

APHC010717512018



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3566]

FRIDAY, THE FIRST DAY OF MAY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE K SURESH REDDY

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

CRIMINAL APPEAL NO: 2612/2018

Between:

1. GILAKALAGIRI, HINDU, R/O. KUKKALAGUDA VILLAGE, YERPEDU
MANDAL, CHITTOOR DISTRICT.

...APPELLANT

AND

1. THE STATE OF ANDHRA PRADESH, The Public Prosecutor, High
Court of Telangana and A.P Hyderabad.

...RESPONENT

Appeal under Section 372/374(2)/378(4) of Cr.P.C praying that the High Court may be pleased to To present this Memorandum of grounds of Criminal Appeal Against the Judgment Passed in SPL.S.C.No.56 of 2015, in the Court of the I Additional Sessions Judge, at Mahaboobnagar on the following grounds among other.

Counsel for the Apellant:

1. VIRUPAKSHA DATTATREYA GOUDA
2. LEGAL AID

Counsel for the Responent:

1. PUBLIC PROSECUTOR (AP)

The Court made the following:

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

***FRIDAY, THE FRIST DAY OF MAY
TWO THOUSAND AND TWENTY SIX***

SPECIAL DIVISION BENCH

PRESENT

HONOURABLE SRI JUSTICE K SURESH REDDY

And

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

CRIMINAL APPEAL No.2612 of 2018

JUDGMENT: (*Per Sri Justice A. Hari Haranadha Sarma*)

Introductory:-

1. [i] The sole accused in S.C.No.15 of 2014 on the file of the I Additional District and Sessions Judge, Chittoor is the appellant.

[ii] The appellant was tried and found guilty for the offences punishable under Sections 363, 302 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 [for short 'POCSO Act, 2012']. He was convicted and sentenced to suffer seven years Rigorous Imprisonment, also to pay fine of ₹1,000/- for the offence under Section 363 IPC; and was convicted and sentenced to undergo Life Imprisonment and to pay fine of ₹1,000/- for the offence under Section 302 IPC and also was convicted and sentenced to undergo Imprisonment for Life and to pay fine of ₹1,000/- under Section 6 of POCSO Act and in default to pay the fine amount directed to

undergo Simple Imprisonment for a period of 6 months each for the said offence.

2. Questioning the conviction and sentence passed under the judgment dated 26.07.2018 passed by the learned Sessions Judge, present appeal is filed.

Case of the prosecution:-

3. [i] The Inspector of Police, Renigunta Rural Circle filed charge sheet against the sole accused/appellant herein.

[ii] A minor girl, aged about 6 years [*hereinafter referred to as 'the deceased/victim girl'*] is the daughter of PW.1 and LW.2-S.Parvathi. The deceased was studying first class in MPP school in Kukkalakunta Village of Yerpedu Mandal. On 08.09.2013 evening the victim girl went to the school to play with other children in the village and from 05.00 p.m. onwards she was found missing. Mother of victim girl LW.2-S.Parvathi searched and enquired with PW2, and LW4-E. Venkatamma told that they saw the missing minor girl talking with the accused at about 04.30 p.m. at elementary school and there were no others at that time. Thereafter, the accused also found missing from the village. They started to search for the accused also.

[iii] On 09.09.2013 at about 11.00 a.m. villagers- LW5-K.Subbarayulu, PW3, LW7-J.Subbaiah, PW.4 and PW.5 found accused. When they questioned him about the missing girl, he did not reply properly but managed to escape from them. On 09.09.2013 at about 06.30 p.m., a complaint under Ex.P1 was lodged by PW1, which is registered vide Crime

No.107 of 2013 on Yerpedu Police Station under the caption 'girl missing'. Certain witnesses were examined. Rough sketch was prepared. Enquiries were made about the missing girl.

[iv] On 10.09.2013 during search the parents of the victim girl and other villagers, LW.5-K.Subbarayulu, PW5, LW10-M. Lakshmiya, LW11-P. Srinivasulu found the dead body of the deceased at about 08.00 a.m. in the sugarcane fields of one Bodugu Subramanyam situated behind MPP Elementary School, with injuries on the vagina and skin was eaten by the ants and insects. Immediately another complaint was lodged at 10 a.m. vide Ex.P2, basing on which the section of law was altered to 376 (2) (i), 376-A and 302 IPC, and further investigation was conducted by PW.12.

