

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No. 1465 OF 2007

ORDER:

This is a Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code') by the petitioner/accused assailing the judgment dated 09.10.2007 in CrI. A. No.116/2006 passed by the learned IV Additional Sessions Judge, Kurnool.

1. **(b)** By the judgment dated 28.09.2006 in S.C. No.9/2006 the learned Additional Assistant Sessions Judge, Kurnool had found the accused guilty of the offence punishable under section 354 of the Indian Penal Code and convicted him of the said offence under section 235 (2) of the CrPC and sentenced him to undergo rigorous imprisonment for a period of two years and pay a fine of Rs.500/- and suffer simple imprisonment for one month in default of payment of the said fine amount. The learned IV Additional Sessions Judge while dismissing the said appeal of the accused had confirmed the judgment of the trial Court in all respects.

2. I have heard the submissions of the learned counsel for the petitioner/accused and the learned Additional Public Prosecutor. I have perused the material record.

3. The case of the prosecution including the substance of the charge, in brief, is this: 'On 28.08.2005, the informant Sankaramma (PW1) went to a grazing area at Thurukonikunta along with cows and 60 goats. She was accompanied by her nephew Hanumanthu (PW4) and servant Govindu (PW3). On that

day at about 15.30 hours she was present near the cows, while PWs 3 and 4 were present at a place, at some distance, where the goats were grazing. While so, the accused went to PW1 and had dragged her and had thrown her down with an intention to outrage her modesty. When she had raised cries, PWs 3 and 4 had rushed to her and had found that the accused was running away from the spot. Subsequently, PWs 1, 3 and 4 had returned to the house. No report was immediately lodged, as the brother of PW1 by name Chennaiah (PW2) was not available in the village. On his return, the details of the incident were informed to him. On 01.09.2005, PW1 went to Bethamcherla Police Station along with his said brother and gave a written report. On the basis of the said first information, a case in Crime No.145/2005 was registered under Section 354 of the Indian Penal Code and was investigated into. After the completion of the investigation, a charge sheet was filed against the accused.'

4. Before the trial Court, apart from PWs 1 to 4, PW5, the ASI of Police, who had registered the crime and investigated into the matter and PW6, the SI of Police, who had arrested the accused and sent him to the Court concerned for remand and who had verified the investigation done by PW5 and had filed the charge sheet, were examined. The first information given by PW1, the FIR issued by the Police and the rough sketch of the scene of offence were exhibited as exhibits P1 to P3.

5. The case of the accused is as follows: "Admittedly, except the sole testimony of PW1 there is no other evidence of any other eye witness to corroborate her evidence. She was aged about 70 years at the time of the alleged offence whereas the accused was aged 24 years. Therefore, the accusation that the

accused had committed the alleged offence is unbelievable, more particularly, as PW1 who was an aged and infirm lady was unable to even walk without the assistance of a stick. PW1 went along with the cattle to the fields situated at a long distance from the village and that too to a hillock area is also unbelievable. There is a delay in lodging the first information with the police; and the said delay was not explained. PWs 1 to 4 are related and interested witnesses and their evidence cannot be given any credence. There is a contradiction in the evidence with regard to the location of the scene of offence. Though it is stated that PW1 has sustained abrasions, no medical record was produced and no doctor was examined. The accused is falsely implicated in the alleged offence to harass and wreck vengeance against him as there were political ill feelings, differences and disputes between the accused and the PW2, who is the brother of the PW1.”

6. (a) At the time of hearing, the learned counsel for the accused had reiterated the various grounds urged in the grounds of revision and had further contended that at the time of examination of the scene of offence by PW5, he was accompanied by PWs 3 and 4 only and that according to him only PWs 3 and 4 had shown him the scene of offence and that PW1 did not accompany him at that time as she was an aged woman and as she was not able to walk along hillock and that therefore, the evidence of PW5, who is one of the investigating officers, is sufficient to disbelieve the prosecution case and conclude that the entire case is unbelievable and unnatural. He would further submit that PW5 had stated that the scene of offence is located towards East of the police station whereas PW6, the successor Investigating Officer, who had filed the charge sheet, had stated that the scene of offence is located towards North East of the

police station and that, therefore, there is inconsistency or any amount of doubt about the location of the alleged scene of offence and that this is only because of the fact that no incident had taken place and that the Police Officers PWs 5 and 6 have never visited the scene of offence and also because of the fact that they had conducted table investigation to support a false case foisted against the accused on account of the ill feelings and disputes between him and PW2, who is no other than the brother of PW1.

6. (b) Per contra the learned Additional Public Prosecutor had contended that all the witnesses PWs1, 3 and 4 had consistently deposed against the accused and that the evidence of the said witnesses is cogent and credible and that Courts below having accepted the evidence of the said witnesses had recorded concurrent findings and that the well reasoned findings in the well considered judgments of the Courts below do not call for interference and that the revision case is devoid of merit and is liable to be dismissed.

