

*** THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
* THE HON'BLE SRI JUSTICE E.V.VENUGOPAL**

+ Criminal Appeal No.244 of 2012

% Date: 22.08.2022

Between

Manoj Kumar Mahanand. ...

Appellant/Accused

AND

**\$ State of Telangana,
Rep. by its Public Prosecutor,
High Court of Telangana, Hyderabad.**

... Respondent/Complainant

! Counsel for the Appellant : Sri P. Prabhakar Reddy

**^ Counsel for the Respondent : Sri C. Pratap Reddy,
Public Prosecutor**

> HEAD NOTE:

? Cases referred

- 1) 2006 Cr.L.J. 2526
- 2) 1971 Cr.L.J. 1816
- 3) (1997) 6 Supreme Court Cases 171
- 4) AIR 2010 SC 1162

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE E.V.VENUGOPAL**

CRIMINAL APPEAL No.244 OF 2022

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), is filed by the appellant/accused, aggrieved by the judgment, dated 23.12.2021, passed in S.C.No.30 of 2014 by the learned Special Sessions Judge for Fast Tracking the cases relating to atrocities against women-I-cum-X Additional Metropolitan Sessions Judge, Hyderabad, whereby the Court below convicted the appellant/accused of the offence punishable under Section 376(2)(f) of IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.50,000/-, in default, to undergo additional simple imprisonment for six (6) months, in addition to conviction period.

2. We have heard the submissions of Sri P. Prabhakar Reddy, learned counsel for the appellant/accused, Sri C.Pratap Reddy, learned Public Prosecutor appearing for the respondent/State and perused the record.

3. The core contention of the learned counsel for the appellant/ accused is that the doctor who examined the victim and allegedly issued Ex.P8-Medical report of the victim was not examined before the Court below to prove the contents of the same. Without formally proving Ex.P8-Medical report of the victim, which is tendered in evidence by PW.11-investigation officer, the Court below erroneously took the same into consideration to come to a conclusion that PW.2-victim was sexually assaulted by the appellant/accused.

4. We find force in the submission of the learned counsel for the appellant/accused. It is evident from the record that Ex.P8-Medical report of the victim was tendered in evidence by PW.11-Investigation Officer in this case. It is settled law that mere marking of a document in evidence does not amount to its proof. Nor, mere marking of exhibit does not dispense with its proof, which is otherwise required to be done, in accordance with law. In medical jurisprudence, proof of writings and reports by any other person, than the real author of a document, should be by a 'competent person'. Such document should not be brought in evidence mechanically, only for the sake of empty formality, but, if taken in evidence, it should be meaningful and purposeful. In case of Injury Certificate/Wound Certificate/PME

Certificate etc., the execution of such a document has to be proved by evidence of those technical/expert persons who can certify the contents of such document. It should be proved firstly by examining the doctor himself who issued the same; and if the said doctor is not found, the course available to the prosecution is to examine some other doctor from the same hospital, who knew the handwritings and signature of the doctor who issued the certificate in question. When the other doctor is examined who knew the handwritings and signature of the doctor who issued Ex.P8-medical report of the victim, he would have spoken about the contents of the medical report and the conclusions reached therein. In such an event, there would have been an opportunity to the appellant/accused to cross-examine the said doctor to answer the questions raised in relation to the commission of rape etc., and it would have been helpful to the Court to arrive at a just conclusion. Non-examination of the doctor who issued Ex.P.8-Medical report of the victim or any doctor working in the same hospital capable of identifying the handwritings and signature of the author of Ex.P8-medical report of the victim certainly causes prejudice to the appellant/accused. In the absence of such evidence, it is unsafe to act on Ex.P8-medical report of the victim.

5. Similar question came up for determination before the Hon'ble Jharkhand High Court in **Sowam Kisku and others Vs. The State of Bihar**¹ wherein, the post mortem report of the deceased therein was sought to be proved by a Compounder attached to the hospital. Declining such practice, the Hon'ble Jharkhand High Court observed as follows: -

"8. We are unable to understand as to why the prosecution did not choose to examine the doctor. It is no doubt true that in spite of the steps taken, the prosecution could not procure the attendance of the doctor who conducted autopsy over the dead body, but that could not have precluded the prosecution from examining some other doctor from the same hospital who knew the handwriting and signature of the doctor who conducted autopsy. If any other doctor had been examined who knew the signature of the doctor who conducted the autopsy and if he had given evidence as to the nature of post mortem done and the injuries found by the doctor on the dead body, then the appellants could have had an opportunity of cross-examining the said doctor to say that the injuries suffered by the deceased are not fatal in nature and even if the deceased died on account of such injuries, the accused-appellants could have taken a defence to say that the said injuries are not sufficient in the ordinary course of nature to cause the death of the deceased or that the said injuries are only likely to cause the death. The prosecution by not examining the doctor denied the opportunity to the accused-appellants as they were prevented from cross-examining the doctor. Therefore, in absence of any evidence that Dugu Ram Kisku died due to homicidal violence, we cannot find the appellants guilty of murder."

