

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Criminal Revision Case No.135 of 2007

Between :-

Avula Bapi Reddy .. Petitioner

And

The State of A.P.,
Rep.by Public Prosecutor,
High Court of A.P., Hyderabad .. Respondent

DATE OF JUDGMENT PRONOUNCED: 23-07-2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copies of Judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wish to see
the fair copy of the Judgment? Yes/No

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.135 of 2007

ORDER:-

The revision is directed against the Judgment, dated 24-01-2007, on the file of the IV-Additional Sessions Judge, Warangal, by and under which the conviction of the petitioner/accused for the offences punishable under Sections 354 and 506 IPC., and sentence of five years rigorous imprisonment and one year rigorous imprisonment respectively, together with the fine of Rs.500/- as imposed by the Principal Assistant Sessions Judge, Warangal, in S.C.No.804 of 2002, dated 30-04-2004 was confirmed.

2. The allegations, in brief, are as under:-

PW.1 is the wife of PW.2. The petitioner/accused is resident of the house opposite to their house. On 26-10-2002, at about 11.00 a.m., when other inmates of the house went to the agricultural fields, the accused entered into the house of PW.1 on the pretext of securing screwdriver and when PW.2 went inside, the accused followed her, caught hold of her and attempted to commit rape and when she raised cries, the accused ran from there by threatening that if she informs about the incident to anyone, her husband would be killed. Two days after the incident i.e., on 28-10-2002, the victim-PW.1 went to her parents house and on 23-11-2002 i.e., more than 25 days after the incident, PW.1 informed about the incident to her mother-PW.3 and thereafter, both PWs.1 and 3 came to the husband's house and narrated the incident. In the meantime, on 20-11-2002, there was a quarrel in between the family of PW.2 and the accused and both of them filed case and counter case with Rayaparthi P.S., which were registered as Cr.Nos.119/2002 and 120/2002 under Section 324 IPC. Four days thereafter, PW.1 lodged the present complaint alleging the offence said to have been committed by the accused on 26-10-2002, which was registered as Cr.No.124/2002 under Section 376 r/w 511 IPC. After completing the investigation, charge sheet was laid. The petitioner/accused denied the charges. The prosecution examined P.Ws.1 to 5 and produced Exs.P.1 to P.3 and the accused denied the evidence on record and no defence evidence was produced. After

hearing the arguments of both sides and perusing the material on record, the learned Asst. Sessions Judge has found the petitioner/accused guilty of the charges under Sections 354 and 506 IPC., convicted and sentenced him as stated above. The petitioner was unsuccessful in the appeal before the learned IV-Additional District and Sessions Judge, Warangal. Hence, the revision.

3. The contention of the petitioner/accused is that there is abnormal delay in lodging the complaint and the victim-PW.1 has exaggerated the incident when compared to her earliest complaint-Ex.P.1 and hence the testimony of PW.1 could not be relied upon. It is further submitted that the present complaint is filed on 24-11-2002 for the incident said to have taken place on 26-10-2002. On 20-11-2002, admittedly, there was an incident involving PW.2 and the petitioner/accused and both of them fought with each other which resulted in both of them filing the complaints with the police on 20-11-2002 and those crimes were registered as Cr.Nos.119/2002 and 120/2002. Learned Counsel submits that four days after these two crimes were registered and as a counterblast thereto, the present complaint is filed by PWs.1 and 2 alleging that an attempt on the modesty of a woman-PW.1 was made by the accused on 26-10-2002. Learned Counsel further submits that absolutely there are no valid grounds for the victim-PW.1 and her husband-PW.2 for not lodging the complaint for more than 28 days. Yet another circumstance which affects the credibility of the story of the prosecution is that even though the victim-PW.1 went to her parents house immediately after the incident, she did not even inform her mother about the alleged incident till 20-11-2002 and this, according to the learned Counsel, is a strong circumstance which belies the case of the prosecution. Learned Counsel further submits that both the Courts below have erroneously found the petitioner/accused guilty of the charges and the evidence on record is not properly appreciated and hence the revision.

4. On the other hand, learned Public Prosecutor submits that both the Courts below have appreciated the evidence on record in proper perspective and have delivered the findings of guilt of the accused which

do not warrant any interference. The revision is liable to be dismissed.

5. The point for consideration is as to whether the prosecution could prove its case beyond reasonable doubt so as to sustain the conviction and sentence as imposed by both the Courts below or whether the Judgments rendered by the trial Court and the first appellate Court suffer from any material illegality or irregularity warranting interference by the revisional Court?

6. **Point:-** The admitted fact is that PWs.1 and 2 are the husband and wife and PW.3 is the mother of PW.1 and the petitioner/accused is having his house just opposite to the house of PW.1. It is also admitted case that the victim-PW.1 went away from her husband's house on 28-10-2002 itself and stayed there for about 25 days. It is also fact that during all these days, the victim-PW.1 did not inform about the incident to anybody including her parents or husband. It is also a fact that on 20-11-2002, there was a fight in between the family of PW.1 and the accused and both the groups sustained injuries and both the groups landed in the Police Station with the complaints which were registered as Cr.Nos.119/2002 and 120/2002 under Section 324 r/w 34 IPC. It is also fact that four days after these two crimes were registered, the present complaint came to be filed alleging that on 26-10-2002 there was an attempt on the modesty of PW.1.