[v] PW.12 has visited the scene of offence and held inquest over the dead body in the presence of witnesses PW.1, PW.2, PW.3 and LW.2-S.Parvathi and LW4-E.Venkatamma, LW5-K.Subbarayulu and LW.7-J.Subbaiah and the Panchayathars -PW8, LW14-Ch.Kotaiah, LW15-G.Rama Murthy. The dead body of the deceased was sent to the Area Hospital, Srikalahasti for post mortem examination and the statements of witnesses PW.4, PW.5, LW.10-M.Lakshmaiah and LW.11-P.Srinivasulu were recorded by PW.12. PW.6- Thomara Lokaiah stated that on 11.09.2013 he saw the accused running from the sugarcane fields of one Bodugu Subramanyam on 08.09.2013 at about 05.00 p.m.

[vi] On 12.09.2013 at about 09.30a.m., the accused voluntarily surrendered before PW.7 and made extra judicial confession admitting that he

has committed rape and killed the deceased/victim girl and then accused was produced before PW.12 and thereafter, PW12 - investigation officer recorded the detailed confession statement of the accused in the presence of mediators PW9 and LW.17-M.Bhaktavatsala Naidu.

[vii] LW.19–Dr.T.Prathiba Sharavanthi, the Medical Officer of Area Hospital, Srikalahasti conducted autopsy over the dead body of the deceased. PW.10 finally opined that the cause of death of the accused was due to *“cardio-respiratory arrest due to mechanical asphyxia probably in throttling”*. The investigation discloses that the accused in the course of fulfillment of his sexual lust, kidnapped the deceased girl to sugarcane fields, committed rape on her and killed her by throttling.

4. The accused was tried for the charges under Section 363 IPC for kidnapping the minor girl, 376(2)(i) IPC for committing rape on minor girl and 376-A IPC - for committing rape and 302 IPC for causing death of a minor girl and under Section 6 of POCSO Act 2012, for committing aggravated penetrative sexual assault. The accused was found guilty for the offences under Section 376, 302 and Section 6 of POCSO Act.

5. In support of its case, the prosecution examined PW.1 to PW.13, marked Exhibits P1 to P16 and MOs.1 and 2.

6. When the accused was examined under Section 313 Cr.P.C., he denied the incriminating evidence appearing against him. Ex.D1, relevant portion in Section 161 Cr.P.C. statement of PW.5 marked on behalf of the accused.

Findings of the learned Sessions Judge:-

7. The evidence of prosecution witnesses that - (i) the deceased/victim girl was found missing on 08.09.2013 and the accused was lastly seen with the deceased and suspicious movements of the accused were noticed, (ii) a complaint was lodged on the next day i.e., on 09.03.2013 under the head of girl missing and on 10.03.2013 the dead body of the deceased was traced by the villagers, (iii) the evidence of PW.2 and PW.3 regarding questioning of the accused, his evasive answers (iv) subsequent conduct of the accused and (v) evidence of PW5 - that the accused was seen in the company of the deceased, (vi) evidence of PW.6 -that he noticed the hurry movement of the accused near the sugarcane fields, - when seen in the light of the confession of the accused made to PW.7, the case of prosecution becomes acceptable. The delay in giving the complaint is explained stating that parents were searching for the deceased. As per the medical evidence, there was an attempt to commit rape; medical officer also found a small bruise measuring 3x3cm in size over left side of the neck and it was caused due to pressure over the neck, thus the deceased was throttled, resulting the death. The accused is aged about 26 years, well built, able-bodied, whereas the deceased is aged about '6' years unable to resist the accused when he has attempted to commit rape. The prosecution is able to prove the guilt of the accused, for the offences under Section 363, 302 IPC and under Section 6 of POCSO Act. Accordingly he is liable for conviction and sentence.

8. Heard Sri Virupakhsa Dattatreya Gouda, learned counsel appearing on behalf of the appellant/accused and Sri Marri Venkata Ramana, learned Additional Public Prosecutor appearing on behalf of the respondent-State.

Arguments in the appeal :

For the accused:-

9. (i) There is a delay in giving the complaint to the Police.
- (ii) When several villagers caught hold of the accused, on the next day, the accused escaping from the villagers is unbelievable.
- (iii) When PW.2 has seen the accused and the deceased together, she should have informed the Police.
- (iv) The accused making confession before PW.7, who is a stranger, is unbelievable.
- (v) Accused committing rape on the deceased is not established with the medical evidence but probability is considered by the learned Sessions Judge. Scientific evidence is not indicating seminal traces on the belongings of the deceased. Therefore, rape cannot be believed.
- (vi) The case of the prosecution is only on probability and there are several doubts against the prosecution case. Therefore, the accused is entitled for benefit of doubt.
- (vii) This is a case of circumstantial evidence and all the links in the chain must be established, without which, the accused cannot be found guilty;

For the prosecution:-

10. (i) Accused is not a stranger and he is known to everyone in the village.

