

IN THE COURT OF THE PRINCIPAL JUDICIAL MAGISTRATE OF FIRST
CLASS AT KHAMMAM

Tuesday, this the 23rd day of July, 2024

Present:- Deepa Kasaragadda
Prl. Judl. Magistrate of I Class
Khammam.

CC No.2926 of 2022
(Old S.C No.138 of 2016)

Between:-

The State through the Sub-Inspector of Police, Thirumalayapalem
Police station.

...Complainant.

And

Gouraboina Krishna S/o Venkanna, 42 years, Catering work,
R/o.Kakaravai Village of Thirumalayapalem Mandal.

...Accused

This case is coming before me on 18.07.2024 for final hearing in the presence of the Learned Assistant Public Prosecutor for the Prosecution and Sri.Ch.Venkata Ramana Chary, learned counsel for Accused; upon hearing both sides, considering the material available on record and the matter having stood over consideration till this day; this court delivered the following:-

:: J U D G M E N T ::

1. The State represented by its Sub-Inspector of Police, Thirumalayapalem Police Station filed a charge sheet against the Accused in Cr. No.172/2015, for the offences punishable under Sections 452, 354 and 506 Indian Penal Code.

2. The brief facts of the case of the prosecution are as follows;

i) The defacto-complainant and accused are wife and husband and they have acquaintance with the accused and for 2 or 3 months prior to lodging of the report, the accused used to harass the defacto-complainant and threatened her by stating that if she reveals the same, he will kill her

and on 11.08.2015 at about 11.00 A.M, when the defacto-complainant was alone in her house, the accused criminally trespassed into their house and caught hold of her and shut her mouth and tried to commit rape on her, immediately she raised hues and cries and at the same time, LW.2, the husband of the defacto-complainant who was coming home observed and the accused threatened them with a knife by stating that if they reveal the same to anybody, he will kill them and fled away from there and later the defacto-complainant lodged a report before the police.

ii) Basing on the report, LW.9/S.Raju, Investigating Officer registered a case in Cr. No.172/2015, U/Secs.452, 354 and 506 IPC, issued F.I.R and sent the same to the Hon'ble Court and the investigating officer examined and recorded the statements of Lws.1 and 2, visited the scene of offence and drafted the rough sketch of scene of offence in the form of Crime Details Form in the presence of mediators i.e., LW.6 and LW.7, secured the presence of Lws.3 to 5 and examined and recorded their statements and on 26.08.2015 issued 41A Cr.P.C notice to the accused and filed requisition before the Hon'ble Judicial Magistrate of First Class, Prohibition and Excise Court, Khammam for recording of 164 Cr.P.C statement of the defacto-complainant and on completion of recording of the statement and on completion of the investigation, investigating officer filed the charge sheet against the accused for the offences punishable U/Secs.452, 354 and 506 IPC.

3. Basing on the charge sheet and on perusal of other material available on record, the case was taken on file for the offences punishable under Sections 452, 354 and 506 of Indian Penal Code against the accused. On appearance of accused, the relevant copies of documents were furnished to him as contemplated U/Sec.207 Cr.P.C.

4. The accused is examined U/Sec.239 Cr.P.C, the charges were framed against the accused for the offences punishable under Sections 452, 354 and 506 Indian Penal Code are read over and explained to him in telugu, for which he pleaded not guilty and claimed to be tried.

5. In trial, the prosecution has examined six witnesses i.e., P.Ws.1 to 6 and got marked as Exs.P-1 to P-4. P.W1 is the defacto-complainant and victim, Pw.2 is the husband of PW.1 and eye witness, Pws.3 and 4 are the circumstantial witnesses, PW.5 is the panch witnesses for CDF panchanama and Pw.6 is the investigating officer.

6. Heard both sides and perused the material on record.

7. Now, the point that arises for consideration is:

“Whether the prosecution is able to prove the guilt of the Accused for the offences punishable U/Secs.452, 354 and 506 IPC, beyond all reasonable doubt?”

POINT:-

8. In order to prove the case against the accused, the prosecution has examined PWs.1 to 6 and got marked Exs.P-1 to P-4. According to the prosecution, Pw.1 is the defacto-complainant and victim and she deposed that on 11.08.2015 at about 11.00 AM, her husband

went for Auto driving and when she was alone in her house, accused entered into her house and caught hold of her hand, closed her mouth and tried to commit rape. She tried to raise hues and cries, at the same time her husband came and on seeing him, accused ran away. Further PW.1 deposed that on 15.08.2015, she lodged a report before Police. It took time to discuss with her family for taking appropriate action against accused and even prior to the occurrence of the incident the accused used to come to her Kirana shop and used to purchase things, but never paid for them and used to postpone the payment, he further used to make obscene gestures to her in drunken state.

