



**HIGH COURT OF ANDHRA PRADESH**  
WEDNESDAY ,THE FOURTEENTH DAY OF JUNE  
TWO THOUSAND AND TWENTY THREE

**PRSENT**

**THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU**  
**CRIMINAL APPEAL NO: 1728 OF 2009**

**Between:**

1. BASSA BABJEE, S/o Venkata Raju,  
coolie,  
R/o Simhadripuram Village,  
Kirlampudi Mandal,  
East Godavari District.

**...PETITIONER(S)**

**AND:**

1. THE STATE OF AP REP BY ITS PP HYD., rep. by its Public Prosecutor,  
High Court of A.P., at Hyderabad.

**...RESPONDENTS**

**Counsel for the Petitioner(s): S R SANKU AND KAVITI MURALI  
KRISHNA**

**Counsel for the Respondents: PUBLIC PROSECUTOR (AP)**

**The Court made the following: ORDER**



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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**CRIMINAL APPEAL No.1728 OF 2009**

**Between:**

Bassa Babjee, S/o. Venkata Raju,  
Aged about 20 yrs, Occ: Coolie,  
R/o. Simhadripuram Village,  
Kirlampudi Mandal,  
East Godavari District. ... Appellant/Accused.

*Versus*

The State of Andhra Pradesh,  
Rep. by the Public Prosecutor,  
High Court of A.P. ... Respondent/Complainant.

DATE OF JUDGMENT PRONOUNCED: 14.06.2023

SUBMITTED FOR APPROVAL:

**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

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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**A.V.RAVINDRA BABU, J**



**\* HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

**+ CRIMINAL APPEAL No. 1728 OF 2009**

**% 14.06.2023**

**# Between:**

Bassa Babjee, S/o. Venkata Raju,  
Aged about 20 yrs, Occ: Coolie,  
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East Godavari District. ... Appellant/Accused.

*Versus*

The State of Andhra Pradesh,  
Rep. by the Public Prosecutor,  
High Court of Andhra Pradesh. ... Respondent/Complainant.

**! Counsel for the Appellant** : Ms.N.Swarnalatha, learned  
counsel, Rep. Sri. S.R.Sanku,  
learned counsel.

**^ Counsel for the Respondent** : Public Prosecutor

**< Gist:**

**> Head Note:**

**? Cases referred:**

This Court made the following:

**THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU****CRIMINAL APPEAL NO.1728 OF 2009****JUDGMENT:-**

The judgment, dated 26.11.2009 in SC ST Session Case No.68 of 2008, on the file of Special Judge for Trial of Cases under SCs & STs (POA) Act, East Godavari at Rajahmundry ("Special Judge" for short) is under challenge in this Criminal Appeal filed by the unsuccessful accused in the above said SC ST Sessions Case. The accused before the learned Special Judge faced trial for the charge under Section 376 r/w 511 of the Indian Penal Code ("I.P.C." for short) and another charge under Section 3(1) (xi) SCs & STs (POA) Act, 1989 and the learned Special Judge on conclusion of trial and after hearing the arguments, found the accused guilty of the charges, convicted and sentenced him for the said charges. Challenging the same, the unsuccessful accused filed the present Criminal Appeal.

2) The parties to this Criminal Appeal will hereinafter be referred to as described before the Court below for the sake of the convenience.

3) The SC ST Sessions Case No.68 of 2008 on the file of Special Judge arose out of a committal order in P.R.C.No.23 of 2007 on the file of Judicial Magistrate of First Class,



Prathipadu, pertaining to Crime No.9 of 2007 of Kirlampudi Police Station.

4) The State, represented by the Sub-Divisional Police Officer, Peddapuram Sub-Division, filed the charge sheet in the above said crime alleging in substance as follows:

(i) The victim girl belongs to SC-Mala and aged 16 years. She is working as coolie along with Talupulamma and Kotnala Seetha. While so, on 06.02.2007 at about 7-00 a.m., she along with Kotnala Seetha went to coolie work in the paddy field of Kalepureddy Koteswara Rao located at Jagapathi Nagaram, H/o Simhadripuram village. While she was attending the work, the accused went to the land, called her by gestures and when she abused, he ran away. At about 1-00 p.m., after completing the work while she was returning from the fields along with L.W.3-Kotnala Seetha and when they were going to their house along with the cart track, the accused who hide himself near the grass heap in the land of Malla Appa Rao, caught hold of the victim all of a sudden, dragged her forcibly, laid her down near one of the heaps, torn her upper garments, laid himself over her, lifted her undergarments and attempted to commit rape. On seeing the same, LW.3-Kotnala Seetha raised cries. LW.4-Tangidipalli Satti Babu, LW.5-Kotnala Nageswara Rao, LW.6-S. Veerabhadra Rao and LW.8-K. Koteswara Rao, who were working nearby in the



sugarcane land of Kalepureddy Koteswara Rao joined with LW.2-Talupulamma and rushed to the land of Malla Appa Rao and found the accused getting up from the victim. When they tried to catch hold of him, he tried to escape and then they caught hold of him. But, in the mean time, Kapu caste elders intervened. On receipt of written report from the victim, case was registered and investigated into.

