



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL APPEAL No.444 OF 2019**Between:**

Kagitha Narendra @ Sunny,
S/o.Devadanam, Aged 24 years,
R/o.Gollamudipadu Village,
Ponnur Mandal,
Guntur District.

Appellant/A-1.

And

The State of A.P.,
Through SHO, Ponnur rural Circle,
Rep. by Public Prosecutor,
High Court of A.P., Amaravathi.

Respondent.

DATE OF JUDGMENT PRONOUNCED : 28.01.2021

SUBMITTED FOR APPROVAL:**HON'BLE SRI JUSTICE JOYMALYA BAGCHI**

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copy of judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to
see the fair copy of the judgment? Yes/No

JUSTICE JOYMALYA BAGCHI



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--- Respondent.

! Counsel for the Appellant

: Sri Rambabu Koppineedi/

Sri T.D.Phani Kumar

^ Counsel for Respondent

:Additional Public rosecutor

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> Head Note:

? Cases referred:

This Court made the following :

**THE HON'BLE SRI JUSTICE JOYMALYA BAGCHI****CRIMINAL APPEAL No.444 OF 2019**

(Taken up through video conferencing)

JUDGMENT:

This Appeal is directed against the judgment dated 03.06.2019 passed by V Additional District and Sessions Judge-cum-Special Judge for Trial of Offences against Women, Guntur, in Sessions Case No.211 of 2017, wherein the appellant/A.1 was found guilty for the offences punishable under Sections 376(1) and 417 of Indian Penal Code (I.P.C.) and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of two months for the offence punishable under Section 376(1) I.P.C. He was further sentenced to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 417 I.P.C. Both the sentences were directed to run concurrently.

The prosecution case, in brief, is as follows:

The victim-PW.1 was a student studying III year B-Tech (ECE) in Vignan University, Vadlamudi Village, while the appellant was pursuing II year B-Tech (Civil) in St.Mary's Engineering College, Narakoduru Village. Both belonged to the same village and it is alleged PW.1 and the appellant used to meet at Gollamudipadu cross road of Munipalli Village in the morning in order to go to their colleges by availing separate buses. Friendship developed between them and the appellant used to sent messages to PW.1. Once the appellant sent obscene pictures and messages



to PW.1. She reported the matter to her parents-PWs.2 and 3. The issue was taken up with the appellant and his parents. Appellant assured that he would not repeat such behavior in future. On 23.07.2014 in the morning the appellant met PW.1 at the bus stand and apologized for his earlier conduct. He told her that it was his birthday and offered her sweets and coke. After consuming them, PW.1 felt giddy. Appellant offered to take her to the hospital and both of them boarded an auto. When they reached Manchala, she lost consciousness. After two hours, she regained consciousness and found herself in a dark room without clothes. On enquiry, appellant stated that he had administered intoxicants and had sexual intercourse with her. He threatened he had taken obscene photographs and videos which he would upload in social media if she did not marry him. In view of such threat, PW.1 agreed to marry the appellant on condition that he deletes the photographs. He accepted such proposal. Thereafter, on her way back, she noticed the name of the premises was Varun Lodge, Guntur. Subsequently, the appellant continued to hold out threats and PW.1 was cohabited with him in the same lodge two or three times. On 25.02.2016 at 12:00 Noon, appellant asked her over phone to come to a temple near quarry of Narakoduru, Guntur. When she reached the place, she did not find the appellant, but his parents and relations threatened her. She sent a message to the appellant. After ten minutes, the appellant came to that place and assured that he would convince his parents. He also requested her to leave her house without knowledge of her parents to solemnize marriage with him. As advised, on 26.02.2016 she left her house and came to the house of one Divya at Pedakakani and stayed



there for two days. But, appellant did not contact her. His friend Ramesh told her the appellant had been taken into custody in view of missing report lodged by her parents. In the night of 29.02.2016 Ramesh took her to the residence of Vidyasagar, a caste elder. She stayed in the house of Vidyasagar. After two days, the matter was placed before caste elders. While her parents did not attend the meeting, appellant and his relations came to the meeting and father of the appellant stated that his son may roam with 100 women and he is not agreeable to marry him off to them. As the appellant and his relations refused to marry, she approached Ponnur Rural Police Station on 09.03.2016 and lodged a complaint-Ex.P.1. She was examined in the Government Hospital, in the course of investigation. Appellant was arrested and his mobile phone was seized. Relevant registers of Varun Lodge (MOs.1 and 2) were seized in the presence of Manager-PW.4.

