

NARRA PEDDI RAJU

Appellant(s)

VERSUS

STATE OF A.P. NOW STATE OF TELANGANA

Respondent(s)

O R D E R

Delay condoned.

Leave granted.

This appeal is directed against the judgment dated 21.09.2011 passed by the High Court whereby the High Court upheld the judgment of the Trial Court dated 22.09.2004 convicting the appellant of having committed an offence punishable under Section 376 of the Indian Penal Code, 1860 (for short 'the IPC') and sentenced him to undergo imprisonment for ten years and pay a fine of Rs.5,000/-.

The case of the prosecution is that on 04.12.2000 at 5.30 pm when the prosecutrix was returning home, the accused committed rape on her. Immediately on coming home, the prosecutrix informed her husband about the occurrence. Thereafter, they went to the police station at about 9.00 pm in the evening and filed a report (Exhibit P1). On the basis of this report, FIR was registered. After investigation, the accused was charged of having committed an offence of the aforesaid. The accused setup a case of denial during the course of trial. There are two main witnesses. The first witness is the victim herself (PW1) and the second witness

is her husband (PW2). Both these witnesses turned hostile but the Trial Court convicted the accused. The appeal has been dismissed and hence the present appeal.

The victim appearing as PW1, in examination, supported her case and virtually repeated what has been said in the FIR. However, in cross-examination, she turned hostile and denied whatever had been said in the examination in chief. The time of occurrence was changed from 5.30 pm to 6.00 pm and in cross-examination, she even stated that it was dark and could not see the person who assaulted her. In fact, in cross-examination, the prosecutrix stated that she did not even know the accused and could not identify who had assaulted her as it was very dark. After being declared hostile, she was again cross-examined by the prosecution. The main suggestion put to her was that she has been won over by the accused. The husband of the victim appearing as PW2 also did not support the case of the prosecution. According to him, his wife did not inform about any rape committed with her.

The Trial Court virtually convicted the accused relying upon the statements recorded under Sections 154 and 161 of the Code of Criminal Procedure, 1973 (CrPC) and totally bypassing the statements made on oath in the Court. It is the statement made on oath in the Court which has to be the foundation of conviction. The conviction of an accused cannot be based on a statement of the witnesses recorded under Section 161, CrPC or even under Section 154, CrPC especially when the witnesses resile from their earlier statements while appearing in the Court and make a completely different statement in the Court.

No doubt, it is true that conviction in a case of rape can be based on the sole testimony of the prosecutrix. However, there is one caveat, which is, that the statement should inspire confidence. This is a case of victim who is blowing hot and cold and changing her stand from time to time. Such a witness cannot be classified as a trustworthy witness and therefore based on her statement alone it would not be proper to convict the accused. As already stated above, even the husband has not supported the victim.

In view of the above, we allow the appeal and set aside the judgments of both the Courts below and acquit the accused.

.....J.
[DEEPAK GUPTA]

.....J.
[SURYA KANT]

NEW DELHI;
October 14, 2019.

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 28533/2019

(Arising out of impugned final judgment and order dated 21-09-2011 in CRLA No. 2572/2004 passed by the High Court Of A.P. At Hyderabad)

NARRA PEDDI RAJU

Petitioner(s)

VERSUS

**STATE OF A.P. NOW STATE OF TELANGANA Respondent(s)
(IA No. 128407/2019 - CONDONATION OF DELAY IN FILING and IA No. 128408/2019 - EXEMPTION FROM FILING O.T.)**

Date : 14-10-2019 This matter was called on for hearing today.

**CORAM : HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE SURYA KANT**

**For Petitioner(s) Mr. A. Sirajudeen, Sr. Adv.
Mrs. Revathy Raghavan, AOR**

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

Leave granted.

The criminal appeal is allowed in terms of the signed order.

Pending application stands disposed of.

**(MEENAKSHI KOHLI)
COURT MASTER**

**(RENU KAPOOR)
COURT MASTER**

[Signed order is placed on the file]