9. Further the prosecution examined Pw.2/Chenna Laxmaiah, who is the husband of Pw.1 and he deposed that on 11.08.2015 at about 11.00 A.M, he went out on his auto and he forgot eggs tray and hence he returned back to his shop and observed that no one was present at the shop and hence he went to his house which was behind the shop and by the time he was opening the door, he heard some cries and immediately he went inside and found accused holding hair of Pw.1 and closing her mouth and immediately he took the axe which was beside him and chased him and accused escaped from their house on seeing him. Later, he enquired Pw.1 and she informed him that while PW.1 is

cleaning utensils, accused came there and dragged her into the house and attempted to rape her and she raised cries and in the meanwhile, he went to the house. Pw1 informed him that accused threatened by stating that accused will kill him and Pw.1, if they lodge any report against him and hence they took some time to discuss and Pw.1 lodged the report after lapse off 2 days.

10. Further the prosecution examined PW.3/G.Srinivas and he deposed that about 9 years back at about 11.00 A.M, PW.2 called him on phone and asked him to come to their house and immediately he went to their house and Pw.2 told him that he went out in order to go to Maripeda Bangalow and as he forgot the egg tray, he returned back immediately and in the meanwhile accused, by taking advantage of Pw.1 being alone at the house attempted to rape her and pulled away her saree and threw it away in the house and he noticed the said saree in their house. The house of accused is adjacent to the house of Pw.2. PW.4/M.Gopal deposed that about 9 years back at about 11.00 A.M, he heard cries from the house of PW.2 and observed that accused jumping from the boundary wall of Pw.2 into the open place beside the house of Pw.2 and ran away from the scene of offence. Further PW.4 deposed that in the meanwhile, he went to the house of PW.2 on hearing cries and PW.2 told

him that accused pulled away the saree of PW.1 and showed him the saree in their house and he told PW.2 that accused is running away from infront of his house.

11. Further the prosecution has examined PW.5/K.Ashok and he deposed that about 7 years back at about 11.00 A.M at the house of PW.2, police conducted scene of offence panchanama in his presence and in the presence of Lw.7/B.Nehru, drew rough sketch and prepared crime details Form. Police told him that they conducted scene of offence panchanama with respect to the investigation regarding the case lodged by Pw.1 against accused for outraging her modesty. Police obtained his signature on Crime Details Form and Ex.P2 is crime details form. Further the prosecution has examined PW.6/ S.Raju, the investigating officer, and his evidence reveals the line of investigation which is formal in nature.

12. On perusal of the entire evidence on record, it is observed that PW.1 deposed that on 11.08.2015 at about 11.00 A.M, her husband went out for auto driving and when she was alone in her house, accused entered into her house and caught hold of her hand, closed her mouth and tried to commit rape on her and then she raised hues and cries, meantime her husband came and on seeing him, the accused ran away, whereas PW.2 who is the husband of PW.1 deposed that while he was opening the door of the house, he heard some cries and immediately he went inside

and found the accused holding hair of Pw.1 by closing her mouth and then he took the axe which was beside him and the accused escaped from their house on seeing him. PW.2 further stated that Pw.1 informed him that accused threatened that he will kill if Pw.1 if she lodges a report against him, hence they took some time and they lodged report after two days of the incident, whereas PW.1 who is the victim herself has not stated anything about threatening by the accused.

13. Pws.3 and 4 who are independent witnesses has stated that Pw.2 informed them that the accused attempted to rape on Pw.1 when she was alone in the house and the accused pulled away her saree and threw it away in the house. But, Pws.1 and 2 failed to state the same which itself shows that Pws.3 and 4 have exaggerated the version which was already deposed by Pws.1 and 2. Pws.3 and 4 further deposed that they observed the saree of Pw.1 which was on the floor in the house of Pw.2. But, Pw.1 who is the victim herself has not deposed that accused has pulled away her saree which is making to hard to believe the evidence of Pws.3 and 4.

14. On perusal of the evidence of Pws.1 and 2, it clearly shows that there is a delay in lodging of the report and Pw.1 stated that they took time to discuss with her family for taking appropriate action against the accused, whereas PW.2 stated that as the accused has stated to kill them if Pw.1 lodge any report against him, they took some time to discuss and Pw.1 lodged a report after two days of the incident. But, on perusal of the Ex.P1, the delay in lodging report was three days from the date of incident. Whereas Pw.1 who alleged to have threatened by the accused

failed to state that the accused has threatened her not to lodge the report. In such circumstances, the reason for delay which was explained by Pws.1 and 2 are inconsistent and they are hard to believe and thus the prosecution has failed to prove the sufficient reason for the delay of 3 days occurred in lodging the report.