After filing charge sheet, the case was taken on file against the appellant and his relations (A-2 to A-5) for the offences punishable under Sections 376(1), 417 and 506 read with 34 I.P.C. by the learned Additional Junior Civil Judge, Ponnur. Since the offences are triable by the Court of Sessions, the case was made over to the Court of Principal District and Sessions Judge, Guntur and transferred to the Court of learned V Additional District and Sessions Judge-cum-Special Judge for trial of offences against women, Guntur. Charges under Sections 376(1), 417 and 506 read with 34 I.P.C. were framed against the accuseds, which were read over and explained to them in Telugu. They denied the same and claimed to be tried.



During the course of trial, the prosecution examined PWs.1 to 14 and marked Exs.P.1 to 17 and M.Os.1 to 3. Ex.D.1 is the contradiction marked through PW.3. After closure of prosecution evidence, the accuseds were examined under Section 313 Cr.P.C., wherein the incriminating materials against them were put to them but they denied the circumstances and asserted their innocence. The evidence of the accuseds was one of innocence and false implication and Ex.D.1 *i.e.*, prior statement of PW.3, mother of the victim, given in police station was exhibited in order to disclose the contents of the letter, which the prosecution had withheld during trial.

Upon analysis of the aforesaid evidence, the trial judge by judgment dated 03.06.2019 convicted and sentenced the appellant as aforesaid. Other accuseds were acquitted of the charges leveled against them.

Sri T.D.Phani Kumar, learned counsel appearing for the appellant, argued the prosecution case with regard to cohabitation on the score of extortion and blackmail on 23.07.2014 has not been proved. MOs.1 and 2 do not show any entry with regard to the appellant and the victim staying in the hotel on that day. PW.4-Manager of the hotel also did not state that the victim had come to the hotel in an unconscious state. Mobile Phone of the appellant, seized and verified during investigation, does not show any obscene pictures of the victim-PW.1. The conduct of the victim in keeping silent for almost two years from the incident with regard to blackmail also renders such allegation highly improbable. The evidence on record show the parents of the victim-PW.1 were



unaware of such incident. They were opposed to the free mixing between the parties as would appear from the evidence of PW.5. As a result, PW.1 left her residence after leaving behind a letter. Letter has not been produced in Court. On the other hand, Ex.D.1-Statement given by PW.3 to the investigating officer divulges the contents of the letter, wherein no inducement on the part of the appellant is alleged. On the other hand, it appears PW.1 on her own volition left the house as her parents were not supporting her mixing with the appellant. Promise to marry would not constitute rape when the prosecution case of dishonest intention or extortion at the inception of the relationship has not proved. Hence, the appellant is entitled to an order of acquittal.

On the other hand, learned Additional Public Prosecutor submits that cohabitation between the appellant and PW.1 has been proved beyond doubt. Entries in Varun Lodge (MOs.1 and 2) as well as evidence of PW.4 and the medical evidence of PW.12 corroborates the version of PW.1 with regard to sexual relationship between them. The appellant had administered intoxicants in coke and had taken obscene pictures of victim to compel her to agree to cohabit with him for two years. Thereafter, he had refused to marry her. Hence, the prosecution case is proved beyond doubt. In light of the evidence of PW.1, lack of consent is to be presumed in terms of Section 114-A of the Evidence Act. He relies on decision in **Anurag Soni vs The State of Chhattisgarh**¹ in support of his contentions.

¹ 2019 (13) SCC 1



On an analysis of the evidence of PW.1 it appears that PW.1 and the appellant were college going students. She was studying III year B-Tech in Vignan College, while the appellant was studying II year B-Tech (Civil) in St.Mary's Engineering College, Narakoduru Village. As they belonged to the same village, they used to meet in the bus stand while proceeding to their respective colleges. Intimacy developed between them and they used to exchange messages over mobile phone. One day appellant sent obscene pictures to her and she complained to her parents. Appellant apologized and assured he would not repeat the same in future. Thereafter, on 23.07.2014, PW.1 claimed the appellant met her at the bus stop and offered her sweets and coke as it was his birthday. After consuming them, she felt giddy. Appellant took her in an auto rickshaw on the excuse of taking her to a hospital. She lost her consciousness. After regaining consciousness she found herself in a dark room without clothes. When she questioned the appellant, he stated that he had sexual relationship with her when she was unconscious and had also taken obscene pictures on the mobile phone. He threatened to upload them if she did not marry him. As a result, PW.1 was compelled to agree and the appellant assured that he shall delete the pictures. On similar threats, he continued to cohabit with her for about two years. Finally, on 25.02.2016, on the request of the appellant, PW.1 came to a temple but he failed to turn up. On the other hand, his parents/relations abused the victim. When contacted, the appellant assured he would convince his relations with regard to marriage. He also told PW.1 to come out of her house without the knowledge of her parents so that they may marry. Accordingly,