6. Further, in **Malay Kumar Ganguly Vs. Sukumar Mukherjee and others**², the Hon'ble Apex Court observed that ordinarily, the document, which is otherwise inadmissible,

¹ 2006 CrI.L.J. 2526

² AIR 2010 SC 1162

cannot be taken in evidence only because no objection to the admissibility thereof was taken. In a criminal case, the right of the accused subject to shifting of burden depending upon the statutes is protected under Article 21 of the Constitution of India. Paragraphs 48 and 49 of the said decision read as follows:

"48. It is true that ordinarily if a party to an action does not object to a document being taken on record and the same is marked as an exhibit, he is estopped and precluded from questioning the admissibility thereof at a later stage. It is, however, trite that a document becomes inadmissible in evidence unless author thereof is examined; the contents thereof cannot be held to have been proved unless he is examined and subjected to cross-examination in a court of law.

49. The document which is otherwise inadmissible cannot be taken in evidence only because no objection to the admissibility thereof was taken. In a criminal case, subject of course, to the shifting of burden depending upon the statutes and/or the decisions of the superior courts, the right of an accused is protected in terms of Article 21 of the Constitution of India. The procedure laid in that behalf, therefore, must be strictly complied with. Exhibits 4, 5 and 6, in our opinion, are not admissible in evidence in the criminal trial".

As indicated above, though Section 294 Cr.P.C provides for no formal proof of certain documents, but it cannot take the place of direct evidence of the doctor. It refers to only that document which can be needed in evidence and the wound certificate/ medical report/postmortem report cannot be read in evidence unless the doctor is examined or otherwise, as indicated above. Section 294 of Cr.P.C. refers to the genuineness of a document.

7. On consideration of the above legal proposition, we are of the considered view that, non-examination of a competent medical practitioner, in absence of the doctor who authored a medical report, even if admissible in evidence under section 32 of the Evidence Act, would be bereft of probative value and would virtually amount to denial of valuable right of the accused to cross-examine the medical practitioner, who could have addressed the intricacies of the said report. We, accordingly, hold that if a medical report/injury report/post-mortem report is tendered in evidence in terms of Section 32 of the Evidence Act, by a person who is not the author of the same, such evidence, though admissible, would not have any probative value, unless and until the same is proved by any other doctor, as indicated above, who is equipped with medical science and competent to answer the questions on the merits of such report, as the defence would be deprived of cross-examination with regard to the contents of the report.

8. Reverting back to the facts of the present case, the doctor who issued Ex.P8-Medical report of the victim was not examined before the Court for the reasons best known to the prosecution. In such a case, the prosecution ought to have proved Ex.P8-

medical report of the victim, as indicated above. The prosecution did not undertake the required exercise. In a mechanical fashion, the medical report of the victim was marked in evidence as Ex.P8 through the Investigation Officer, i.e., a police officer, who is neither competent to speak about the contents of Ex.P8, nor has any knowledge with regard to the handwriting etc., of the doctor who issued Ex.P8.

9. Further, the Court below placed much reliance on Ex.P8-medical report of the victim to come to a conclusion that the victim was sexually assaulted. Paragraph No.43 of the impugned judgment reads as follows:

“Admittedly, the victim was said to be a minor girl at the time of incident and the Ex.P8 which is the medical certificate of the victim dated 13-02-2012 is reflecting the pathetic condition of the victim when she was taken to Niloufer Hospital after the alleged incident and the observations of the medical officer at Page No.4 of Ex.P8 are reflecting that the victim was said to be subjected to sexual assault.”

Under these circumstances, the fault not only lies with the prosecution, but also with the Court below, which failed to look into the aforesaid fundamental legal principle that goes to the root of the matter, and erroneously took Ex.P8-medical report of the victim into consideration for reaching to a conclusion. The judiciary has the solemn duty to do justice and every conduct of the Court and the ultimate decision of the Court should be fair,

just and reasonable. Under these circumstances, we are of the considered view that it is a fit case to remit the matter to the Court below with some directions.

10. Under these circumstances, without expressing any opinion on the merits of the matter, the impugned judgment dated 23.12.2021 passed in S.C.No.30 of 2014 by the learned Special Sessions Judge for Fast Tracking the cases relating to atrocities against Women-I-cum-X Additional Metropolitan Sessions Judge, Hyderabad, in convicting and sentencing the appellant/accused of the offence under Section 376(2)(f) IPC, is set aside. Consequently, S.C.No.30 of 2014 is restored to prove Ex.P.8-medical report of the victim, through the doctor concerned or otherwise, as indicated above. Needless to say that the appellant/accused is entitled to cross-examine the said medical expert. The appellant/accused is directed to be set at liberty forthwith, if he is no longer required in any other case. The appellant/accused shall continue to be on bail granted to him in the subject Sessions Case. After recording the evidence of the doctor as indicated above, the Court below shall hear both the parties and determine the charges framed against the appellant/accused, in accordance with law, within a period of sixty (60) days from the date of receipt of a copy of the

judgment. The appellant/accused shall appear before the Court below, as and when the subject Sessions Case is taken up for hearing.

11. With the above directions, this Criminal Appeal is disposed of.

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

Dr. SHAMEEM AKTHER, J

E.V.VENUGOPAL, J

22nd August, 2022

Note: Mark LR copy.
(B/o)
SCS / BVV