7. In a case of this nature, delay by itself is not fatal to the prosecution provided there are certain valid reasons for the victims of assault on a woman are forthcoming. The solitary testimony of the prosecutrix can also be made the sole basis for determining the guilt or otherwise of the offender provided the said evidence is cogent, consistent, convincing and shall inspire the confidence of the Court. Corroboration to the testimony of a prosecutrix need not be searched for if the evidence of the prosecutrix satisfies the above tests.

8. In the instant case, when the incident is said to have taken place on 26-10-2002, the victim-PW.1 went to her mother's house on 28-10-2002 and stayed there for about more than 25 days. She informed her mother that she came there since she was suffering with fever. She did not

inform about the incident to her mother. She also did not inform about the incident to her husband or mother-in-law even though she stayed with her husband for two days after the alleged incident. It is also on record that on 20-11-2002 i.e., nearly 25 days after this incident, there was a fight in between the accused and PW.2 and both of them filed the complaints with the police. Crimes were also registered. Four days thereafter, the present complaint was filed. In the absence of there being any satisfactory explanation for this abnormal delay of about 28 days in lodging the complaint and in view of the peculiar circumstances of the case, the said delay becomes fatal to the case of the prosecution.

9. In addition to the above, the evidence of the prosecutrix is found to be in complete variance with what she stated in the police complaint which is marked as Ex.P.1. In Ex.P.1 the allegation is that on 26-10-2002 at about 11.00 a.m., when she was alone in the house, the accused came to her and asked for a screwdriver and when she went inside, the accused suddenly came behind her and caught hold of her and attempted to rape her. It is further mentioned in Ex.P.1 that when she raised cries, the accused went away from there after threatening of dire consequences. As against the above version, there is the oral evidence of the victim-PW.1. It is spoken to by the victim that on the date of the incident, the accused came and asked for a screwdriver and when she was going towards the Television for bringing the screwdriver, the accused suddenly came behind her, fell her down by gagging the mouth with his hand, that the accused forcibly lifted her saree and attempted to rape. She also speaks about the alleged threats held out by the accused. It is evident that the version that is spoken to by PW.1 is not what is mentioned in the complaint-Ex.P.1. In the cross-examination PW.1 admits that she is educated woman having studied 9th standard and that the complaint was drafted by one Md.Hussain. She also admits that she did not mention in her complaint-Ex.P.1 all the details that are spoken to by her in her evidence. She also admits that she did not inform about the incident to her husband, her in-laws or parents. She also admits that the

present complaint is filed after the two complaints were filed by PW.2 and the accused against each other. She also admits that she did not give any reasons for the delay in lodging the complaint.

10. In view of the above, the evidence of PW.1-the victim cannot be said to be wholly reliable for accepting that the alleged incident took place since it is at variance with what is mentioned in the earliest complaint-Ex.P.1. PW.2 is the husband of PW.1. It is in his evidence that his wife went to her parents' village about 25 days prior to the quarrel which took place in between himself and the accused, for which complaints were filed. He further deposed that his wife returned to the village two days after that quarrel and informed them about the incident which took place about 25 days back and therefore the present complaint was filed. With regard to the quarrel which took place between PW.2 and the accused, for which two different complaints were filed, it is stated by PW.2 that when his mother was scolding his children, the accused quarrelled with him suspecting that his mother is abusing him. PW.2 admits that other than this, there were no other disputes in between the two families. PW.2 further admits when the complaints were filed on 20-11-2002, they were not aware about the incident said to have taken place on 26-10-2002.

11. PW.3 is the mother of PW.1 and it is also in her evidence that even though her daughter-PW.1 came to her house and stayed there for about 25 days, she did not inform about the incident till 20-11-2002 and on being informed, they came to the husband's village and then the complaint was lodged.

12. From the above evidence on record, what is evident is that when the incident is said to have taken place on 26-10-2002, the victim-PW.1 went to her parents' house on 28-10-2002 and did not inform about the incident to anybody till 20-11-2002. On 20-11-2002 case and counter-case were filed by PW.2 and the accused. Three days thereafter, PW.1 came to her husband's house and informed about the incident of 26-10-2002 and thereafter, the complaint-Ex.P.1 came to be filed on 24-11-2002. What is stated in Ex.P.1 is that the accused came behind her and caught hold her and attempted to rape but in the evidence, PW.1 stated

that the accused came from behind, fell her down, gagged her mouth, lifted her saree and attempted to commit rape. These essential details are not mentioned in the complaint-Ex.P.1. Apparently, the present complaint is filed as a counterblast to the two crimes registered four days prior thereto, involving PW.2 and his parents on the one hand and the accused on the other. Both the Courts below have not appreciated the evidence on record in proper perspective and have erroneously held that the petitioner/accused guilty of the offences punishable under Sections 354 and 506 IPC., and convicted and sentenced him as stated above. The said conviction and sentence cannot be sustained for the reasons stated above. The point is answered accordingly.

13. In the result, the revision is allowed setting aside the conviction and sentence imposed by both the Courts below. Consequently, the revision petitioner/accused is acquitted of the charges levelled against him. The bail bonds executed by him shall stand cancelled. The fine amount, if any, paid by him shall be refunded.

The miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

23rd July, 2015
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