PW.1 left her residence and stayed in the house of a friend, Divya. The appellant did not turn up. On the other hand, his friend Ramesh told PW.1 that the appellant had been arrested on the missing report lodged by her parents. Subsequently, PW.1 went to the residence of one of her caste elders namely Vidyasagar on 29.02.2016. Two days later, mediation was held under the auspices of caste elders. The appellant and his relations refused to marry her as a result, she lodged a complaint. Apart from PW.1, her parents-PWs.2 and 3 have been examined. It appears from their deposition they were unaware of the incident which occurred on 23.07.2014 or the continuing relationship between PW.1 and appellant. Upon coming to know PW.1 had left the residence on 26.02.2016, they searched for her and on 29.02.2016, PW.2 (father) lodged missing report (Ex.P-2) at police station. PW.1 had left behind a letter and her mobile phone. Subsequently, she returned home and narrated the entire incident to them. In cross-examination, P.W.3 (mother of the victim) was confronted with her previous statement to police with regard to the contents of the said letter left behind by PW.1.

P.W.4 is the Manager of the Hotel, who produced the entry registers-M.Os.1 and 2. He deposed P.W.1 and appellant came to the hotel on two or three occasions. In cross-examination, he admitted that the condition of P.W.1 and appellant was normal when they visited the lodge. P.W.5 is a local villager who stated that one day he saw P.W.1 proceeding towards the house of the appellant and her parents chastised her and took her back.



P.Ws.6 and 7 are the mediators, who were present during the course of mediation between P.W.1 and the appellant. In the cross-examination, P.W.6 claimed that police were also present. P.Ws.8 and 9 were declared as hostile. P.W.10-Medical officer, examined appellant with regard to potency, while PW.11 examined the victim and proved the injury report-Ex.P.8. P.Ws.12 to 14 are the Investigating Officers.

Prosecution case, therefore, rests on the version of P.W.1 that initial cohabitation between her and the appellant was a product of extortion and blackmail. It is contended by P.W.1 on 23.07.2014 she was intoxicated by administering drugs and raped by the appellant in Varun Lodge. Her obscene pictures were taken and she was made to agree to marry him on the threat that the obscene pictures shall be uploaded on social media. She agreed to marry on condition the obscene pictures shall be deleted from the mobile phone. Subsequently, on similar threats, she cohabited with the appellant two to three times. When her version is tested in the light of her subsequent conduct and other evidence on record, allegation of rape by resorting to extortion and blackmail appears to be apparently absurd and inherently improbable. Firstly, conduct of the victim (PW.1) is most unnatural. Although, she had immediately brought a minor indiscretion relating to sharing of obscene pictures to the notice of her parents-P.Ws.2 and 3, PW.1 is strangely silent with regard to such gross act of raping her by administering drugs for about two years. On the contrary, she continues her association and cohabits with the appellant on a number of times. A laconic explanation that the appellant held out threats does not appear to be convincing. P.W.1 deposed she



agreed to marry the appellant on condition he would delete the obscene pictures. The appellant had assured her, he would do so, if true, question of continued threat of such score does not arise. In the alternative, if the appellant had deleted the obscene pictures, it is highly improbable P.W.1 would have kept quiet and not promptly informed her parents about such conduct.

Learned Additional Public Prosecutor appearing for the State has strongly relied on the evidence of P.W.4 and the entries in M.Os.1 and 2 to corroborate PW.1 with regard to cohabitation at Varun Lodge. None of these evidence support the prosecution case that P.W.1 had being taken in an intoxicated/unconscious state to Varun Lodge in 2014. P.W.4 in cross-examination stated the condition of P.W.1 when she came to the lodge was normal. Entries in the register standing in the name of the appellant or K.Akhil are of 2015 clearly improbablizing any case of cohabitation under influence of drugs or threat or coercion in 2014 in the said lodge. That apart, mobile phone of the appellant was also seized in the course of investigation and its verification does not disclose any obscene picture of P.W.1 being taken/stored therein. For these reasons, it is difficult to accept that P.W.1 had been initially subjected to sexual intercourse under intoxication or had been blackmailed to cohabit on the threat of disclosure of obscene pictures. If this part of the prosecution case is not believed, what remains is one of free mixing between two college going students, which was not approved by their parents. In fact, PW.5, a neighbour, stated PW.1 was chastised by her parents, when she was proceeding to the house of the appellant and she returned home weeping. On 26.02.2016, P.W.1 left her parents' house and



stayed in the house of Divya. Under what circumstances she did so is unclear. Although PW.1 claimed that the appellant had induced her, there is no corroborative evidence in that effect. Neither Divya nor Ramesh (friend of appellant) has been examined to corroborate such fact. It appears PW.1 had left behind a letter at the time of leaving her residence. Such letter though seized by the police was not produced during trial, which gives rise to an adverse inference against the prosecution case. During cross-examination of P.W.3, her former statement to police disclosing contents of the said letter has been exhibited (Ex.D-1) by the defence. In Ex.D-1, there is no whisper that the appellant had induced her to leave her residence.