(ii) The evidence of PW.2, and PWs.5 and 6, is natural and their evidence is clear.

(iii) PW.2 evidence is clear as to, he seeing the deceased along with the accused at 4.00 p.m. on 08.09.2020, on 5.00 p.m. onwards the deceased was missing, therefore, the deceased was seen lastly with the accused. Subsequently, her dead body was recovered. Therefore, last seen theory is applicable.

(iv) The evidence of PW.6 is also to claim that at about 5.00 p.m. he noticed the accused in hurried manner and when PW.6 called him, the accused did not respond.

(v) There is no ill-will or motive for PW.2 and PW.6 to speak against the accused. The evidence on record is sufficient to hold that, the accused guilty and the argument that there was delay etc., are trivial and they do not contribute for disbelieving the prosecution case.

11. Perused the record. Thoughtful consideration is given to the arguments advanced by both sides.

12. The points that arise for determination in this appeal are -

1) Whether the prosecution is able to bring home the guilt of the appellant/ accused for the offences under Sections under Section

363, 302 IPC and under Section 6 of POCSO Act, 2012 and Whether the conviction and sentence imposed by the learned Sessions Judge under the impugned judgment dated 26.07.2018 in S.C.No.15 of 2014 are sustainable in law or on facts ? Or require any interference? if so, on what grounds and to which extent?

2) What is the result of the appeal?

Point No.1:-

Delay in lodging the F.I.R.:-

13. [i] As per the prosecution case, the victim girl /deceased was found missing from 05.00 p.m. on 08.09.2013; Ex.P1 – complaint was submitted to the concerned Police at 06.30 p.m. on the next day i.e., on 09.09.2013. The argument for the accused is that, there is a delay in lodging complaint / Ex.P1. On the strength of Ex.P1, Ex.P12 -FIR in Cr.No.107 of 2013 was registered in terms of Section 154 Cr.P.C. on the file of Yerpedu Police Station, Tirupathi. The date and time of offence was noted as 08.09.2013 from 04.30 p.m., and against the sections it is mentioned as 'girl missing'. As per Ex.P1, informant/ PW.1 stated that he has two daughters, his eldest daughter/victim girl was studying in MPP school first class; there was holiday to the School on 08.09.2013. Hence, she was at the house and when Pw.1 went for work, his wife and children were at home. He came back at 05.00 p.m. then his wife informed him that his daughter is found missing. PW.2 informed that while she was coming from MPP school side at about 04.30 p.m. she observed that

the accused was talking to the deceased. Then they made enquiry about the accused as well. He was not found in the village. They, along with the villagers, conducted a search. As the girl was not found, a complaint was lodged, furnishing descriptive particulars of the missing girl.

[ii] In a village like situation, where immediate efforts for search are made in and around the locality for 24 hours and the report was thereafter given does not constitute any abnormal delay.

Investigation:-

14. [i] Ex.P12 was registered at about 06.30 p.m. by PW11. The evidence of PW11 - Sub Inspector of Police is that on 09.09.2013 at about 06.30 p.m. PW1 went to Police Station and presented Ex.P1/ report and on the strength of Ex.P1, Ex.P12/FIR in Cr.No.107 of 2013 under the caption 'girl missing' was registered. Under Ex.P12 - the information was submitted to the concerned Court.

[ii] PW11- the then Sub-Inspector of Police, Yerpedu Police Station deposed that he has examined PW1, LW.2-S.Parvathi, and LW.4-E.Venkatamma and recorded their statements; visited MPP school i.e., scene of offence and prepared rough sketch vide Ex.P13 on 09.09.2013. He has further stated that he made effort to apprehend the suspect, when he was in police station on 10.09.2013 at about 10.00 p.m. PW1 came to police station and presented Ex.P2/ report. Based on the same, Section of law is altered to

376 (2)(i), 376-A, 302 IPC and Section 6 of POCSO Act and FIR /Ex.P4 was submitted to the Court. During the cross-examination, he has admitted that PW1 did not suspect that the accused is responsible for missing of victim girl, but stated that villagers saw the deceased talking with the accused and thereafter, both of them are missing. He has denied the suggestion that witnesses are interrelated and close relatives to PW.1.