(ii) During the course of investigation, the Sub-Divisional Police Officer, recorded the statements of witnesses, visited the scene of offence in the presence of the mediators and drafted observation report and prepared rough sketch. He sent the victim for medical examination. He altered the Section of law from Section 354 of IPC into 376 r/w 511 of IPC and filed a memo to that effect before the Court concerned.

(iii) While so, the accused visited Kirlampudi Police Station on 06.02.2007 and gave statement which was recorded by L.W.14-Sub Inspector of Police and was registered as a case in Crime No.10 of 2007 under Sections 342 and 323 r/w 34 of I.P.C. against L.W.4-Tangidipalli Sathi Babu, L.W.5-Kakada Nageswara Rao and L.W.6-Sundarapalli Veerabhadra Rao. The Sub Inspector of Police kept the accused under surveillance after getting him treated at Community Health Center, Prathipadu.



L.W.15-Sub Divisional Police Officer arrested the accused on 07.02.2007 and sent him to remand.

(iv) L.W.11 Medical Officer, who examined the victim, issued wound certificate, stating that the victim is habituated to sexual intercourse, but, there is no evidence of recent sexual intercourse. L.W.12 Professor, Forensic Medicine, GGH, Kakinada, examined the victim and certified that victim is aged about 16 years. According to L.W.13-Mandal Revenue Officer, Kirlampudi, the victim belonged to Mala caste which comes under Scheduled Caste and the accused belonged to Kapu caste which comes to Other Caste. Hence, the charge sheet.

5) The learned Judicial Magistrate of First Class, Prathipadu, took cognizance of the case under Section 376 r/w 511 of IPC and Section 3(1)(xi) of SCs & STs (POA) Act and numbered it as PRC. On appearance of the accused and on complying the provisions of Section 207 of Cr.P.C., the learned Magistrate, committed the case to the Court of Sessions and thereby it was numbered as Sessions Case and made over to the learned Special Judge for disposal in accordance with law.

6) On appearance of the accused before the learned Special Judge and after complying the procedure contemplated under Section 228 of Cr.P.C., charge under Section 376 r/w 511 of I.P.C. and another charge under Section 3(1)(xi) of SCs & STs



(POA) Act were framed and explained to the accused in Telugu, for which he pleaded not guilty and claimed to be tried.

7) To bring home the guilt against the accused, the prosecution before the learned Special Judge examined P.W.1 to P.W.11 and got marked Ex.P.1 to Ex.P.16 and M.O.1 to M.O.5. After closure of the evidence of the prosecution, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances in the evidence adduced by the prosecution, for which he denied the same.

8) The accused filed a written statement during the course of Section 313 of Cr.P.C. examination along with certified copies of charge sheet and F.I.R. in Crime No.10 of 2007 of Kirlampudi Police Station concerned with C.C.No.43 of 2007, on the file of Judicial Magistrate of First Class, Prathipadu. The contention of the accused in the written statement is to the effect that he did not commit any offence and he was beaten by the prosecution party for which he made a report which was registered as a case in Crime No.10 of 2007 of Kirlampudi Police Station under Sections 342 and 323 r/w 34 of IPC. The present case is filed by the complainant as a counter-blast to the case filed by the accused with false allegations. The accused did not let in any defence evidence.





9) The learned Special Judge on hearing both sides and on considering the oral as well as documentary evidence, found the accused guilty of both the charges and convicted him under Section 235(2) of Cr.P.C. and after questioning him about the quantum of sentence, sentenced him to suffer rigorous imprisonment for five years and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for three months for the charge under Section 376 r/w 511 of I.P.C. and further sentenced him to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for one month for the charge under Section 3(1)(xi) of SCs & STs (POA) Act and that both the sentences shall run concurrently. Felt aggrieved of the same, the unsuccessful accused filed the present Criminal Appeal.

10) Now, in deciding the present Criminal Appeal, the points that arise for consideration are as follows:

(1) Whether the prosecution before the Court below proved that the accused on 06.02.2007 at about 1-00 p.m., while the victim was returning from the fields to the house, made an attempt to commit rape?