15. Further Pw.1 deposed that prior to the incident, the accused used to come to the Kirana shop and purchased things and he never paid for them and used to postpone the payment and he made obscene gestures to her in drunken state and Pw.1 admitted in her cross-examination that whenever her customers failed to pay the amount, small quarrels took place between them. So, from the evidence of Pw.1, it is clear that the accused used to purchase the groceries from the shop of Pw.1 on credit basis and failed to pay the money, whereas Pw.2 in his cross-examination stated that accused does not purchase the items from their shop on credit basis which is contra to the evidence of Pw.1.

16. PW.1 deposed that she raised hues and cries when the accused attempted to commit rape against her, but none of the neighbours of PW.1 were examined. PW.4 stated that he heard the cries of Pw.2 and he does not know where Pw.1 was when Pw.2 has raised cries. In such case, PW.4 heard the cries of PW.2, he should have heard the cries of Pw.1 which was raised when the alleged incident was occurred. But, Pw.4 did not state that Pw.1 has raised cries and he further deposed that he observed when accused was jumping from the boundary wall of Pw.2 into

the open place beside the house of Pw.2 and ran away from the scene of offence. But, Ex.P2 does not reveal that there is open place beside the house of PW.2.

17. It is further observed that PW.1 has stated that accused used to make obscene gestures to her in drunken state, but Pw.2 stated that they did not lodge any report against the accused prior to this report when the accused made obscene gestures to PW.1. PW.1 merely deposed that the accused has running away on seeing the PW.2. But, Pw.2 has stated that he has chased the accused and itself is creating a doubt to the actual presence of the accused in the house of Pw.2 at the time of incident. The evidence of PW.1 and Ex.P1 are contradicting to each other as in Ex.P1, Pw.1 has mentioned that the accused has threatened by showing a knife and stated not to tell the same to PW.2 and fled away, whereas PW.2 stated that he has chased the accused and moreover PW.1 has not lodged any report inspite of alleging that the accused made obscene gestures to her and the evidence of Pws.3 and 4 are inconsistent with the evidence of PW.1 and contradicting the Ex.P1 and Ex.P4 and the evidence of PW.1 itself is creating the doubt as to the actual occurrence of the incident as all the 3 documents have 3 different versions of the story of the prosecution.

18. Moreover the prosecution has failed to satisfactorily explain the delay which caused for lodging the F.I.R and the PW.1 has clearly deposed that the accused used to evade the payment of groceries which he has purchased in the shop of PW.1 which clearly shows that Pws.1 and

2 and the accused are not having good terms. Thus, all the above said circumstances and inconsistencies in the evidence of prosecution witnesses is creating a doubt as to the authenticity of the story of the prosecution case. In such circumstances the benefit of doubt must be extended to the accused.

19. In view of the foregoing discussion, this Court is of the opinion that the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt. Accordingly, this point is answered in favour of the accused and against the prosecution.

20. **IN THE RESULT**, the accused is found not guilty for the offences punishable under Sections 452, 354 and 506 Indian Penal Code. Accordingly, he is acquitted U/sec.248 (1) of Cr.P.C for the said offences. The bail bonds of the accused, shall remain in force for a period of six months as envisaged under section 437-A Cr.PC.

Dictated to the Stenographer, transcribed by him, corrected and pronounced by me in the open court on this the 23rd day of July, 2024.

Prl. Judicial Magistrate of I Class,
Khammam.

: Appendix of Evidence ::
Witnesses examined

For prosecution:

Pw.1:	Chenna Padma	Complainant and victim
Pw.2:	Chenna Laxmaiah	Husband of PW.1 and Eye witness
Pw.3:	Guduru Srinivas	Circumstantial witness
Pw.4:	Mandali Gopal	Circumstantial witness
Pw.5:	Kumbam Ashok	Panch witness for CDF panchanama
Pw.6:	S.Raju	Investigating Officer

For Defence:- -NONE-

Documents marked

For prosecution:

Ex.P.1:	is the report, dt.14.08.2015
Ex.P.2:	Is the Crime details form, dt.15.08.2015
Ex.P.3:	is the original of F.I.R, dt.15.08.2015
Ex.P.4 :	is the 164 Cr.P.C statement of Pw.1.

For Defence:- -Nil-

Material objects marked:

-NIL-

Prl. Judicial Magistrate of I Class,
Khammam.