SUPREME COURT OF INDIA

Koppula Venkat Rao

Vs.

State of A.P.

Crl.A.No.84 of 1998

(Arijit Pasayat and Doraiswamy Raju JJ.)

10.03.2004

JUDGMENT

Arijit Pasayat, J.

1. Taking lift on a bicycle after a late-night movie show and travelling in darkness can result in some harrowing traumas for a teenaged girl, as the victim in the present case experienced.

2. The accused-appellant Koppula Venkat Rao calls in question the legality of his conviction as recorded by the trial court and upheld by learned Single Judge of the Andhra Pradesh High Court under Section 376 of the *Indian Penal Code, 1860* (in short "IPC"). He was sentenced to undergo 10 years' RI by the trial court which was reduced to 5 years by the High Court.

3. Accusations which led to the trial of the accused are essentially as follows:

4. On 10-6-1991, at about 6.00 p.m. the victim along with her friend and two others started on foot from their village to go to a nearby place for witnessing a movie. They reached crossroads of the village where the accused along with his friends who were going to Borrampalem on their bicycles met them and gave lift to the victim girl and her friends and all of them witnessed the picture at a movie hall. At the time of return the accused nourished an idea of quenching his lust by committing sexual intercourse with the victim, invited her to board his bicycle and the victim girl agreed to accompany him and sat on his bicycle and the accused rode the bicycle at high speed and reached near a cattle shed, stopped the bicycle, dragged the victim by using criminal force into the cattle shed, took out her sari, and got on top of her, but before actual intercourse ejaculated. The accused left the victim on hearing some sound and went away along with his bicycle. Thereafter, the victim girl came on to the road. The parents of the victim girl took her to the village. The father of the victim girl approached the village elders on the same night who promised to summon the accused on the next day. But the accused did not turn up till the evening. On 12-6-1991, when the victim girl along with her parents were on the way to the police station, the SI of Police met them and asked them to go to the Government Hospital, and there he recorded the statement of the victim girl and on the basis of the statement a crime was registered in Crime No. 39 of 1991

and investigation was started. After investigation, charge-sheet was filed. The accused pleaded innocence and faced trial.

5. The prosecution examined twelve witnesses. PW 1 is the victim while PW 2 and PW 3 are her mother and father respectively. PW 5 is the doctor who examined the victim and PW 12 is the doctor who examined the accused.

6. Placing reliance on the evidence of PW 1, the trial court convicted the accused as aforesaid holding that the victim was subjected to rape by the accused. Conclusions were upheld by the High Court. Both the courts held that since ejaculation was there, it amounted to rape and whether actual intercourse was there is immaterial, ejaculation being the ultimate act of sexual intercourse.

7. In support of the appeal, learned counsel for the appellant submitted that the prosecution version has many loose ends and the courts below have not analysed the evidence in its proper perspective. Additionally, the evidence of PW 1 and the doctor's evidence clearly rule out the commission of rape as alleged. Even if the prosecution version is accepted in its totality, no case of rape is made out and at the most a case of attempt to rape is made out. Actual intercourse and not ejaculation is the sine qua non of the offence.

8. Per contra, learned counsel for the respondent State submitted that the well-reasoned orders of the trial court and the High Court unerringly point out that the accused had committed rape on the victim, as established beyond a shadow of doubt. The version of the prosecutrix alone can form the foundation of conviction.

9. The plea relating to applicability of Section 376 read with Section 511 IPC needs careful consideration. In every crime, there is first, intention to commit, secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law punishes the person attempting the act. Section 511 is a general provision dealing with attempts to commit offences not made punishable by other specific sections. It makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable with death. An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment is awarded.

10. A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit

the offence. The word "attempt" is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under Section 122 (waging war against the Government of India) and Section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.

11. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but failing short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, failing short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.

12. In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect.

13. The sine qua non of the offence of rape is penetration, and not ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. Definition of "rape" as contained in Section 375 IPC refers to "sexual intercourse" and the Explanation appended to the section provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Intercourse means sexual connection. In the instant case that connection has not been established. Courts below were not correct in their view.

14. When the evidence of the prosecutrix is considered in the proper perspective, it is clear that the commission of actual rape has not been established. However, the evidence is

sufficient to prove that attempt to commit rape was made. That being the position, conviction is altered from Section 376 IPC to Sections 376/511 IPC. Custodial sentence of 3 and 1/2 years would meet the ends of justice. The accused who is on bail shall surrender to custody to serve remainder of his sentence.

15. The appeal is allowed to the extent indicated.