(2) Whether the prosecution before the Court below proved that the accused assaulted or used criminal force against the victim within the meaning of Section 3(1)(xi) of SCs & STs (POA) Act?



(3) Whether there are any grounds to interfere with the judgment of the learned Special Judge?

**Points:-**

11) Ms. N. Swarnalatha, learned counsel, representing the learned counsel for the appellant, would contend that in fact the accused was beaten severely by the prosecution party for no fault of him for which he lodged a report which was registered as a case in Crime No.10 of 2007 against P.W.3 and others and as a counter-blast to the said case, the present case is falsely foisted. The accused became a scapegoat at the evil advice of one Veerababu, who is behind this issue. As the accused refused to work under Veerababu, he used the victim as a tool and implicated the accused in the false case. There are omissions, contradictions and exaggerations from the evidence of the prosecution witnesses. The victim developed the case during the course of trial without any basis from Ex.P.1. The omissions that are suggested to P.W.1 to P.W.3 are proved through the evidence of P.W.11, the investigating officer. The prosecution did not explain as to what was the scene of offence in Ex.P.1 and later the investigating officer located the scene of offence as in the lands of one Malla Appa Rao without there being any basis. The prosecution did not prove the essential ingredients of



the charges framed against the accused. The evidence on record did not prove that the accused prepared himself to commit rape, as such, the charge under Section 376 r/w 511 of IPC is not at all tenable. The prosecution did not explain the fact how the accused received injuries on the date of offence. The accused filed copies of his report and charge sheet against P.W.3 and others and in spite of that the Court below found favour with the case of the prosecution and erroneously convicted the accused, as such, the Criminal Appeal is liable to be allowed.

12) Sri Y. Jagadeeswara Rao, learned counsel, representing the learned Public Prosecutor, would contend that the so-called Crime No.10 of 2007 has nothing to do with the present offence in question. Obviously, the time of offence alleged by the accused in Crime No.10 of 2007 was evening, but, the time of offence in this case was at 1-00 p.m. The accused was caught hold red handedly by P.W.3 and others at the spot when he was committing the offence and later the Kapu caste elders intervened with assurance to admonish the accused and took away. The evidence of P.W.1, P.W.2, P.W.3 and P.W.4 is quietly consistent. P.W.3 has no reason to depose false against the accused. Because P.W.3 and others caught hold of the accused, the accused felt humiliated and appears to have reported leisurely in the evening with fabricated version. The



Court below categorically gave findings that Crime No.10 of 2007 was not a counter-blast case to the present case. The Court below rightly looked into the evidence on record and with tenable reasons ordered conviction and sentenced against the accused, as such, the Criminal Appeal is liable to be dismissed.

13) P.W.1 is no other than the victim. P.W.2 is Tangidipalli Talupulamma, who claimed to have witnessed the occurrence. P.W.3 is Kakada Nageswara Rao, who claimed to have witnessed the occurrence. P.W.4 is Kalepureddi Koteswara Rao @ Koti S/o Veerraju in whose lands P.W.3 and others were stated to have worked on the date of incident. P.W.5 is the medical officer, who examined the victim and issued age determination certificate. P.W.6 is another medical officer, who examined the victim and issued certificate. P.W.7 is the mediator to the observation of the scene of offence. P.W.8 is Mandal Revenue Officer, who issued caste certificates of accused as well as victim. P.W.9 is Sub Inspector of Police, who registered the FIR. P.W.10 is the Panchayat Secretary, who acted as witness to the observation of the scene of offence by the police. P.W.11 is the investigating officer.

14) For better appreciation, firstly this Court would like to refer here the substance of the contents of Ex.P.1 which was lodged by the victim on the date of offence at 7-00 p.m. when



the time of offence was said to be at 1-00 p.m. Ex.P.1 reads in substance that it is the report lodged by P.W.1. Her age is 15 years. Her father was expired about five year back. She used to work along with her mother Sita. On 06.02.2007 at 7-00 a.m., she along with her maternal aunt Tangidipalli Talupulamma went to the lands of Veerraju for coolie work. At 8-00 a.m., one Bassa Babjee, S/o Venkata Raju (Accused) in the fields made signs towards her and she abused him and he went away. At 1-00 p.m. while she was returning from the fields by the side of Veerraju lands, near hayrick, accused caught hold of her, dragged her towards hayrick and made her to lay over and torn her clothes and made attempt to commit rape. In the meantime, her maternal aunt Tangidipalli Talupulamma raised cries and brought nearby persons working in the fields i.e., Tangidipalli Sathi Babu, Kakada Nageswara Rao, Sundarapalli Veerabhadra Rao and Kalipureddy Koteswara Rao. When the accused tried to escape on seeing them, Tangidipalli Sathi Babu, Kakada Nageswara Rao and Sundarapalli Veerabhadra Rao caught hold of him. This is the substance of the report lodged by the victim.