The final aspect of the prosecution case is the refusal of the appellant to marry the victim in the course of mediation at the behest of caste elders. P.W.1 claimed when the appellant did not turn up, she went to the house of Vidyasagar, a caste elder, to arrange the marriage. Prosecution has not examined Vidyasagar in whose house the appellant had resided for a couple of days before mediation. On the other hand, prosecution has examined P.Ws.6 and 7 to prove that the appellant and his relations refused to perform marriage during mediation. P.W.1 has not spoken of the presence of the said witnesses during mediation. Even if the evidence of the said witnesses is accepted, it appears the marriage proposal fizzled out as the parents of both the parties were not agreeable. It may be relevant to note parents of P.W.1 at all points of time were opposed to the free mixing between PW.1 and the appellant and did not attend the mediation.



In this back drop, one can safely conclude PW.1 had left her residence as her parents were opposed to her free mixing with the appellant. There is no convincing evidence that she was induced by the appellant to do so. Owing to parental opposition, marriage proposal fizzled out. Cohabitation between consenting adults on the promise of marriage is not rape unless it is proved the appellant had in bad faith and with *mala fide* intentions held out a false promise of marriage from the inception of the relationship. Subsequent failure to marry would not invariably lead to an inference of deceit or dishonest.

In this regard, reference may be made to ***Kaini Rajan v. State of Kerala***², ***Deepak Gulati vs State Of Haryana***³, ***K.P.Thimmappa Gowda vs State Of Karnataka***⁴, ***Deelip Singh @ Dilip Kumar vs State Of Bihar***⁵ and ***Maheshwar Tigga vs. State of Jharkhand***⁶.

In the aforesaid catena of decisions, the Apex Court unequivocally held dishonest intention or bad faith must exist at the initial stage of the relationship. Mere failure to live up to the promise of marriage without anything more cannot be a ground to convict a person of rape. In the present case, allegation of cohabitation by use of blackmail and/or extortion has not been proved. Subsequent failure to marry, primarily, arose due to lack of willingness on the part of parents of both the parties. In this backdrop, it would be incorrect to come to a conclusion that the appellant had dishonestly induced PW.1 to cohabit on a false

² 2013 (9) SC 113

³ 2013 (7) SCC 675

⁴ 2011 (14) SCC 475

⁵ 2005 (1) SCC 88

⁶ 2020 (10) SCC 108



promise of marriage and her consent was vitiated on such misconception of fact.

Learned Additional Public Prosecutor submits lack of consent may be presumed under Section 114A of the Indian Evidence Act, which reads as under:

“114A. Presumption as to absence of consent in certain prosecution for rape. - In a prosecution for rape under clause (a), clause(b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (1), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.”

Conditions precedent to attract the statutory presumption are as follows:

- (a) Accused is charged under the aforesaid clauses of sub-section (2) of Section 376 IPC i.e. case of aggravated rape;
- (b) Sexual intercourse is proved;
- (c) Victim stated she did not consent to such intercourse.

In the instant case, the appellant had been charged for the offences punishable under Sections 376(1), 417 and 506 read with 34 I.P.C. and for aggravated rape under sub-section (2) of Section 376 IPC. Hence, the aforesaid presumption does not apply to the facts of this case.

In support of his contention, learned Additional Public Prosecutor has relied on **Anurag Soni** (supra 1). No doubt, reference has been made to Section 114A of the Indian Evidence



Act in the aforesaid decision. However, the Apex Court in the said case came to a finding that the accused had dishonest intention from inception as he had agreed to marry another girl while he co-habited with the victim. In the instant case, no such incriminating circumstance to show the existence of dishonest or *mala fide* intention on the part of the appellant has been proved and the cited case is factually distinguishable and of no assistance to the prosecution.

In the light of the aforesaid, I hold the prosecution has failed to prove its case beyond reasonable doubt and the appellant is liable to be acquitted for the charges levelled against him.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/A.1 for the offences punishable under Sections 376(1) and 417 of I.P.C. *vide* judgment dated 03.06.2019 in S.C.No.211 of 2017 on the file of V Additional District and Sessions Judge-cum-Special Judge for Trial of Offences against Women, Guntur, is set aside and he is acquitted for the said offences. Consequently, the appellant/A.1 shall be set at liberty forthwith, if he is not required in any other case or crime. His bail bond shall stand cancelled after expiry of six months in terms of Section 437A of Cr.P.C.

As a sequel, Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

JUSTICE JOYMALYA BAGCHI

Date: 28.01.2021

Ivd/Mjl

Note: L.R. copy to be marked