HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

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Criminal Appeal No.1745 OF 2009

Between:

Gopireddy Srinivas ... Appellant/accused

And

The State of A.P. rep. by its Public Prosecutor,
High Court of A.P., Hyderabad.
... Respondent/complainant

DATE OF JUDGMENT PRONOUNCED: 13.03.2024

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

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K.SURENDER, J

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

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Gopireddy Srinivas ... Appellant/Accused

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High Court of A.P., Hyderabad.
... Respondent/Complainant

! Counsel for the Appellant: Sri C.Masthan Naidu, learned Senior Counsel

^ Counsel for the Respondent: Sri Suresh Goud, learned Assistant Public Prosecutor

>HEAD NOTE:

? Cases referred

HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No. 1745 of 2009

JUDGMENT:

1. The appellant was found guilty for the offence of rape punishable under Section 376 of IPC and sentenced to undergo rigorous imprisonment for a period of seven years, by the IV Additional Metropolitan Sessions Judge, Hyderabad vide judgment in SC No.85 of 2009 dated 09.12.2009.

2. The case of the prosecution is that P.W.1/victim lodged complaint by giving oral statement which was recorded by the police on 18.03.2008. According to the statement of the victim, about four months prior to lodging complaint, she was residing along with her parents and three brothers. She went out to search for her brother's son. At that time, the appellant caught hold of her hands, closed her mouth, took her into a school premises and raped her. On 08.03.2008 when she was suffering from fever, her mother/P.W.2 took her to hospital and it was known that she was pregnant. Accordingly, P.W.2/mother and other family members including P.W.3/brother questioned as to who was responsible for the pregnancy. P.W.1 informed that she was raped four months prior,

by the appellant. Abortion procedure was done on 13.03.2008. Thereafter complaint was lodged on 18.03.2008 requesting to take necessary action against the appellant.

3. Police examined witnesses and also sent the appellant and victim/P.W.1 for medical examination. Thereafter police filed charge sheet for the offence under Section 376 of IPC against the appellant. Having concluded examination of witnesses P.Ws.1 to 12 and marking Exs.P1 to P8 on behalf of the prosecution, the learned Sessions Judge found that the appellant was guilty of committing rape on the victim/P.W.1 and sentenced him accordingly.

4. Sri C.Mastan Naidu, learned Senior Counsel appearing for the appellant would submit that there is an inordinate delay of four months in lodging the complaint. The said delay is not explained. Only for the reason of P.W.1 becoming pregnant and she stated that the appellant had committed rape on her, conviction was recorded without any other corroboration. Even the recording by the learned Sessions Judge is incorrect. Chief examination of the victim/P.W.1 was conducted by the Public Prosecutor by putting leading questions which is impermissible.

5. Counsel submitted that the Learned Public Prosecutor requested the Court, since witness was not able to understand questions, he may be permitted to put leading questions. Learned Sessions Judge had mechanically permitted such procedure, which is contrary to law.

6. Learned counsel relied on the judgment of Varkey Joseph v. State of Kerala (1993 Supp(3) Supreme Court Cases 745), wherein the Hon'ble Supreme Court held that the procedure adopted by the prosecution in recording the evidence in the form of questions put by the Public Prosecutor in Chief Examination which were leading in nature is incorrect. On the said basis, the Hon'ble Supreme Court set aside the conviction for the offence under Section 302 IPC.

7. Learned Public Prosecutor submitted that there was nothing wrong in the procedure adopted by the learned Sessions Judge when the questions were put with the permission of the Sessions Judge. When questions and answers are recorded, it is fair and such recording is after observation by the learned Sessions Judge regarding answers being given by the victim/P.W.1.

8. Public prosecutor further submitted that the fact remains that she was impregnated and she has specifically stated that she was raped by the appellant.

9. It is necessary that the evidence of P.W.1/victim is extracted, which is as under:

> "About one year back on one day I went to in search of my brother son. At that time accused caught hold of my hand, closed my mouth with hand and Cherchaddu. This incident took place in the evening hours. Accused caught hold my hand and taken me towards upwards of a building consisting of three floors from the cross-roads.
>
> Question:- Where the accused taken you, whether it is a building, or a room. Addl. PP also asked the questions repeatedly. But the witness says as follows repeatedly.
>
> Answer:- Accused caught hold my hand. Closed my mouth and taken there and Cherchaddu by removing clothes, without answering about the place of scene of offence.
>
> When the accused removing the clothes, I requested him not to remove the same and even then the accused removed it and threw away, witness gave the answer

when Addl.PP asked that after spoiled you by accused, what happened later.

Again the Addl.PP asked the question after spoil you what happened later. The witness given the same answer.

At this stage Addl.PP reported that the witness not understanding the question about the subsequent to the incident and permit him to put leading questions. In such a case, question and answer will be noted in the chief examination as the witness giving answer to other aspects than questions put by Addl.PP with regard to things subsequent to the incident or should with regard to main incident.

Question:- After the incident whether you have gone to the hospital.

Answer:- Yes we went to Koti Hospital. Where the Doctor examined me and told that I became pregnant.

Question:- What the doctors did about the pregnancy.

Answer:- Doctors terminated my pregnancy, inspite of my request not to terminate and I required the said Baby.

Question:- My mother and Maternal aunt taken me to the Hospital at Koti. When you told the incident to your mother and others.