15) Now the substance of the evidence of P.W.1 is that on 06.02.2007 at about 7-00 a.m., she along with L.W.2 went to attend coolie work in the land of one Veerraju. At 9-00 a.m., accused came to land where she was working and was looking



at her from the hayrick located in the land where they were working. She questioned the accused as to why he was looking at her, for which he replied that he was not looking at her. She strongly asked him that he was telling lies and that he was looking at her. Accused grew wild and abused her in filthy language. She also abused him. Then accused opened his pant zip and shown his private part uttering "*antinchu*" "*antinchu*" (*stick stick*). Co-coolies of the accused took him away. After the work was over between 12-30 or 1-00 p.m., she along with L.W.2 were going to the house. When they reached the hayrick of Appa Rao, accused pushed away L.W.2 and accused lifted her (P.W.1) and took her to the hayrick of Appa Rao. He closed her mouth with his *rumalu* (handkerchief) and made her to lay down. He placed his legs on her shoulders and removed her chokka which was wore by her and torn her bra, lifted her inner petty coat and upper petty coat and attempted to commit rape. Then, L.W.2 came to the scene along with co-workers L.W.4, L.W.5 and L.W.6 whose names she do not remember. L.W.7 also came to the scene along with L.W.2. On seeing them, accused was running away, but they caught hold of him. L.W.7 admonished the accused. He asked L.W.2, L.W.4 and L.W.5 and others to take him to the village. When they were taking the accused to the village, Kapu caste people came and assured to



take him to village. Later, Kapu caste people took the accused away, but, he was not produced in the village. She and L.W.2 came to the house and informed the incident to her mother and junior paternal uncle. On the same day, she went to Kirlampudi Police Station and lodged a written report. Ex.P.1 is her written report which bears her signature. Police sent her to the Government Hospital, Prathipadu. On the next day, D.S.P. examined her and she handed over her brinjal colour shirt, outer petty coat, inner petty coat, jacket and bra. M.O.1 is brown colour outer petty coat, M.O.2 is saffron colour inner petty coat, M.O.3 is brinjal colour shirt, M.O.4 is jacket and M.O.5 is bra. Later, she was taken to Government General Hospital, Kakinada.

16) According to the evidence of P.W.2 about two years back, she and P.W.1 went to coolie work in the lands of Veerraju. At about 1-00 p.m., after the work was over, she and P.W.1 were going to the house. By the time they reached hayrick of one rythu belongs to their village, accused came, lifted P.W.1 and took her to hayrick. Then she (P.W.2) raised cries and called the coolies working in the sugarcane field. L.W.4, L.W.5 and L.W.7 and some others whose names she do not remember, came to the scene. They went to the scene and separated the accused from P.W.1. She was coming towards the scene at some distance. L.W.4 is her son. When her son along



with others asked the accused to come to the village along with them after the incident, the accused hacked her son on his hand with sickle. They tied the hands and legs of the accused and was taking him to the village. On the way, Kapu caste people came and took away the accused. After the incident, she and P.W.1 went to their house. She went to police station along with P.W.1. As the witness did not speak about the morning incident, the prosecution cross examined her and in the cross examination by the learned Addl. Public Prosecutor, she stated before police that on 06.02.2007 at about 8-00 a.m., the accused came to the land of Veerraju and calling P.W.1 with signs for which P.W.1 abused and he went away and that at about 1-00 p.m., while they were going to their house when they reached near the hayrick of Malla Appa Rao, the accused caught hold P.W.1 forcibly to the hayrick of Appa Rao, laid her down, torn her clothes and blouse, lifted her petty coat and attempted to commit rape, etc. as in Ex.P.2. So, the prosecution elicited from the evidence of P.W.2 as to the manner which she gave her statement as in Ex.P.2 before the police. Though she did not speak about the morning incident, but, insofar as the incident at 1-00 p.m. is concerned, she supported the case of the prosecution.





17) Coming to the evidence of P.W.3, about 2 ½ years he, L.W.4, L.W.6 and L.W.8 went to coolie work to the sugarcane field of L.W.7. At 1-00 p.m., P.W.2 was coming towards them by raising cries. They all ran towards her and found the accused lying over P.W.1 at the hayrick of Malla Appa Rao. On seeing them, accused tried to escape and they caught hold of him. They brought him to the village and in the meantime, Kapu caste elders took away. When questioned P.W.1, she replied that the accused attempted to commit rape on her.

