

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

\*\*\*\*\*

**Criminal Appeal No. 619 OF 2010**

Between:

Gorre Narayana

... Appellant

And

The State of Andhra Pradesh,  
Rep. by Public Prosecutor,  
High Court of A.P., Hyderabad  
For Inspector of Police,  
Kamareddy, Nizamabad District

... Respondent

DATE OF JUDGMENT PRONOUNCED: 20.06.2023

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 |

---

**K.SURENDER, J**

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

**+ CRL.A. No. 619 OF 2010**

% Dated 20.06.2023

# Gorre Narayana

... Appellant

And

\$ The State of Andhra Pradesh,  
Rep. by its Public Prosecutor,  
High Court Of A.P., Hyderabad  
For Inspector of Police,  
Kamareddy, Nizamabad District

... Respondent

**! Counsel for the Appellant:** Sri J.U.M.V. Prasad

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

**>HEAD NOTE**

**? Cases referred**

1.2022 Live Law (SC) 582

2.(2023) 1 SCC 83

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL APPEAL No. 619 OF 2010****JUDGMENT:**

This Criminal Appeal is filed by the appellant/accused aggrieved by the conviction recorded by the VI Additional Sessions Judge (Fast Track Court) Nizamabad at Kamareddy, Nizamabad District, dated 11.12.2009, passed in SC.No.43 of 2007, for the offence punishable under Section 376(2)(f) of the Indian Penal Code.

2. Heard learned counsel for the appellant/accused and learned Additional Public Prosecutor for the respondent State.

3. Briefly, the case of the prosecution is that on 15.05.2006, around 2.30 p.m., while the victim girl who was examined as PW5 was playing in-front-of the house along with PWs.2 and 4, the appellant allegedly took PW5-victim girl and PW2 stating that he would give mangoes. PW1 who is the mother of PW5-victim girl searched for the victim girl. PW3 saw PW2 and PW5 crying and brought them back to the village and on enquiry with PW5-victim girl, she informed that a stranger had committed rape on her by taking her on a bicycle along with PW2 stating that he would give mangoes. On the basis of said

information provided by PW5-victim girl, Ex.P1-complaint was filed before the Kamareddy Police. The same was registered and after investigation, Police filed charge sheet for the offence under Section 376 (2) (F) of the Indian Penal Code.

4. During the course of trial, the learned Sessions Judge examined witnesses PWs.1 to 9 and marked Exs.P1 to P11 on behalf of prosecution.

5. PW1 is the sister of grand-mother of PW5. She stated that while the children were playing in-front-of her house and since she did not find them, she went in search of them. PW3 who is the resident of same village went in search of PWs.2 and 5 and found that PW5 was weeping near the bushes. She was bleeding from her private parts, PW3 brought PW2 and PW5 back to the house. It was informed by PW5-victim girl that one unknown person had taken them stating that he would give mangoes to them took PW5 into the bushes, beat and raped her. PWs.2, 4 and 5 who are children were aged 5 years, 7 years and 8 years respectively at the time of incident. All the three witnesses including victim girl-PW5, identified the accused and PW5 stated that she was forcibly taken by the appellant behind the bushes by closing her mouth.

6. The learned Sessions Judge considered the evidence of PWs.2 and 5 coupled with the evidence of doctor-PW7 who deposed that the victim girl was found with injuries. Vaginal smear and Vaginal swabs were sent for chemical examination. The report of FSL report was as follows;

- a) Abrasion on the Labia Majora 2x1 cms.
- b) Hymen ruptured
- c) Posterior Vaginal wall tear is about 3x2x1/2 cms.

According to FSL report Ex.P3, human blood was detected on the wearing apparel of the victim. However, Semen and Spermatozoa was not found. On the basis of FSL report, PW7 gave opinion that she cannot say that the rape has not occurred.

7. The learned Sessions Judge believing the version of the prosecution convicted the appellant.

8. Learned Counsel appearing on behalf of the appellant/accused raised the following grounds.

- 1) The appellant was arrested after 17 days when he was caught in some other case by PW6 who is also a coolie and a stranger to the appellant.

- 2) On the basis of the evidence of PW6 that the appellant has confessed about committing rape of a girl earlier in Bathkamma Kunta, appellant was handed over to the Police and arrayed as accused in the present case.
  - 3) PW6 being stranger, the said confession cannot be considered and does not fall within Section 24 of the Evidence Act.
  - 4) PWs.2 and 4 specifically stated that they were tutored before entering into witness box and the accused was shown by the Police outside the Court, as such, the evidence of identification cannot be considered.
  - 5) The police have not conducted any test identification parade to ascertain the identity of the person who committed rape on PW5.
  - 6) The identification of the appellant for the first time was in the Court after three years during trial and totally unreliable.
9. In the said circumstances, the learned counsel appearing for the appellant would submit that prosecution has failed to prove that it was the appellant who had committed the said crime and the conviction has to be reversed.

10. The learned Additional Public Prosecutor would submit that the appellant is charged of raping a girl who was aged 8 years. In such instances, the victims will have clear memory of the perpetrator. The Victim girl has clearly stated in her evidence before the Court that it was the accused who had taken her and committed rape on her. The said evidence is also corroborated by the evidence of PW2 who was also taken on the bicycle by the appellant. PW4 also identified the appellant as the person who had taken PWs.2 and 5. In the said circumstances, when there is direct evidence of the appellant involvement in the crime, the appeal has to be dismissed.

