Supreme Court of India
State Of A.P vs P. Narasimha on 29 April, 1994
Equivalent citations: 1994 SCC (4) 453, JT 1994 (3) 576
Author: H B.L.
Bench: Hansaria B.L. (J)

PETITIONER:
STATE OF A.P.

Vs.

RESPONDENT:
P. NARASIMHA

DATE OF JUDGMENT29/04/1994

BENCH:
HANSARIA B.L. (J)
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HANSARIA B.L. (J)
SAHAI, R.M. (J)

CITATION:
1994 SCC (4) 453 JT 1994 (3) 576
1994 SCALE (2)760

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by HANSARIA, J.- These appeals are by the State, which has felt aggrieved at the acquittal of the two respondents by the High Court on appeals being preferred by them against their convictions, which were under Sections 366, 366-A and 376 IPC insofar as Respondent 1 is concerned and under Section 376 as regards Respondent 2. Two other accused had also been booked for trial under Section 366 but they were acquitted.

2. The short facts which need be noted for the disposal of the appeals are that according to the prosecution, PW 3 Bhagyamma had been kidnapped by Respondent 1 with the intent that she would be forced or seduced to have intercourse, whereafter she came to be raped by both the respondents. The High Court, after perusal of the materials on record, took the view that elopement of Bhagyamma may not be ruled out. After hearing Shri Raghuvir for the appellant-State, we have not felt inclined to take a view different from that of the High Court on this aspect. Shri Raghuvir's main submission, however, is that acquittal of Respondent 1 under Section 366 was not warranted, even

if, age of Bhagyamma be taken to be above 16. The relevance of this age is that consent becomes material if the age be above 16. For the appeals at hand, we shall presume that Bhagyamma was above

16. We have taken this stand because the evidence of PW 13, Professor S.N. Narain Reddy who had examined Bhagyamma, is that her age, which was 16 or 17 as determined on the basis of ossification test, could differ by one or two years this way or that way.

3. Let us, therefore, see whether on the facts of the present case it could be held that Bhagyamma had consented to the sexual act insofar as Respondent 1 is concerned. Learned counsel for the respondents has contended in this connection that the fact that Bhagyamma had kept totally silent about the sexual assault on her when she had met PW 2 soon after she had started living with Respondent 1 would show that she was a consenting party. This submission is reinforced by contending that Bhagyamma took exception to overtures of Respondent 1 after she got herself married to Respondent 2. This would show, according to the learned counsel, that prior to that Bhagyamma had really not objected to the sharing of bed with Respondent1.

4. We do not, however, agree with the learned counsel, because Bhagyamma being not at all a girl of easy virtue could not have agreed voluntarily to allow Respondent 1 to sexually assault her, when she ultimately got herself married to Respondent 2 and that too within 10-15 days of her aforesaid elopement. Her silence about non-reporting to PW 2 or, for that matter to PW 6, in this regard has to be taken to be either because of fear of reprisal or because of the need felt by Bhagyamma to protect her image.

5. We, therefore, hold that even if Bhagyamma was above 16, Respondent I was guilty of the offence under Section

376. As, however, at the relevant time no minimum sentence for offence of rape had been prescribed, which had come to be so done by Criminal Law (Amendment) Act, 1983 the present occurrence having taken place in November 1982, we are of the view that interest of justice would be met if the sentence of imprisonment undergone, which is said to be about three years, is inflicted as punishment on Respondent 1 for his offence under Section 376.

6. As to the acquittal of Respondent 2 under Section 376, Shri Raghuvir's argument does not stand on strong footing, because Bhagyamma having married Respondent 2, her consent can well be presumed even for sexual acts prior to the marriage.

7. In the result, the appeals are partly allowed by setting aside the order of acquittal of Respondent 1 insofar as his offence under Section 376 is concerned for which offence sentence of imprisonment is reduced to the one already undergone. The appeals are dismissed qua Respondent

2. Both the appellants are on bail. They need not surrender.