Answer:- Accused threatened me not to disclose the same to anybody. I inform the incident to my mother about one year back.

Question: Have you informed same to the police.

Answer: Yes. Police also recorded my statement.

Question: Addl.PP read over the statement and put the questions as: Whether you give such report with those contents.

Answer from the witness: Yes, it is Ex.P1.

The police examined me later. The witness not able to give answer with clear words out of her mouth.

I am an illiterate. I am also not went to school. I will speak slowly and thereby not speak fluently as that of others."

10. According to P.W.1, one year prior to her deposition, when she went in search of her brother's son, the appellant caught hold of her hands and stated that "Cherichaddu"(when translated into English as 'spoiled'). The Public Prosecutor had repeatedly asked whether it was a building or room and the witness repeatedly stated that the appellant caught hold of her hand and removed her clothes without saying anything about the scene of offence. Then request was made by the learned Public Prosecutor that the witness was not

understanding the questions about the events subsequent to the incident and permitted to put leading questions. Accordingly, permission was given.

11. Under Section 141 of Indian Evidence Act, leading questions are questions suggesting the answers, putting the same expecting to receive an answer is called leading question. Under Section 142, if leading questions are objected by the adverse party in chief examination or in re-examination, they shall not be asked except with the permission of the Court. However, the Court shall confine such leading questions which are introductory or undisputed or in the opinion of the Court which facts were sufficiently proved. Accordingly, the Court granting permission to put leading questions in chef examination or re-examination shall be limited to; i) Introductory issues; ii) Undisputed facts; iii) Facts which have already been proved.

12. Learned Sessions Judge found that the witness was giving answers to other questions put by the Public Prosecutor other than the main incident. The main incident would be commission of rape which is totally denied by the appellant. Such questions regarding

the main incident which is rape should not have been permitted by the Sessions Judge since questions are not introductory in nature or undisputed.

13. The learned Sessions Judge found that other than the main incident, for other questions P.W.1 was answering properly. Permitting Public Prosecutor to put leading questions is wholly incorrect in the said circumstances. As seen from the deposition, she has given answers in the cross-examination and there is no observation by the Sessions Court that she had any difficulty to understand the questions or answer questions during cross-examination.

14. The Sessions Court ought not to have permitted the learned Public Prosecutor to put any leading questions in chief examination. The course adopted should have been to declare the witness as hostile to the prosecution case and permission should have been given to cross-examine the witness. Even in cases of declaring a witness hostile and cross-examining a witness, admissible portions of evidence and also evidence which is convincing can always be considered by the Court while

adjudicating upon the case. It is not necessarily that every witness who is declared hostile, the complete evidence has to be discarded.

15. Any statement by a witness in the Court had to be voluntary for which reason leading questions are not permitted in chief examination. It was found by the learned Sessions Judge that except the main incident of rape, the witness was in a position to understand all other issues. Understanding appears to be selective in the present case, which appears to be deliberate. It is apparent that the witness understood what was going on in the Court, however, she was not inclined to answer. Again after putting leading questions, after being permitted by the Sessions Judge, the victim gave answer and the victim stated that she became pregnant and though she requested the Doctor not to terminate her pregnancy and required baby, the Doctor terminated her pregnancy.

16. The narration of P.W.1 before the Court is not free from suspicion and creates any amount of doubt regarding the correctness of her statement. She voluntarily stated that she wanted to keep the child but abortion was forced on her. It cannot be said that Pw1 did not understand the proceedings. The case

against the appellant has to be proved beyond reasonable doubt and the case of the prosecution should not appear to be true but must be true. Further the Court should be in a position to come to a conclusion that the evidence of a witness is free from any reasonable doubt and accordingly adjudicate upon the facts narrated by the witnesses.

17. As already discussed in the above paragraphs, firstly, the procedure adopted by the learned Sessions Judge and the Public Prosecutor is not in accordance with law. Secondly, the events give rise to any amount of suspicion regarding commission of rape by the appellant. The appellant was aged around 19 years and the victim was nearly 33 years when the incident had taken place. Though it is stated by PW1 that she was forcibly raped and her clothes were forcibly taken off, it is not the case that she received any injuries or her clothes were torn. Pw1 never informed about the alleged rape until she was found to be pregnant and was confronted by all the family members about the pregnancy. There is a delay of nearly four months in filing the complaint and the complaint was filed only after five days of terminating her pregnancy. No reasons

are given as to why no complaint was filed when it was found that P.W.1 was carrying pregnancy. It is not the case of PW1 that appellant was a prior acquaintance. According to doctors PW9 and PW11 who examined PW1, she had low IQ. According to Investigating Officer PW10, while recording statement, PW1 stammered. The trial Court did not find or observe that PW1 had low IQ or stammered while deposing. According to PW1 she was severely beaten by PW2-mother and two brothers before complaint to Police. The evidence of witnesses is discrepant and doubtful. The procedure adopted in the Court during examination of victim is prejudicial to the accused. Collectively, the case of prosecution is not free from serious doubts. This Court deems it appropriate to extend benefit of doubt to the appellant.

18. In the result, the judgment in SC No.85 of 2009 dated 09.122009 is set aside. Since the appellant is on bail, his bail bonds shall stand discharged.

19. Criminal Appeal is allowed.

K.SURENDER, J

Date: 13.03.2024.
Note: L.R.copy to be marked
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