18) Coming to the evidence of P.W.4, who is son of Veerraju in whose lands P.W.1 and P.W.2 claimed to have worked, he deposed that on 06.02.2007 at about 1-00 p.m., on hearing cries of P.W.2, they all went to cart track situated in the land of Malla Appa Rao and found P.W.1 and accused at the hayrick of Malla Appa Rao. He again says that he was coming behind P.W.3, L.W.3, L.W.4 and L.W.6. They were ahead of him and they were caught hold of the accused. Meanwhile village elders came to the scene and took away the accused. He did not enquire anything about P.W.1 and P.W.2.

19) Now, I would like to deal with as to whether there are any omissions in the evidence of P.W.1 to P.W.4 and if so, whether they are fatal to the case of the prosecution.



20) During the course of cross examination P.W.1 denied a suggestion that she did not mention in Ex.P.1 and she did not state before police that at about 9-00 a.m., on 06.02.2007 the accused came to the land where they were working and was looking at her from the hayrick located in the land where they were working and that the accused opened his pant zip and shown his private part uttering "antinchu" "antinchu". She denied that she did not mention in Ex.P.1 or state before the police that the accused abused her in filthy language and that she also abused him. She denied that she did not mention in Ex.P.1 and did not state before police that the co-coolies of the accused took him away. She denied that she did not state before police that the accused pushed away L.W.2 (stress is on pushed away). She further denied that she did not state before police that the accused closed her mouth with his *rumalu* (handkerchief) and that while they were taking the accused, their village Kapu caste people came and took away the accused with an assurance to produce him in the village. P.W.2 during course of cross examination denied that she did not state before police that the coolies in the sugarcane field came to the scene and separated the accused from P.W.1 and that she did not state before police that the accused hacked her son with sickle. P.W.3 during the course of cross examination denied that he did



not state before police that Kapu caste elders took away the accused from their custody. He further denied that he did not state before police that by the time they went to the scene, they found the accused lying over P.W.1 at the hayrick of Malla Appa Rao (stress is on coming towards their side). Turning to the evidence of P.W.4 during cross examination, he denied that he did not state before police that the village elders came to the scene and took away the accused.

21) Now, coming to the evidence of P.W.11, the investigating officer, he deposed in cross examination that P.W.1 did not state before him that at about 9-00 a.m., on 06.02.2007 accused came to the land where they were working and was looking at her from the hayrick located in the land where they were working and that the accused opened his pant zip and shown his private part uttering "*antinchu antinchu*" and that the accused abused her in filthy language and she abused him and that co-coolies of the accused took him away and that the accused pushed P.W.2 and that the accused closed her mouth with his *rumalu* (handkerchief) and that the village Kapu caste people took away the accused with an assurance to produce him in the village. He further deposed in cross examination that P.W.2 did not state before him that the coolies in the sugarcane field came to the scene and separated the accused from P.W.1



and accused hacked her son with a sickle. He further deposed in cross examination that P.W.3 did not state before him that P.W.2 accompanied him to the scene and that P.W.2 was coming towards them by raising cries and that by the time he went there, he found the accused lying over P.W.1 and that Kapu caste people took away the accused. He deposed in cross examination that P.W.4 did not state before him that the village elders came to the scene and took away the accused.

22) As seen from Ex.P.1, the crucial allegations in the version of P.W.1 are that when she was attending agricultural work in the fields at 8-00 a.m., the accused came there and made signs towards her and when she abused him, he went away. It is no doubt true that P.W.1 elaborated in her evidence the manner in which the accused made signs to her at 8-00 a.m., and further she deposed that it was happened at 9-00 a.m. The F.I.R. cannot be taken as encyclopedia. P.W.1 categorically testified that in the morning hours, when she was working in the field, the accused came there and made signs towards her and she abused him and then the accused went away. That is there in Ex.P.1. In the evidence, she elaborated the manner in which the signs were made. So, the case of the prosecution even if the improvement evidence of P.W.1 is excluded from consideration remained intact with reference to



the contents in Ex.P.1 about the incident happened in the morning. What P.W.1 deposed is the manner in which the accused made signs and on that the evidence of P.W.1 cannot be disbelieved. With regard to the fact that at the time of incident, accused shut her mouth with *rumalu*, etc., it cannot be taken as a major omission. Even if the evidence of P.W.1 on the improvement version is excluded from consideration, the rest of her evidence has corroboration from Ex.P.1, the report. Hence, what all the omissions that are suggested to P.W.1 and elicited from P.W.11 are not at all material to disbelieve the case of the prosecution. Similarly, the omissions that are suggested to P.W.2 to P.W.4 are trivial in nature. They are not going to affect the case of the prosecution. They are not going to the root of the matter.

