

**IN THE COURT OF THE SPECIAL JUDGE FOR PROTECTION
OF CHILDREN FROM SEXUAL OFFENCES ACT-cum- ADDL.
METROPOLITAN SESSIONS JUDGE: VIJAYAWADA.**

**Present: Sri ALAPATI GIRIDHAR,
Special Judge for Protection of Children from Sexual Offences-
cum-
Addl. Metropolitan Sessions Judge, Vijayawada.**

Tuesday, this the 27th day of December, 2016.

S.T.C. No.6/2016

- 1). Smt.Shaik Asma,
w/o Azeem,
Lambadipeta,
Vijayawada.
- 2). Sk.Azeem,
s/o Sk.Chand Basha,
Lambadipeta,
Vijayawada. ... Accused

This petition coming on this day for hearing before me in the presence of Sri M.Gowtham Babu, Advocate for 1st & 2nd accused and the matter having stood over for consideration till this day, the Court made the following.

ORDER

1. The Court issued show cause notices to the 1st and 2nd accused u/Sec. 193 of IPC r/w 344 of Cr.P.C., who are PWs.1 & 2 respectively in Sessions Case No.44/2014, PW1 & PW2 are mother & father of the victim girl in the Sessions Case and they are hereinafter referred as the 1st & 2nd accused respectively.

2. The brief averments of the show cause notices issued to the 1st & 2nd accused are that the Court in its Judgment dated 05.11.2015 observed that PW1/the 1st accused herein and PW2/the 2nd accused herein deposed 2 inconsistent versions, one is that the accused committed aggravated penetrative sexual assault on their daughter, the other version is that they lodged this case against the accused out of quarrel at public water connection, the Court observed that they gave false evidence before the Court, it is of the opinion that it is expedient in the interest of justice that both must be tried for giving false evidence

before the Court, it is a fit case to try them summarily for perjury in the interest of justice and accordingly took cognizance u/Sec. 193 of IPC r/w 344 of CrPC and issued show cause notices to the 1st & 2nd accused.

3. The brief averments of the show cause notice issued to the 1st accused are that in her chief examination, she deposed that she, her husband and the victim girl gone to her mother's house on 22.7.2014, when they were preparing sweet (semiya), the victim girl went to opposite house for playing, she approached to the opposite house as to feed breakfast to her daughter, she found the door is closed, she opened the window and found her daughter was on mattress on floor without clothes and Boya Praveen Kumar was on her without clothes, she shocked and raised alarm and banged the doors, her mother and Reshma and others came there, Boya Praveen Kumar wore clothes, opened the doors and ran away by throwing them, that she dressed the girl and the girl narrated that she gone for playing with the child of Reshma, but Boya Praveen Kumar called her and gave chocolates, closed the doors, removed her clothes and he removed his clothes, he laid her on the mattress and did something at her private part, they took the victim girl to RMP Doctor/Rajani and they approached the police, lodged report/Ex.P1, but in her cross examination she stated that the case is lodged against Boya Praveen Kumar out of quarrel at Public water connection and she deposed against him as per the instructions of Police and she cannot identify the accused.

4. The brief averments of the show cause issued to the 2nd accused are that he received phone call from his wife/1st accused, she narrated that Boya Praveen Kumar committed rape on their daughter, he rushed, searched for the accused, found him and tied to a tree and slapped him, lodged report against him and Police took him, his daughter complained pain at her private part and she was treated in Government Hospital, but in his cross examination he stated that the case is lodged against Boya

Praveen Kumar out of quarrel at Public water connection and he deposed against him as per the instructions of Police. The Court observed in detail in the judgment observed the grounds and material for issuing show cause notice and sought their explanation to show why they should not be punished u/Sec.193 of IPC r/w 344 of CrPC.

5. The 1st & 2nd accused appeared and they were furnished the material, they filed joint explanation.

6. The brief averments of the joint explanation of the 1st & 2nd accused are that the 1st accused is house-wife and the 2nd accused is daily labourer, they have 2 female children and no one was there to take care of their children, they were warned by surrounded society that in future nobody will come forward to marry their children if they admit the occurrence of rape before the Court, they were misguided, however Boya Praven Kumar is convicted and prayed to take lenient view and pardon them, if the Court finds that they have committed wrong act to impose simple costs in the interest of justice.

7. The Court pursued the material on record, including their explanation, not satisfied with the explanation and satisfied with the material on record, registered this proceeding. The 1st & 2nd accused were briefed about the substance of accusation against them, they prayed to take lenient view.

8. The learned Counsel for the 1st & 2nd accused contended that they are from poor background and prayed to take lenient view by imposing fine.

9. The Court, considering the material, explanations and submissions framed the following point for determination:

Whether there exists material to show that the 1st & 2nd accused willfully gave false evidence in the judicial proceeding, if so, whether proved beyond reasonable doubt to find guilty u/s.344 of Cr.P.C?