7. Now, the points for determination are:

Whether the prosecution had established the guilt of the accused for the offence punishable under Section 354 of the IPC as required under law and beyond all reasonable doubt?

Whether the accused had made out valid and sufficient grounds for his acquittal? And, if so, whether the impugned judgment is liable to be set aside?

8. **POINTS:**

8. (a) PW1, the victim, PW3, her servant and PW4, her grandson, had all stated in one voice that on the day of incident all the three of them had taken two cows and 60 goats to Duddakonda area for grazing and that at about 3.00 PM PW1 was with the two

cows near vagu at Duddakonda area while PWs 3 and 4 were with the goats which were grazing at some distance of about ½ a furlong. PW1 had further testified that when she was sitting under a tree, the accused came there and had requested her to satisfy his sexual desire and pushed her to ground and then she had raised cries and that on hearing her cries PWs 3 and 4 had rushed to the spot and on seeing them the accused had run away and that thereafter she and PWs 3 and 4 had returned to the village. PWs 3 and 4 had also further testified that on hearing the cries of PW1 they both had rushed to the spot and that by the time they had reached the spot PW1 was lying on the ground and the accused was running away. PW3 had also stated that PW1 had informed that the accused had caught hold of her hand and pushed her to the ground. PW4 had stated that he had identified the accused while he was running away and that they (he and PW3) had tried to catch him but, they could not catch hold of him and that PW1 had informed him that she was insulted and her modesty was outraged by the accused. PW1 had further stated that since her brother PW2 was not available in the village, they had waited for his arrival and that on his return to the village after three days, she had informed about the incident to him and that he took her to the police station and that at the police station PW2 had scribed the report as dictated by her and that she gave exhibit P1 report to the police. PW2, the brother of PW1, had corroborated her version in this regard. In her cross examination, PW1 had maintained her stand and had given the details of the incident and had further stated that she had sustained abrasions on both her knees and that the accused ran away towards the village side on the arrival of PWs 3 and 4. In her cross examination it is elicited that her husband is aged about 70 years and he is suffering with old age

ailments and that her brother (PW2) was working as a cooly under a ryot by name Muralidhar Reddy. She had denied the suggestions that the accused had never requested her to satisfy his sexual desire and that the incident as spoken to by her has not happened and that she had deposed falsehood. She had further denied the suggestion that there is enmity between her family and the accused and that for that reason the false case was foisted. She had also denied the suggestion that she and her family belong to Telugu Desam political party whereas the accused belongs to the opposite political party and that as he had refused to join the Telugu Desam political party, the case was foisted with the help of the said Muralidhar Reddy. Suggestions that there was enmity from the beginning between his family and the family of the accused and that the case was foisted with the influence of the Muralidhar Reddy were put to PW2. But, PW2 had also denied the said suggestions. It was elicited in the cross examination of PW2 that he had married the daughter of PW1. He had further denied the suggestion that the accused has not committed any offence. PW3-Govindu, who was said to be the servant of PW1, had also denied the suggestion that he was tutored by PWs 1 and 2 to depose falsehood. He had further stated that when the accused was running he had turned back and then he saw his face and identified him. He had also denied the suggestions that the accused never came to the suddakonda and had never outraged the modesty of PW1 and that he is deposing falsehood at the instance of PW1 as he is working in the house of PW1. He had stated that he is working under PW1 on a remuneration of Rs.6,000/- per month. PW4 is the nephew of the PW1 and the son of PW2. He had admitted that PW2 was working as a coolie in the factory of Muralidhar Reddy. PW4 had denied the suggestions

that from the beginning there was enmity between his family and the family of the accused and that for that reason the accused has not supported the political party of Muralidhar Reddy and therefore, a false case was foisted against the accused. PW4 had also denied the suggestions that the accused never came to the scene of offence and that the accused had never committed any offence against PW1 and that the case was foisted due to political enmity to harass him. PWs 3 and 4 had also maintained their respective stands in their cross examinations.

8. **(b)** Though, PW 1 had deposed about the incident in which her modest was said to have been outraged by the accused and PWs 3 and 4 had supported the case of the prosecution, the vital question is whether their consistent version is true or is a version far from truth and/or whether there are any circumstances to extend a reasonable benefit of doubt to the accused.