Last seen Theory – Corpus delicti- Identity of the accused:-

15. PW.2 stated that she saw the accused sitting on the wall of the School and talking with the deceased at 04.00 p.m. on 08.09.2013. Thereafter the deceased was found missing. PW1 and others searched for the deceased in and around the village. She informed PW.1 that she saw the accused with the deceased at 04.00 p.m. on that day. She has further added that on 10.09.2013 at about 08.00 to 09.00 p.m. they found dead body of the deceased at Sugarcane fields of one B. Subyramanyam situated behind the School. The dead body was in a condition of Putrefaction and started maggots. Inquest was held over the dead body of the deceased and she was present during inquest. Her statement was recorded at the time of inquest. During the cross-examination she has stated that PW.1 is not her relative. She did not state the Police that the accused committed rape and killed the deceased. She did not witness such incident. The dead body was not in an identifiable condition. She does not know about the political rivalry between Krishnaiah and the accused. She has denied the suggestion that the dead

body was not that of the victim girl/deceased. From the cross examination done on behalf of the accused, it is relevant to note that the accused is disputing the identity of the accused and corpse of the deceased. It is not the case of the accused that he does not belong to the village and that the prosecution witnesses are from the outside the village. In FIR, the descriptive particulars of the girl were given including the dress she wore at the time of missing are mentioned. The villagers including PW.1 and PW.2 identified the dead body during the inquest. Therefore, the defence as to *corpus delicti* and about the identity of the dead body holds no substance and fit to be discarded.

16. From the evidence of PW.1, PW.2 and PW.11 including the other material missing of girl and that the accused was last seen with the deceased prior to discovery of her dead body are clear. Therefore, last seen theory operates against the accused and the objections as to identification of the dead body and the accused are fit to be discarded.

Homicidal death of the deceased:-

17. Inquest report /Ex.P4 shows that PW.1, father of the deceased and her mother and other witnesses including Panchas identified the dead body and also cause of the death as due to when accused closed the mouth and nose of the deceased in the process of committing rape, being unable to breath the deceased died. The post mortem examination report-Ex.P8 along with RFSL report- Ex.P9 and the opinion as to cause of the death vide Ex.P10-Final report, coupled with the evidence of Doctor-PW10, would show that the

deceased died to cardio-respiratory arrest due to mechanical asphyxia in throttling and also an attempt to commit rape.

18. From the evidence of PW.10 and the medical record covered by Exhibits P8 to P10, the death of the deceased as homicidal stands proved when the same is seen in the light of the entire evidence on record.

Offence of Rape:-

19. The prosecution has relied on the evidence of PW.10 -doctor to show that the deceased was subjected to rape. External injuries on the deceased noted by PW.10 are as follows :-

“External Injuries:

1. An abrasion measuring 2x2 cm in size over the right eye caused with tough object, it is in ante mortem in nature.
2. Skin erosion over the both labia majora and minora due to friction, ante mortem in nature.
3. Skin over the clitoris due to attempt for penetration, ante mortem in nature.
4. There is an evidence of vaginal bleeding due to manual rupture of the hymen, ante-mortem in nature.
5. Cyanosis present in both toes and fingers.
6. A small bruise measuring about 3 x 3 cm in size over left side of the neck, ante-mortem in nature due to pressure over the neck.
7. Bleeding from both the nostrills due to injury ante-mortem in nature.

Under Head and Neck:-

Tongue is partially protrude, Pharynx is congested, Hyoid-bone fracture noted on left horn, kept in thorax and closed.

Chest

Signs of Respiratory failure seen on cut section congested.

Abdomen:

50-100 grams of semi-digested stuff seen.

Injuries noted on vaginal organs are as follows :-

“Vaginal admitting index finger freely. Small abrasion over the labia majora and minora. Erosions over the clitoris present.”

20. During the cross-examination of PW10, it was suggested to him that the death of the deceased was not due to alleged attempt to commit rape. But he stated that the deceased was throttled, and then an attempt was made to commit rape. External injury No.4 as well as the evidence and the circumstances would show that the deceased was subjected to rape. The argument for the accused is that seminal traces were not found on the belongings of the deceased vide item Nos.1 to 5 described in Ex.P9 and seminal traces were found only on item No.6. This argument found not valid in the context of injury No.4 disclosing that there is evidence of vaginal bleeding due to manual rupture of the hymen and same is ante-mortem in nature. Therefore, the evidence is found sufficient to accept that the deceased was subjected to rape, especially in the light of the settled legal position that escalation and seminal emission are not necessary, to prove commission of rape.

Role of the accused:

21. [i] Accused was lastly seen with the deceased. Evidence of PW2 is quite clear on that aspect. Further the evidence of PW3 would show that the

accused was found on 09.09.2013 and when he was questioned about the deceased he said that he does not know anything and went away. Likewise, PW4 also stated about he and others finding the accused, questioning about the deceased and the accused stated evasive answers and escaping from them. The evidence of PW5 is also in similar lines. PW.6 is another crucial witness. He has stated that he noticing the accused at about 05.00 p.m. on 08.09.2013 while he was coming back from his fields after attending agricultural works and the accused was moving in hurried manner. When PW6 called the accused, he did not respond and went away.