10. The Court perused the show-cause notices, joint explanation of the 1st & 2nd accused, judgment and depositions of PWs.1 & 2.

11. The Inspector of Police, II Town Police Station laid charge sheet against Boya Praveen Kumar u/Sec.342, 376(2)(i) of IPC & Sec.6 of PoCSO Act on the strength of the report lodged by PW1/the 1st accused herein, Boya Praveen Kumar is convicted.

12. The Court basing on the evidence of the 1st & 2nd accused/PWs.1 & 2 in the Sessions Case, observed that they deliberately gave false evidence by deviating from their chief examination, that it is expedient in the interest of justice that both must be tried for giving false evidence before the Court and it is a fit case to try them summarily for perjury in the interest of justice and accordingly took cognizance u/Sec.193 of IPC r/w 344 of CrPC and issued show cause notices to PWs.1 & 2/the 1st and 2nd accused herein.

13. As per the deposition of PW1 in Sessions Case No.44 of 2014/1st accused herein, on 16-03-2015 in her chief examination she deposed that she, her husband and the victim girl gone to her mother's house on 22.7.2014, they were preparing sweet (semiya), the victim girl went to opposite house for playing, she approached to the opposite house as to feed breakfast to her daughter, she found the door is closed, she opened the window and found her daughter was on mattress on floor without clothes and Boya Praveen Kumar was on her without clothes, she shocked and raised alarm and banged the doors, her mother and Reshma and others came there, Boya Praveen Kumar wore clothes, opened the doors and ran away by throwing them, that she dressed the girl and the girl narrated that she gone for playing with the child of Reshma, Boya Praveen Kumar called her and gave chocolates, closed the doors, removed her clothes and he removed his clothes, he laid her

on the mattress and did something at her private part, they took the victim girl to RMP Doctor/Rajani and they approached the police, lodged report/Ex.P1. Police examined her and referred the girl to the Government Hospital, her daughter was not fully matured, she could not walk and speak properly. But in her cross examination on 7-4-2015 she deposed that this case is lodged against Boya Praven Kumar out of quarrel at public water connection and she deposed against him as per the instructions of police, she further deposed that she cannot identify him. Whereas the learned Prosecutor cross-examined her suggesting that she did not depose at the instance of police and now she compromised the matter with Boya Praven Kumar and deposing false to help him, but she denied the same.

14. As per the deposition of PW2 in Sessions Case No.44 of 2014/2nd accused herein, on 16-03-2015 in his chief examination deposed that he gone to her mother-in-law's house along with his wife and children, he left them at the house and gone to his shop, at about 12.00 Noon he received phone call from his wife and she narrated that Boya Praveen Kumar committed rape on the victim girl, he asked her to telephone to his brothers, he rushed there, they searched for Boya Praveen Kumar and found him, his brothers tied him to a tree and slapped him, they lodged report and the police took him, that his wife and daughter narrated the incident how Boya Praveen Kumar took her into his house and committed the offence, his daughter also complained pain at her private part and his daughter was examined by the Government Doctors. The girl could not walk and speak properly, but in his cross examination on 7-4-2015 he deposed that this case is lodged against Boya Praven Kumar out of quarrel at public water connection and he deposed against him as per the instructions of police. Whereas the learned Prosecutor cross-examined him suggesting that he did not depose against Boya Praveen Kumar at the instance of police and that

he deposed what had happened to his daughter, that his chief examination is true, that he is deposing false to help Boya Praveen Kumar out of compromise with him, but he denied the same.

15. The above evidence of 1st and 2nd accused in S.C. No.44/2014 reveals that the 1st accused and 2nd accused initially on 16-03-2015 deposed on oath that Boya Praveen Kumar committed rape on their daughter, they lodged report against him and their daughter complained pain at her private part and she was treated in Government Hospital, whereas in their cross examination on 7-4-2015 they took 'U' turn stating that they lodged the case against Boya Praveen Kumar out of quarrel at Public Water Connection.

16. The above material further reveals that the 1st & 2nd accused were examined in chief on 16.3.2015 where they supported the prosecution case on penetrative sexual assault on their daughter aged 6 years. They were cross examined on 7-4-2015, where they took 'U' turn. Whereas in their explanation they stated that they were warned by surrounded society circle if they admit the rape nobody would come forward to marry their children and they were misguided by the surrounded society circle. But the material on record show that they deviated from their evidence deliberately introducing quarrel at Public water connection, further even on the face of their explanation it shows that out of misguiding by surrounded society circle they deposed so before the Court, which also strengthens the case against them, further the explanation of the 1st & 2nd accused also strengthens the case of perjury, they could not place material before the Court to show that they are innocents and could not demonstrate material to show their innocence and further the explanation is also devoid of merits in view of the above evidence on record.

