



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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**CRIMINAL APPEAL No.582 OF 2009**

**Between:**

Mallappagari Sadasiva Reddy,  
S/o.Mallappagari Subbireddy,  
40 years, Agriculturist,  
Sangeethamvaripalle,  
Amadaguru Mandal.

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Appellant.

And

1. State of A.P.,  
Rep. by Public Prosecutor,  
High Court of A.P., Amaravathi.

2. Kuntlapalli Harijana Krishnamma,  
W/o.Kuntlapalli Narasimhulu,  
25 years, Coolie,  
Sangeethamvaripalle,  
Amadaguru Mandal.

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Respondents.

DATE OF JUDGMENT PRONOUNCED : 25.01.2021

**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

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**JOYMALYA BAGCHI, J**



**\* HON'BLE SRI JUSTICE JOYMALYA BAGCHI**

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**! Counsel for the Appellant**

**: Sri C.Sharan Reddy**

**^ Counsel for Respondent No.1**

**: Additional Public Prosecutor**

**< Gist:**

**> Head Note:**

**? Cases referred:**

This Court made the following :

**HON'BLE SRI JUSTICE JOYMALYA BAGCHI****CRIMINAL APPEAL No.582 OF 2009****JUDGMENT:**

1. This Appeal is directed against the judgment and order, dated 13.05.2009, passed in Sessions Case No.775 of 2003 by the learned Special Sessions Judge for trial of cases under Scheduled Castes and Scheduled Tribes (POA) Cases, Anantapur (for short, 'the learned Special Judge') convicting the appellant for commission of offences punishable under Section 354 of Indian Penal Code, 1860 (for short, 'IPC') and under Section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989') and sentencing him to suffer Rigorous Imprisonment for five (5) years and pay a fine of Rs.500/-, in default to suffer Simple Imprisonment for six (6) months more on each account. Both the sentences were directed to run concurrently. Out of the fine amount of Rs.1,000/-, Rs.500/- was directed to paid as compensation to the Victim/PW.1.

2. Prosecution case, as alleged against the appellant, is to the effect that the victim, who belongs to Madiga caste, is a resident of Madigapalle in Sangeethampalle village in Amadaguru Mandal; her husband, K. Narasimhulu (PW.4), had gone to Chkkaballapur, Karnataka for coolie works; they used to earn their livelihood by rearing pigs. On the date of the incident *i.e.*, 15.10.2000 at 07:00 A.M. PW.1 and her daughter (PW.2) took the pigs in the *vanka*, situated in the outskirts of the village, for grazing. At that time, the appellant came to the spot and enquired from PW.1 whether her husband was in the village; PW.1 replied that her husband had gone to Karnataka for working as a coolie. Suddenly, the appellant, with dishonest intention to molest her, held her by the tuft of her



hair and pushed her to the ground; she started weeping and raised hue and cry; her daughter also raised hue and cry; she somehow escaped from the clutches of the appellant and ran to the house; she informed the incident to her mother-in-law (PW.3). Her mother-in-law advised to wait for the arrival of her husband and thereafter report the incident. When PW.1 was proceeding to lodge complaint, the appellant had threatened and abused her by taking her caste name. Subsequently, upon the arrival of her husband, on 28.10.2000, Crime No.28 of 2000 under Section 354 of IPC and under Section 3(1)(xi) of the Act of 1989 was registered by Amadaguru Police Station for investigation. However, no effective investigation was done in the matter and the Police finally submitted a report as false.

3. Upon notice issued by the Court, PW.1 appeared in the Court and filed private complaint. She and other witnesses were examined on oath and process was issued against the appellant under Section 354 IPC and under Section 3(1)(xi) of the Act of 1989. The case was committed to the Special Court for trial. Special Court framed charges under Sections 376 R/w.511 and 354 of IPC and under Section 3(1)(xi) and 3(1)(x) of the Act of 1989 against the appellant. Appellant pleaded not guilty and claimed to be tried.

4. In the course of trial, prosecution examined four (4) witnesses including the victim (PW.1). Defence of the appellant was one of innocence and false implication due to prior enmity. Appellant exhibited number of documents pertaining to the prior statements of the witnesses in the course of investigation made by the Police namely Exs.D-1 to D-9 to prove his defence.



5. In conclusion of trial, the trial Judge, while acquitting the appellant of the charges under Sections 376 R/w.511 of IPC and under Section 3(1)(x) of the Act of 1989, convicted and sentenced him for the offences punishable under Section 354 of IPC and Section 3(1)(xi) of the Act of 1989, as stated hereinabove.

6. Learned counsel appearing for the appellant argued delay of 13 days in lodging the first information report has not been adequately explained. While PWs.1 and 2 claimed delay was due to absence of the husband of the victim, PW.3 (mother-in-law) claimed delay was due to threats hurled out by the appellant. It is further contended conduct of the victim after the incident was un-natural. Neither the victim nor the family members informed her husband/PW.4 about the incident. PW.4 is unable to disclose the identity of the person who informed the incident to him. There was dispute and enmity between the parties over grazing of pigs. Seven (7) days prior to the incident, family members of the appellant have lodged complaint against the victim and her family members on the score their pigs had destroyed their crops. The victim and her family members were summoned to the Police Station and the matter was finally compromised. Hence, possibility of false implication cannot be ruled out.