8. **(c)** On a careful and close scrutiny of the evidence on record and the circumstances of the case, this Court is of the well considered view that this is a fit case to extend a reasonable benefit of doubt to the accused for the following among other reasons: **Firstly**, the victim woman is of about 68 years of age on the date of the alleged incident; and the accused was of the age of 24 years. Therefore, that he had asked her to satisfy his sexual desire and has tried to outrage her modesty appears to be ex-facie unbelievable and unnatural. **Secondly**, the scene of offence is indisputably a grazing area in the outskirts of the village near Suddakonda limits; and it is at a distance of 6 kilo meters from the police station as per the version of PW5, one of the two investigating officers. Whether at that advanced age, she had gone with PW3 and 4 with two cows and 60 goats to such a distant

place is doubtful. This doubt is fortified by the evidence of the investigating officer-PW5, who was said to have visited the scene of offence. According to his evidence he had visited, on the same day, the scene of offence which is located at a distance of 6 Kms from his police station and that at that time PWs 3 and 4 had only accompanied him and showed him the exact scene of offence and that PW1, who is an aged woman was unable to walk along the hillock and that therefore, he had taken PWs 3 and 4 along with him to the scene of offence. His evidence, therefore, shows that PW1 was unable to walk along the hillock due to her advanced age. Therefore, her presence at the scene of offence with the cows is highly doubtful. **Thirdly**, there was inordinate delay in lodging the first information with the police. The incident as per the version of PW1 had happened on 28.08.2005 in the after noon. The police report under exhibit P1 was lodged with the police on 01.09.2005 at 15.30 hours. It is stated in the report that after informing her relatives about the incident the report was being lodged on that day. However, an improvised version was stated in the evidence to explain away the long delay in lodging the report with the police. PW1 and PW2, who is no other than the brother-cum-son-in-law of PW1, had deposed to the effect that as on the date of the incident PW2 was not in the village and that he had been to Kurnool and that therefore, PW1 had waited for his return to the village and that on his return to the village after three days, the report was lodged. However, this version that PW2 had been to Kurnool and that on his return after three days, the report was lodged was not stated in the exhibit P1 report. This improvised version in the evidence to explain away the long delay in lodging the first information with the police cannot be countenanced. The specific and consistent defence of the accused is that there was

enmity between his family and the family of PWs 1 and 2 from the beginning and that PW1 and her family belong to Telugu Desam political party whereas the accused belongs to the opposite political party and that as he had refused to join the Telugu Desam political party, the case was foisted with the help of the said Muralidhar Reddy. PW2 is a coolie and he is working in the factory of Muralidhar Reddy is borne out by the record. Further, the husband of PW1 who was aged about 70 years was alive and, therefore, there was no need for PW1 to wait for the return of PW2, her brother, from Kurnool, even if really he was at Kurnool. No explanation is forthcoming for not lodging a report promptly by PW1 after consulting her husband who was available in the house at the village. In these circumstances, the delay of nearly four days in lodging the first information with the police is fatal to the case of the prosecution and this inordinate delay is a strong circumstance which weighs in favour of the accused. **Fourthly,** in the evidence brought on record there is a discrepancy in regard to the exact location of the scene of offence. PW1, the victim, did not admittedly accompany the police officer at the time of the identification of the scene of offence. PW5, the first investigating officer who was said to have visited the scene of offence had stated that the scene of offence is towards East whereas PW6, the investigating officer, who had laid the charge sheet, had stated that the scene of offence is towards North East of the Police Station. **Lastly,** according to the defence of the accused, the enmity between his family and the family of PWs1 and 2 and the political rivalry are the reasons for his false implication in the case. No doubt, the political rivalry, as rightly urged, which is said to be the motive, is a double edged weapon and it can be made use of by any one party against the other party. And, it may be a

reason for the commission of the offence or for false implication. In the case on hand the same is not the reason for the commission of the offence. The long delay in lodging the first information and the absence of valid explanation for the long delay in the report-exhibit P1 and the improvised version in the evidence to explain away the delay, which is held to be not acceptable, and the absence of any reason for not lodging a report promptly after consulting the husband of PW1 who was available in the house are all the circumstances which cumulatively lead to the conclusion that the motive stated in the defence of the accused is also a strong circumstance to extend a reasonable benefit of doubt to him. **To sum up**, on a careful perusal of the judgments of the Courts below this Court is of the considered view that the Courts below had failed to appreciate the evidence in proper perspective and had failed to give cogent and convincing reasons in support of the findings recorded while over ruling or rejecting the contentions of the accused and that therefore, there is no legality or propriety in the finding of guilt recorded successively by the courts below against the accused. For the reasons assigned this Court is of the view that there are compelling and substantial reasons for interfering with the findings of the courts below.

8. (d) Viewed thus, this Court finds that the prosecution could not establish the guilt of the accused for the offence punishable under Section 354 of the IPC as required under law and beyond all reasonable doubt and that the accused had made out valid and sufficient grounds for extending a reasonable benefit of doubt and for acquitting him and that, therefore, the impugned judgment confirming the judgment of the trial Court recording a conviction and imposing a sentence on the accused is liable to be set aside. The points are accordingly answered.

9. In the result, the Criminal Revision Case is allowed and the impugned judgment of the Court below confirming the conviction recorded and sentence imposed by the trial court against the accused for the offence punishable under section 354 of the IPC is accordingly set aside and the accused is found not guilty of the said offence and is acquitted. The bail bonds of the accused shall stand cancelled and the fine amount, if any, paid by the accused shall be returned to him after the further appeal/revision time is over.

Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

M.SEETHARAMA MURTI, J

19th January 2015
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