

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

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**Criminal Appeal No.1063 OF 2010**

Between:

Syed Nawaz and another

... Appellants

And

The State of A.P., rep by  
its Public Prosecutor

... Respondent

DATE OF JUDGMENT PRONOUNCED:

11.07.2023

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**

**+ CRLA. No. 1063 of 2010**

% Dated 11.07.2023

# Syed Nawaz and another

... Appellants

And

\$ The State of A.P., rep by  
its Public Prosecutor

... Respondent

**! Counsel for the Petitioner:** Smt.D.Sangeetha Reddy

**^ Counsel for the Respondent:** Public Prosecutor

**>HEAD NOTE:**

? Cases referred

**HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL APPEAL No. 1063 of 2010****JUDGMENT:**

1. The appellants were convicted for the offence under Section 376(2)(g) of IPC for gang rape.

2. It is the case of the prosecution that both the appellants committed rape on the victim/P.W.1 on 28.01.2008. According to P.W.1 while she was standing in Sangareddy Town waiting for one Shareef, these appellants enquired about her. P.W.1 stated that she was waiting for Shareef, then the appellants took her in an auto stating that they would take her to Shareef's house. P.W.1 was taken into Kandi village and forced her to drink beer. After few minutes, the 2<sup>nd</sup> appellant committed rape on her. Later 1<sup>st</sup> appellant also committed rape on her. It happened in the bushes and shrubs nearby National Highway 9 on the road in the mid night. Both the appellants committed rape without heeding to her request and resistance. Later, the appellants took her in an auto to the house of M.L.A in Sangareddy and later let off. Thereafter she met the father of Shareef and came to know that her mother was in the Rural Police Station in Sangareddy. P.W.1 went to the Police Station and narrated about the rape committed by the appellants.

Ex.P1/complaint was lodged giving the details of the incident. In the said complaint, she narrated the incident and informed that she knew that A1 was the driver of the M.L.A and she has seen him earlier and also she can recognize the other person, who committed rape on her.

3. Having taken up investigation, the victim/P.W.1 was sent for medical examination. P.W.13, Doctor examined the victim/P.W.1. It was informed to P.W.1 that she was raped by some unknown persons. P.W.13 found the following injuries on her body:

- “1. Multiple abrasions over right forearm aged about 24 hours linear in shape.
2. Multiple abrasions over dorsum of left hand aged about 24 hours linear in shape.
3. An abrasion over left knee measuring 3 cms linear shape aged about 24 hours
4. An abrasion over left leg measuring 6 cms linear in shape aged about 24 hours.”

4. Having concluded the investigation, the police filed charge sheet for the offence of gang rape against the appellants.

5. Learned Assistant Sessions Judge, Sangareddy, having examined P.Ws.1 to 13 and marking Exs.P1 to P23 found the appellants guilty and convicted them to undergo ten years rigorous

imprisonment and also to pay fine vide judgment in S.C.No.430 of 2008 dated 11.05.2010.

6. Learned counsel appearing for the appellants would submit that the entire version given by P.W.1 is unbelievable. According to her, she was taken to the house of MLA. However, the said M.L.A was not examined. Even according to the evidence of the Doctor/P.W.13, in the final opinion, it was opined that there was no evidence of recent sexual intercourse. In the said circumstances, the version of P.W.1 that she was raped repeatedly by the appellants cannot be believed. Further, no semen or spermatozoa were detected on the sample which was collected on 24.01.2008. In the said circumstances, when the medical evidence is totally contrary to the oral evidence, the version given by P.W.1 cannot be believed.

7. Learned counsel further submitted that the injuries received by P.W.1 were on account of her mother beating her in the police station. It is on record that the mother of P.W.1 was in the police station for lodging complaint of P.W.1 eloping. Having found P.W.1 in the police station, the mother of P.W.1 assaulted her, for which reason, injuries were received. In the absence of any injury on the private parts of the victim, though she claims that she was gang

raped, the version cannot be believed in the back ground of medical evidence. Accordingly, prayed to set aside the conviction.

8. On the other hand, learned Public Prosecutor would submit that the evidence of P.W.1 is consistent. There is no reason why a false complaint would be filed against these appellants. The narration given by P.W.1 cannot be disbelieved for some minor discrepancies that have crept in during the course of trial. Even medical evidence suggests that she has received injuries over her hands and legs which corroborates with the version of her struggling in the bushes where she was raped beside the National Highway Road No.9. There are no grounds to interfere in appeal.

9. The version of P.W.1 cannot be brushed aside only for the reason of Doctor stating that there was no evidence of recent sexual intercourse. The Doctor ought to have explained as to why she had formed an opinion that there was no recent sexual intercourse by scientific reasoning. What is the time duration of the word 'recent' used in her opinion is not explained. Victim was examined after 36 hours of the incident. Victim received injuries which are abrasions on the hands and legs. Abrasions are caused by sliding motion of an object due to scratching or rubbing against rough surfaces

including rough surface, shrubs etc. Nature of injuries caused is in consonance with her narration of how the rape was committed.

10. Her wearing apparel/MO1 was sent for FSL examination. Semen and spermatozoa were detected. Ex.P15 is the forensic report and item No.1 is MO1 which is an orange colour kurta. It is specifically stated in the complaint that she knows the 1<sup>st</sup> appellant as the driver of the MLA and also she recognized the other person, who had committed rape on her. Minor discrepancies regarding the timing or that the identification could not be believed, cannot form basis to set aside the conviction. The incident happened the entire night and the question of not being able to identify the assailants does not arise. Medical evidence amply establishes that semen and spermatozoa were found on the wearing apparel. The evidence of PW1 is convincing and also the events narrated. The argument that the injuries found on the hands and legs of the victim could have been on account of her mother beating her in the police station is far fetched and unbelievable. I do not find any infirmity with the finding of the learned Assistant Sessions Judge in convicting the appellants under Section 376(2)(g) of IPC.

10. The incident has taken place in the year 2008 prior to amendment of Section 376 IPC. The punishment prescribed under

Section 376(2)(g) is rigorous imprisonment for a term not less than ten years and it may extend to life provided that for adequate reasons, sentence of imprisonment for a term less than ten years can be imposed.

11. Learned counsel appearing for the appellants would submit that the appellants are married and have dependents to take care. He alternatively pleaded to reduce the period of sentence. However there are no mitigating circumstances to reduce the sentence.

12. Accordingly, the Criminal Appeal is dismissed. The trial Court is directed to cause the appearance of the appellants and send them to prison to serve out the remaining part of the sentence, after setting off the remand period, if any, under Section 428 Cr.P.C. Consequently, miscellaneous applications, if any pending, shall stand closed.

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**K.SURENDER, J**

Date: 11.07.2023.

Note: LR copy to be marked.

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**HONOURABLE SRI JUSTICE K.SURENDER**

Criminal Appeal No.1063 of 2010

Date: 11.07.2023

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