[ii] PW7 is a witness before whom the accused said to have confessed about consuming liquor noticing the deceased girl asked her to come with him on the pretext of giving sugar cane, and taken her into a dilapidated room by the side of the School, committed rape by closing her mouth, putting pressure over the neck; after committing rape, he found the girl was senseless. With an intention to hide her, he lifted her but while lifting, she fell on the ground and her head touched the ground. He took her to sugarcane fields, covered the dead body with sugarcane leaves, from there he went to mango garden, remained till night, later went to his house and slept. The villagers questioned him. He did not give any reply and went away. He went to Thirupati, Kalahasti and finally approached PW.7 to help him to escape from the criminal liability. PW.7 and took the accused to Police Station and handed over him. During the cross-examination of PW.7, it is elicited that it is the first

time PW.7 is coming to give evidence before the Court, This suggests that he is not a stock witness of the police.

[iii] PW.8 is Sarpanch of the Village and stated that on 10.09.2013 at about 11.00 a.m. at the instance of police, he along with others went to sugarcane fields of one B. Subramanyam, noticed the dead body in putrefaction condition and started maggots and they found a frock over the dead body. In his presence, frock was seized by the Police. Inquest was conducted and Panchayatdars opened that the accused committed rape and killed the deceased.

[iv] PW.9 is a witness for recovery of the cloths owned by the accused at the time of committing the offence and confession statement of the accused, Ex.P5 was drafted by the Sub Inspector of Police in his presence and accused led them to place where he has committed rape on the deceased and accused has produced blue colour jeans pant and stated that he worn the pant on the date of committing rape. M.O.2 is the jeans pant. He has also stated about the detailed confession made by the accused before the police. Since it was made in the presence of police, the same cannot be considered.

22. Following are clear from the evidence:-

(1) The deceased was lastly seen with the accused at about 04.30 p.m.

(2). PW2 and PW6, stated that they found the accused in hurried manner at about 05.00 p.m.

- (3) PW2 stated that she found the accused sitting on the wall of the School and talking to the deceased at about 04.00 p.m. on 08.09.2013.
- (4) Ex.P1 report dated 09.09.2013 clearly reveals the factum of PW.2 informing that the accused and deceased were seen lastly together.
- (5) Dead body of the deceased was recovered on 10.09.2013. Ex.P2 was given on the strength of the same, Ex.P14 was registered and the same was sent to the Court immediately.
- (6) On 09.09.2013, when the villagers asked the accused, he evaded to respond.
- (7) The evidence of PW2, PW5 and PW6 is natural. Though they are chance witnesses, cannot be accepted as a planted witnesses when totally of circumstances have seen together.
- (8) Post mortem examination on the dead body of the deceased, inquest and nature of the injuries found on the dead body coupled with the evidence of PW10 would show that there was rape on the deceased.
- (9) There is clear evidence beyond all reasonable doubt placed by the prosecution indicating that the accused was seen lastly with the deceased and the death of the deceased homicidal coupled with rape.

23. In this connection, it is relevant to note that the Hon'ble Apex Court in ***Sharad Birdhichand Sarda v. State of Maharashtra***¹, has laid down five (5) golden principles, which govern a case based only on circumstantial evidence:

- “(1) *The circumstances from which the conclusion of guilt is to be drawn should be fully established.*
- (2) *The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*
- (3) *The circumstances should be of a conclusive nature and tendency.*
- (4) *They should exclude every possible hypothesis except the one to be followed, AND*
- (5) *There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

24. In the light of the evidence and discussions made above, this Court finds that the prosecution has proved the guilt of the appellant/accused beyond all reasonable doubt and there are no grounds to interfere with the conviction and sentence recorded by the learned Additional Sessions Judge. Point No.1 is answered accordingly, against the appellant.

¹ (1981) 4 SCC 116

Point No.2:-

25. **In the result**, the present Criminal Appeal is **dismissed** confirming the conviction and sentence recorded by the learned I Additional District and Sessions Judge, Chittoor in Sessions Case No.15 of 2014, dated 26.07.2018.

Miscellaneous petitions, if any, pending in the Criminal Appeal, shall stand closed.

JUSTICE K.SURESH REDDY

JUSTICE A.HARI HARANADHA SARMA

Date: 01.05.2026
Pnr

HONOURABLE SRI JUSTICE K SURESH REDDY

And

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

CRIMINAL APPEAL No.2612 of 2018

Date: 01.05.2026

Pnr