge to outrage her modesty. Usually the act involves the sexual parts of either. In such assaults, a man may try to kiss a woman, press or fondle her breasts, touch or expose the genitalia or thighs, try to put a finger in her vagina, play with vulva etc., This is usually committed against children, or adolescent girls and rarely on adult or old women. Stripping naked a female patient for medical examination is regarded as an assault. Indecent offences between two or more male persons include such offences as friction of penis on the gluteal folds, handling of the male genitalia, mutual masturbation, etc., or intercrural connection. Such assaults are punishable under Section 354 I.P.C. upto two years

imprisonment and/or fine. In such cases, medical examination is of little value. Abrasions or bruises may some times be present due to struggle.

The above passage has no relevance to the facts of the case. Further, no authority has been placed before the Court to substantiate that the above acts committed by a male person on a victim girl or woman would only constitute an offence punishable under Section 354 I.P.C and can be made applicable to a person who has committed the crime with an intention to commit rape on a woman. A distinction has to be drawn between a person who has committed the crime only with an intention to outrage the modesty of a woman by a spur of moment and a person who has committed the crime with preparation and with an intention to commit the act of rape on a woman or a girl taking advantage of certain circumstances, but had failed to do so. In the former case, a person may have only an intention to outrage the modesty of a woman with no intention to commit rape on her. But, in the latter case, a person may outrage the modesty of a woman with intention and preparation to commit rape on her, but might have failed in his attempt. Persons taking advantage of the loneliness of a woman or minor girls, with an intention to commit rape on them, may resort to the offence by indulging in indecent assault or criminal force. Merely because an accused person who has committed the offence has failed in his attempt to commit rape on the victim, it cannot be said that he has no intention to commit rape on the victim. Whether the accused person has intention to commit rape on the victim girl or not can be examined on an appreciation of the evidence on record. If the evidence clearly establishes that there was an intention on the part of an accused person to commit rape followed by an attempt on his part, then, merely because he had failed in his attempt to complete the act, it cannot be held that he is liable to be punished only for the offence punishable under Section 354 I.P.C and not for the offence punishable under Section 376 read with Section 511 I.P.C. though his intention to commit rape has been established.

18. At this stage, it may be apt to refer to the decision of the Supreme Court in Koppula Venkat Rao v. State of Andhra Pradesh : 2004 CriLJ1804 wherein in identical circumstances, the Supreme Court considered the scope of offence punishable under Section '376 read with Section 511 IPC' as also the scope of the

word 'attempt'. The following excerpts from the Judgment of the Supreme Court, which are relevant for the purpose, may be noted:

The plea relating to applicability of Section 511 I.P.C needs careful consideration. In every crime, there is first intention to commit, secondly, preparation to commit it, thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails the crime is not complete, but law punishes the person attempting the act. Section 511 is a general provision dealing with attempts to commit offences not made punishable by other specific sections. It makes punishable all attempts to commit offences punishable with imprisonment. An attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment is awarded..Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word 'attempt': is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission.....An attempt may be described to be an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.

In order to find an accused guilty of an attempt with intent to commit a rape, Court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part....

In the instant case, the evidence clearly establishes that there was an intention on the part of the accused to commit rape on the victim girl. The fact that the girl was alone at 8.00 pm at her house, that her mother was away from the village and his father was away from the house at that time are undisputed. Therefore, taking advantage of the situation, the accused came to the house of the victim girl, forcibly took her to the cattle shed, bitten the girl on her cheeks and by removing her petty coat, he attempted to commit the rape, but, could not do so because he noticed the presence of P.W.3 who was washing his feet on return from outside. All the above facts, which are established, cumulatively indicate that the accused came to the house of the victim girl with preparation and with an intention to commit rape on her. Under these circumstances, I am of the considered view that the offence committed by the appellant-accused would constitute an offence punishable under Section 376 read with Section 511 I.P.C. but not the offence punishable under Section 354 I.P.C as contended by the learned Counsel. The facts established clearly falls under Section 511 I.P.C. as per the dicta laid down by the Supreme Court in Koppula Venkatrao's case (supra). The prosecution has been able to bring home the guilt of the accused beyond reasonable doubt for the offence punishable under Section 376 read with Section 511 I.P.C. In view of the same, the conviction recorded by the lower court does not call for any interference. But, since the accused committed only an attempt to rape the victim girl, the sentence of rigorous imprisonment for ten years appears to be harsh. Accordingly the sentence of R.I. for ten years is reduced to R.I for a period of four years and the sentence to pay fine of Rs. 1000/- in default to undergo S.I. for three months is, however, maintained.

19. In the result, the Criminal appeal is partly allowed as indicated above. Since the offence was committed about eight years back, the accused shall be taken into custody forthwith to serve the sentence of imprisonment left over. The concerned Judge shall submit compliance report within six weeks.

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