17. The Division Bench of Hon'ble High Court in Pubi Satyanarayana vs. State of Andhra Pradesh (1995 CrI.L.J. 1738),

While modifying the conviction and sentence from Sec.302 of IPC to Sec.304 Part I of IPC, the **Hon'ble High Court** upheld initiation of perjury by Sessions Judge, observed at para 6, the menace of perjury and role of Judges, the para is extracted here under;

The hostile attitude of the witnesses has become the order of the day. It appears that the Courts below are taking a lenient view on the resiling events that take place during the course of the trial. This is a matter of concern because where the witnesses state on oath in the Court in the first instance and after taking adjournment on some pretext, the witnesses turn hostile, which is nothing but blatant manipulation of evidence. It is the duty of the Court in such cases to proceed for perjury against the persons concerned. When the statements have been made in the Court during the trial and subsequently the witnesses resile, the Court is competent to take steps to initiate proceedings for perjury and, in the instant case, the Court below is perfectly justified in taking steps to proceed for perjury. We appreciate the stand taken by the learned Additional Sessions Judge and believe that the same trend will be followed by other Sessions Judges too in similar situations so that the manipulation can be curbed at the initial stage itself.

18. The Hon'ble Supreme Court of India in Manila Vinod Kumari case Vs. State of Madhya Pradesh, reported in (2008) 8 SCC 34 observed the menace of perjury at para 12 that Courts to use provisions more effectively, the para is extracted here;

12. The evil of perjury has assumed alarming proportions in cases depending on oral evidence and in order to deal with the menace effectively it is desirable for the courts to use the provision more effectively and frequently than it is presently done.

19. The three Judge bench of Hon'ble Supreme Court of India in Re: suo moto proceedings against Mr. R. Karuppan, Advocate, reported in (2001) 5 SCC 289, observed the menace of perjury, the same is extracted here under;

In India, law relating to the Offence of perjury is given a statutory definition under Section 191 and Chapter XI of the Indian Penal Code, incorporated to deal with the offences relating to giving false evidence against public justice. The offences incorporated under this Chapter are based upon recognition of the decline of moral values and erosion of sanctity of oath. Unscrupulous litigants are found daily resorting to utter blatant falsehood in the courts which has, to some extent, resulted in polluting the judicial system. It is a fact, though unfortunate, that a general impression is created that most of the witnesses coming in the courts despite taking oath make false statements to suit the interests of the parties calling them. Effective and stern action is required to be taken for preventing the evil of perjury, conceitedly let loose by vested interest and professional litigants. The mere existence of the penal provisions to deal with perjury would be a cruel joke with the society unless the courts stop to take an evasive recourse despite proof of the commission of the offence under Chapter XI of the Indian Penal Code. If the system is to survive, effective action is the need of the time..."

20. The Court, in view of the material on record and the above law, holds the evidence on record shows beyond reasonable doubt that the 1st & 2nd accused/PWs.1 & 2 deliberately gave false evidence placing 2 inconsistent versions, one is that Boya Praveen Kumar committed rape on their daughter and they lodged report against him, the other version

is that they lodged this case out of quarrel at Public water connection and they deposed false evidence before the Court introducing quarrel at Public water connection as afterthought.

21. In the result, the 1st & 2nd accused found guilty and accordingly they are convicted u/s 344(1) of Cr.P.C.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court, this the 27th day of December, 2016.

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22. The learned Counsel for the 1st & 2nd accused submitted that they have 2 children and they will be orphans if they are sentenced to imprisonment, prayed to take lenient view and impose fine on them in the interest of justice.

23. The 1st accused submitted that she has 2 children, no one is there to take care of them, her elder daughter is not matured one, prayed to condone her act for this time.

The 2nd accused submitted that he is eking livelihood by doing labour work, prayed to condone his act for this time and he would not repeat this act and prayed for mercy.

24. Sec.344(1) Cr.P.C. provides imprisonment which may extend to three months or fine Rs.500/- or with both.

25. The Court, considering the material on record on the deliberate acts of the 1st & 2nd accused, their evidence before the Court, their explanations and their conduct before the Court, holds that they are not entitled to extend the benefit under the Probation of Offenders Act in the circumstances of the case.

26. The Court, considering the above submissions, their explanations and their conduct, inclined to take lenient view and awarding the following sentence to meet the ends of justice to commensurate with their acts.

27. In the result, the 1st & 2nd accused are sentenced to undergo simple imprisonment for a period of one month each and to pay a fine of Rs.500/- (Rupees Five hundred only) each, in case of default of payment of fine amount, to undergo simple imprisonment for a period of one month, for Sec.344(1) of Cr.P.C. They are appraised of their right to appeal and free legal aid.

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APPENDIX OF EVIDENCE

N I L

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