7. In rebuttal, learned Additional Public Prosecutor submits the evidence of PW.1, the victim, is corroborated by her daughter/PW.2. Delay has been duly explained and the earlier dispute had been compromised by and between the parties.

8. PW.1 is the victim and the most vital witness. She deposed on the date of incident at 07:00 A.M. she and her daughter/PW.2 had gone to *vanka* near the village to graze the pigs. Her husband PW.4 at that time was at Chikkaballapur, Karnataka doing coolie works. Appellant arrived at



the spot and asked her about her husband; when she said her husband/PW.4 was away, he with evil intention caught hold by the tuft of her hair and pushed her down to the ground; she raised hue and cry and asked her daughter to report the incident. Her daughter also raised hue and cry. Thereafter, she escaped from the clutches of the appellant and reported the incident to her mother-in-law.

9. PW.2, daughter of the victim, corroborated the aforesaid case. In cross-examination it was suggested that she, in her statement to the Police, admitted of tutory.

10. PW.3, mother-in-law, stated that the incident was reported to her by the victim. They did not lodge complaint because the appellant had threatened them. On the other hand, the victim/PW.1 and her daughter/PW.2 claimed that mother-in-law Salemma (PW.3) had told them not to lodge complaint till the arrival of her son/PW.4. There is clear variance with regard to the reason for delay in lodging complaint. While PWs.1 and 2 have claimed delay in lodging first information report was due to the advice of Salemma (PW.3) that they should await the arrival of the husband of victim, Salemma herself deposed that the appellant had threatened them, hence, the delay. PWs.1 and 2 are completely silent with regard to such alleged threats. Hence, the explanation of the delay in lodging the first information case appears to be on shaky ground based on inconsistent versions of the witnesses. Post occurrence conduct of PW.1 also gives rise to serious doubt with regard to the authenticity of her version. PW.1 alleged she had been molested by the appellant and her mother-in-law told her to await the arrival of her husband before lodging complaint. Strangely, neither PW.1 nor PW.3 or any of her relations informed the incident to her husband/PW.4, PW.4/husband of the victim,



claims that he was working at Chikkaballapur, Karnataka, at the time of occurrence and some one informed him about the incident. He is unable to disclose the identity of the said person. These circumstances throw grave doubt with regard to the incident itself. If PW.1 had been molested by the appellant and she was waiting for her husband to return home to lodge complaint, it would be most natural on her part to immediately intimate the incident to him. This aspect of the prosecution case was glossed over by the trial Judge, who mechanically relied on the version of PWs.1 and 2 to come to a finding of guilt against the appellant.

11. It is settled law that the version of a victim of sexual assault is to be treated with due care and circumspection. Minor variations or inconsistencies ought not to be a ground to discard her version. However, it is also the duty of the Court, to examine the version of the victim against the broad probabilities of the case before arriving at a conclusion that her version is true. Un-natural conduct of the victim is important factor to be considered by the Court while assessing the veracity of her version. The present case portrays serious and grave doubts with regard to its genesis as well as the conduct of the victim immediately after the incident. Firstly, there is delay of 13 days in lodging first information report. Explanation of such delay is inconsistent and unreliable. As discussed earlier, while PWs.1 and 2 claimed they were waiting for the Husband/PW.4 to arrive home, as per the advise of PW.3, mother-in-law, the said witness (PW.3) gave a completely different picture. She claimed appellant had threatened them, hence, the delay in lodging complaint. Inconsistency in the explanation throws grave doubt with regard to the very genesis of the case. Furthermore, there is no explanation why PW.1 did not promptly contact her husband and inform him about the incident. Her husband,



PW.4, claimed that he had known the incident from someone (who is unnamed) and not from the victim or any of his family members.

12. These infirmities in the prosecution case become amplified when it is tested from the admitted evidence of enmity between the parties. Evidence has come on record 7 days prior to the incident, there was a dispute between the two families over the pigs destroying the crop of the appellant. Police had summoned the victim and her family members. It is claimed that the matter was compromised. However, it cannot be ruled out, lingering vengeance may have prompted the victim and her family members to falsely implicate the appellant after the arrival of her husband, PW.4. Judged from this angle, I am of the opinion that the appellant may be extended the benefit of the doubt and acquitted of the charges levelled against him. Conviction and sentence of the appellant is thus set-aside. The Appeal is allowed. Appellant shall be discharged from his bail bond after expiry of 30 days in terms of Section 437A of Cr.P.C.

13. As a sequel, miscellaneous applications pending, if any, in this Appeal shall stand closed.

**JOYMALYA BAGCHI, J**

Date: 25-01-2021.  
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