11. The core question that arises for consideration in the present appeal is whether the identification of the appellant after a period of more than three years for the first time in the Court, can be considered as valid identification in the absence of any test identification parade.

12. The incident occurred on 15.05.2006 and the witnesses PWs.2, 3 and 5 were examined on 10.11.2009 i.e. three and half years after the incident. The accused was arrested by the Police on 02.06.2006. PW9 stated that it was PW6 and another who brought the accused to the Police Station while he was

caught red handed in Crime No.148/2006 under Section 363 of the Indian Penal Code, when he was taking away a person named Rahul.

13. It is the case of the prosecution that on account of beating by PW6, the appellant had confessed to PW6 that he had committed the rape in Bathkammakunta, earlier. Admittedly, PW6 is a stranger to the appellant and in fact PW6 had beaten the appellant on the road suspecting of committing a crime of trying to take away the person named Rahul.

14. There is no explanation by the prosecution as to why test identification parade was not conducted after his apprehension on 02.06.2006. It is the specific case of PW1-complainant and the victim girl-PW5 that a stranger had committed rape. It is the bounden duty of the Police to establish the identity of the perpetrator of such heinous crime of raping 8 year old girl. No reasons are given as to why the process of test identification parade was not undertaken by the Police.

15. The child was aged around 8 years and according to the admission of PWs.2 and 5, the Police had in fact tutored as to what has to be stated in the Court and also shown the



appellant in the Court. Though the offence which was perpetrated is a serious offence, however, the Courts cannot be carried away by the seriousness or the gravity of such offences.

16. In a criminal case, the burden is always on the prosecution to prove the case beyond reasonable doubt. Since it is the specific case that the appellant was a stranger, it throws any amount of doubt on the identity of the appellant being correct which was after a period of nearly 3 ½ years by the victim girl who was aged around 8 years at the time of incident. The test identification parade should have been held in the present case since the appellant is a stranger and the descriptive particulars of the perpetrator were not given by any of the witnesses. Since the complaint and the statements made before the Police have not described the perpetrator in any manner, the test identification parade was all the more necessary. In the present facts of the case, when the identification for the first time is after a period of 3 ½ years and admittedly on the basis of the appellant being shown in the Court premises by the Police and the witnesses being tutored, the evidence casts any amount of doubt regarding identification being correct.

17. The Honourable Supreme Court in ***Amrik Singh v. The State of Punjab***<sup>1</sup> held that when no test identification parade was conducted, the initial version in the complaint or FIR plays a significant role. If the complaint or FIR does not disclose the identity or description of the accused on the basis of which a witness can recollect at the time of deposition, and the identity of the accused is for the first time in the Court, it would not be safe or prudent to convict the accused, solely on the basis of their identification for the first time in the Court.

18. The entire prosecution case rests upon the alleged confession that was made to PW6 who had beaten up the appellant. The said statement made by the appellant to PW6 appears to be highly improbable. Further, such statement would not fulfill the requirement under Section 24 of the Evidence Act to rely upon the evidence of PW6 to state that the said statement is an extra judicial confession. Firstly, an extra judicial confession in itself would be a weak piece of evidence and secondly the mode and manner in which the alleged confession was made to PW6 is highly doubtful and improbable.

---

<sup>1</sup> 2022 Live Law (SC) 582

There is no reason why the appellant would confess to PW6 who is a coolie and there was a fight in between them.

19. The Honourable Full Bench of the apex Court in the case of **Rahul v. State of Delhi**<sup>2</sup> held at para-42 as follows;

*“ It may be true that if the accused involved in the heinous crime go unpunished or are acquitted, a kind of agony and frustration may be caused to the society in general and to the family of the victim in particular, however, the law does not permit the courts to punish the accused on the basis of moral conviction or on suspicion alone. No conviction should be based merely on the apprehension of indictment or condemnation over the decision rendered. Every case has to be decided by the courts strictly on merits and in accordance with law without being influenced by any kind of outside moral pressures or otherwise.”*

20. In the present case, as already discussed, there is any amount of doubt regarding the identity after a period of nearly 3 ½ years, coupled with the fact that the Police were lethargic and it appears that they have not taken steps to conclude investigation in accordance with law by establishing the identity of the accused beyond reasonable doubt. No reasons are given by the prosecution why the police did not take any steps to identify the appellant as the perpetrator, when he was apprehended. Though, the act is heinous in nature, since there is a glaring mistake on part of police in not trying to establish

---

<sup>2</sup> (2023) 1 SCC 83

the identity of appellant and an improbable version given by the prosecution regarding apprehension of appellant, this Court has no other option but to extend benefit of doubt in favour of the appellant.

21. Criminal Appeal is allowed and the conviction recorded by the VI Additional Sessions Judge (Fast Track Court) Nizamabad at Kamareddy, Nizamabad District, dated 11.12.2009, passed in SC.No.43 of 2007, for the offence punishable under Section 376(2)(f) of the Indian Penal Code, is set aside and the appellant is acquitted. Since the appellant is on bail, his bail bonds shall stand cancelled

Miscellaneous applications, if any pending in this criminal appeal, shall stand closed.

---

**K.SURENDER,J**

Date: 20.06.2023

Note: LR copy to be marked.

tk

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

**CRIMINAL APPEAL No. 619 of 2010**  
**Dt.20.06.2023**

tk