23) As seen from Ex.P.1, it contains the names of persons, who witnessed the occurrence. The presence of P.W.2 and P.W.3 at the time of occurrence is there in Ex.P.1. Apart from this, the name of P.W.4 is also there in Ex.P.1. Even the name of another person is also there who was not examined by the prosecution. The case of the prosecution is that P.W.2 on witnessing the occurrence, raised cries and the persons who are working in the neighbouring fields came there. Under the circumstances, it is not the case of the accused that the names



of P.W.2 to P.W.4 were not there in Ex.P.1 and that they were planted witnesses. Under the circumstances, it is immaterial whether P.W.2 separated the accused from P.W.1 or the neighbouring ryths separated accused from P.W.1. Therefore, insofar as the so-called omissions are concerned, they are minor, which are not going to the root of the matter. It is no doubt true that the evidence of P.W.2 is such that she made an improvement as if the accused also attacked her son with a sickle which she did not speak in her Section 161 of Cr.P.C. statement. The facts and circumstances are such that even according to the evidence of P.W.1, P.W.3 and others caught hold of the accused after the incident and when they were taking the accused to the village, Kapu caste people intervened with an assurance to produce him in the village and they did not keep up their promise. The contention of the accused is that he was beaten by P.W.3 and others severely for which he lodged a report and as a counter-blast to the said case, the present case is filed.

24) It is to be noticed that the defence of the accused is totally inconsistent. What was suggested before P.W.1 during cross examination is that as the accused refused to work under one Veerraju, he got lodged this complaint through P.W.1. It is rather improbable to assume that when the accused refused to



work under one Veerraju, Veerraju used the victim as a tool and implicated him in the false case. It is very difficult to believe such a defence theory. Contrary to that, he put up another contention that on the date of incident, accused lodged a police complaint alleging that L.W.4-Tangidipalli Sathi Babu, L.W.5-Kakada Nageswara Rao and L.W.6-Sundarapalli Veerabhadra Rao beat him and as a counter-blast to that, the present case is filed. In support of such a theory, during the course of Section 313 of Cr.P.C. examination before the learned Special Judge, he filed certified copies of the report pertaining to Crime No.10 of 2007 and the charge sheet relating to C.C.No.43 of 2007.

25) It is to be noticed that the present case is pertaining to Crime No.9 of 2007 and the time of offence was at 1-00 p.m. In Crime No.10 of 2007 P.W.3 was shown as accused and further L.W.4-Tangidipalli Sathi Babu and L.W.6-Sundarapalli Veerabhadra Rao were also shown as accused. There is no dispute that the report lodged by P.W.1 is first in point of time. Therefore, when P.W.1 went to the police station at 7-00 p.m., and lodged Ex.P.1, accused cannot contend that Crime No.9 of 2007 is a counter-blast to Crime No.10 of 2007. It appears that as P.W.3 and others caught hold of the accused and detained him, even according to the evidence of P.W.2, accused lodged such a report pertaining to Crime No.10 of 2007. It is to be



noticed that the so-called incident pertaining to Crime No.10 of 2007 was subsequent to the alleged commission of offence against P.W.1 when witnesses caught hold of the accused red handedly. Under the circumstances, the contention of the accused that the present case is filed as a counter-blast to Crime No.10 of 2007 is not at all tenable. At one hand accused contended that as a counter-blast to Crime No.10 of 2007, the present case is filed which is not tenable. At another hand, he contended that at the instance of one Veerraju, victim implicated him in a false case and it is also not tenable. It is to be noticed that no previous animosity was elicited between the family of P.W.1 and family of the accused.

26) The incident in question was happened in the fields at 1-00 p.m. Prior to that the accused was alleged to have made some signs to P.W.1 for which P.W.1 abused the accused. Absolutely, P.W.1 had no reason whatsoever to implicate the accused falsely. The evidence of P.W.1 has support from the evidence of P.W.2. Though the version of P.W.1 that the accused pushed away P.W.2, and the version of P.W.2 that she was pushed away by the accused were not there in Ex.P.1, but their evidence that when they were returning to the house after completion of work the offence happened cannot be doubted. Further P.W.3 has no reason to depose false against the





accused. In fact, he was an independent witness to the incident. The so-called fact that he was shown as accused in the report lodged by the accused along with others was only on account of the incident happened subsequent to the commission of offence against the victim. Therefore, even the presence of P.W.3 at the scene of offence is quietly probable and his presence is not at all doubtful. P.W.4, the son of Veerraju, testified the fact that on hearing the cries of PW.2 they all went to the cart track and found P.W.1 and accused at the hayrick of Malla Appa Rao. Hence, his evidence also supports the presence of the accused at the hayrick of Malla Appa Rao along with P.W.1. The evidence of P.W.3 corroborates the evidence of P.W.1 and P.W.2.

27) There was a contention raised by the accused before the Court below that the prosecution deliberately shifted the scene of offence to some other place. This Court has carefully looked into the above said contention. Though Ex.P.1 did not disclose literally exact place of scene of offence, but, it depicts that the scene of offence was near hayrick and the said hayrick was located in the lands adjacent to the lands of one Veerraju. The investigating officer during course of investigation prepared Ex.P.11 scene observation report and Ex.P.13 rough sketch of the scene of offence.



28) Now, this Court has to look into the contention as to whether the prosecution deliberately shifted the scene of offence to un-suit the defence of the accused. Ex.P.1 depicts the scene of offence was near hayrick and the said hayrick was located in the lands adjacent to the lands of one Veerraju. Though there was no whisper that the scene of offence is a hayrick situated in the field of Malla Appa Rao, but, Ex.P.1 depicts that the scene of offence was near hayrick and the said hayrick was located in the lands adjacent to the lands of one Veerraju. As seen from Ex.P.13 rough sketch and Ex.P.11 mediators report, there is a description regarding the pathway leading to the fields running to the north-south. Therefore, the so-called pathway can be connected to the pathway mentioned in Ex.P.1. There is no dispute that the land of Veerraju is abutting to this pathway. Even as seen from the above, the land of Malla Appa Rao is also there as abutting the said pathway. So, it goes without saying that on the immediate west of the pathway, paddy field of Veerraju and hayrick of Malla Appa Rao were situated. P.W.1 and P.W.2 were attending agricultural works in the land of Veerraju. So, the lands of Veerraju and the lands of Malla Appa Rao were adjacent with each other. It further reveals that the hayricks were also to the north of land of Veerraju. Towards the west of the scene of offence, hayricks and paddy field of Malla



Appa Rao were located. Even Ex.P.1 describes that scene of offence as hayrick located in the field of Malla Appa Rao. The evidence of P.W.11, the investigating officer, is not at all challenged disputing the location shown in Ex.P.13 rough sketch of the scene of offence. With regard to the observation report, though one of the mediators i.e., P.W.7 did not support the case of the prosecution as he turned hostile, but, his hostility was proved by virtue of the evidence of P.W.11, the investigating officer. But, there is evidence of P.W.10 in support of the preparation of the observation report by P.W.11. P.W.10 deposed that he along with D.S.P. and other staff on 07.02.2007 proceeded the field of Malla Appa Rao where the D.S.P. prepared observation report. This Court has no doubt about the preparation of observation report and rough sketch of the scene of offence, in the absence of challenge to the testimony of Ex.P.11. So, on thorough scrutiny of the evidence on record, this Court is of the considered view that the hayrick as made in Ex.P.1 can only be the hayrick of Malla Appa Rao, as such, the contention of the appellant that the scene of offence was deliberately shifted is not at all tenable.

29) It is a case where the offence in question was happened at 1-00 p.m. According to the evidence of P.W.1 Kapu caste people took away the accused with an assurance to



produce him in the village. She claimed that after returning to the house along with P.W.2, she revealed the incident to her mother and her junior paternal uncle and then they went to the police station. As seen from Ex.P.1, it was lodged on 06.02.2007 at 7-00 p.m. There is no denial of the fact that after reaching to the house only P.W.1 revealed the incident to her mother. The learned defence counsel before the Court below elicited in cross examination of P.W.1 that she went to the house after the incident at about 4-00 p.m. or 5-00 p.m. she reached to the house and after informing the incident they went to the police station and lodged report. Under the circumstances, there is no delay in lodging report and even otherwise, there was no agitation on the part of the accused about the delay in lodging Ex.P1. It is not a case where there was any bitter animosity between the defacto-complainant party and the accused party. Apart from this, in a case of this nature, the delay is bound to be happened, as victim on her own cannot go to the police station straight away and as lodging report in such an offence would invite stigma everybody would hesitate to present a report in a case of this nature. However, the circumstances does not show any delay in lodging the report. Under the circumstances, the evidence adduced by the prosecution is convincing and this



Court has no reason to disbelieve the evidence of P.W.1 to P.W.4.

30) Now, this Court has to consider as to whether the evidence on record which is convincing would invite the essential ingredients of Section 376 r/w 511 of I.P.C. and Section 3(1)(xi) of SCs & STs (POA) Act. There is a whisper in Ex.P.1 that the accused took away the victim from the pathway to the hayricks and laid her down and made an attempt to commit rape. It is clearly testified by P.W.1. Though there was no allegation in Ex.P.1 that the victim was in fact subjected to rape, but, the investigating officer referred the victim to the hospital for medical examination. It is altogether a different aspect that he referred the victim to ascertain the age of her. According to the evidence of P.W.5, the age of the victim was of 16 years and she conducted general examination, physical examination, dental examination and radiological examination and issued Ex.P.3. But, the investigating officer also sent the victim to the Assistant Professor, Obst. & Gynecologist, Kakinada and according to the evidence of P.W.6, after noting the physical condition of the victim, she obtained swab and sent it to RFSL and according to her, the victim is habituated to sexual intercourse, but, there is no evidence of recent sexual intercourse and issued Ex.P.6 final opinion. As it is not the case



of the prosecution that the accused in fact committed rape, the evidence of P.W.6 assumes a little importance. During the cross examination, P.W.11 the investigating officer deposed that he noticed blood stains on the inner petty coat of the victim and in RFSL report also blood stains were noted in item Nos.9 and 10. It is the case of the prosecution that the investigating officer collected M.O.1 to M.O.5 from the victim during the course of investigation. Therefore, it appears that as he found blood marks on the inner petty coat, he referred the victim to the Gynecologist for obtaining necessary opinion. Under the circumstances, as it is not the case of rape and as only attempted to commit rape, the evidence of P.W.6 has no significance.

31) The prosecution categorically established the incident happened in the morning in the fields where P.W.1 was working. According to the evidence of P.W.1, the accused made signs to her for which she abused him. So, it appears that from morning itself, the accused developed evil intention on P.W.1. The act of the accused in pulling her from the pathway into the hayricks and made her to lay down and fell upon her by removing her clothes is nothing but an attempt made by the accused towards the commission of rape. It is not a case of assaulting a woman with criminal force. If the intention of the



accused was such that he intended to outrage the modesty, he would have done it on the pathway itself, but he would not have pulled the victim to a hayrick in the lands of Malla Appa Rao. The learned Special Judge in fact rightly dealt with in elaborate manner the conduct of the accused from the morning in developing an intention to commit rape against the victim.

32) Having regard to the overall facts and circumstances, the commission of offence made by the accused was after making preparation and the attempt made by the accused was only towards the commission of offence i.e., to commit rape against the victim.

33) Coming to the evidence of P.W.8, there is no dispute that the victim belonged to Scheduled Caste and accused belonged to Forward Caste. The accused had knowledge that the victim is of a Scheduled Caste. The act of the accused in going to the fields where P.W.1 was working and making signs was nothing but a desperate. Further the act of the accused in taking away the victim from the pathway to the hayrick was also desperate. In my considered view, the evidence on record squarely attracts the essential ingredients of Section 376 r/w 511 of I.P.C. as well as Section 3(1) (xi) of SCs. & Sts. (POA) Act. The learned Special Judge rightly considered the evidence on record in a proper manner and made appreciation of the



evidence with sound reasons and rightly found the accused guilty of both the charges.

34) Having regard to the above, I am of the considered view that the prosecution before the Court below categorically proved both the charges against the accused beyond reasonable doubt, as such, I do not see any reason to interfere with such well reasoned judgment of the Special Judge for Trial of Cases under SCs & STs (POA) Act, East Godavari at Rajahmundry.

35) In the result, the Criminal Appeal is dismissed, as such, the judgment, dated 26.11.2009 in SC ST S.C.No.68 of 2008, on the file of learned Special Judge for Trial of Cases under SCs & STs (POA) Act, East Godavari at Rajahmundry, shall stands confirmed.

36) The Registry is directed to take steps immediately under Section 388 Cr.P.C. to certify the judgment of this Court along with the trial Court, if any, to the Court below on or before 21.06.2023 and on such certification, the trial Court shall take necessary steps to carry out the sentence imposed against the appellant (accused) and to report compliance to this Court.

Consequently, miscellaneous applications pending, if any, shall stand closed.

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**JUSTICE A.V. RAVINDRA BABU**

Dt. 14.06.2023.  
PGR





**THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU**

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**CRL. APPEAL NO.1728 OF 2009**

**DIRECTION:**

**Date: 14.06.2023**

PGR