

THE HONOURABLE MR JUSTICE M.S.RAMACHANDRA RAO

Crl.A.M.P.No.536 of 2009

and

Crl.A.No.315 of 2015

ORDER

Crl.A.(SR).No.29081 of 2008 is filed challenging the judgment dated 05.02.2008 in S.C.No.345 of 2007 on the file of Assistant Sessions Judge at Suryapet, acquitting the respondent of offences under Sections 354 and 323 IPC.

2. Crl.A.M.P.No.536 of 2009 is filed under Section 5 of Limitation Act, 1963, to condone the delay of 201 days in presenting the appeal.

3. Having regard to the averments in the affidavit filed in support of the application for condonation of delay, I am satisfied that sufficient cause has been shown by the prosecution for condoning the said delay. Therefore, Crl.A.M.P.No.536 of 2009 is allowed.

4. Coming to the merits of the appeal, the allegation against the respondent is that the de facto complainant as well as the respondent were residents of Parsaipally Village. On 06.09.2006 at about 3.30 PM., when the de facto complainant was attending to the weeding operation in her field, the accused is alleged to have lifted her physically, took her to nearby bushes and tried to rape her. It is the case of the prosecution that when the de facto complainant resisted the acts of the accused, he had beaten her severely and this was witnessed by neighbouring field owners, who arrived at the scene of offence. Thereupon, the accused ran away threatening that he would satisfy his desire even by killing her husband.

5. On the basis of the complaint given by the de facto complainant, the charge sheet was filed under Sections 354 and 323 IPC before the Judicial Magistrate of First Class, Suryapet, who then committed the case to the Court of Sessions Division, Nalgonda District and it was numbered as S.C.No.345 of 2007.

6. The prosecution examined P.Ws.1 to 9 and marked Exs.P1 to P4. On behalf of the accused, Exs.D1 to D3 were marked.

7. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with regard to the incriminating evidence against him. He denied the same.

8. Thereafter, by the impugned judgment dated 05.02.2008, the Court below acquitted the accused of the offences under Sections 354 and 323 IPC.

9. Questioning the same, this appeal is filed.

10. Learned Public Prosecutor contended that the Court below ought not have acquitted the accused of the offences under Sections 354 and 323 IPC and that the evidence on record shows beyond doubt that the accused has committed the offences alleged against him. He also contended that on the basis of conjectures and surmises, the Court below acquitted the accused.

11. P.W.1 stated about the incident. She stated that on arrival of her husband, who came to the place of incident on hearing her cries, the accused ran away. But Ex.P1 does not speak about the arrival of her husband when the accused was trying to outrage her modesty. P.W.2 stated that the prosecutrix was alone in the field and that he was in the house at the time of the incident. In Ex.D2, he stated that his wife told that the accused caught hold of her and forced her. Therefore, he could not have been an eyewitness to the occurrence. In Ex.D3, his statement under Section 161 Cr.P.C., it is recorded that he was coming from tapping palmyra tree at the time of the incident, but in the witness box, he admitted that he did not say so before the police. So, his evidence is not believable.

12. The alleged eyewitnesses P.Ws.3 and 4 became hostile. P.W.3 although stated that he heard some commotion at the field of P.W.2 but that when he questioned as to who it was, the accused had left P.W.1 and he did not go to the scene of offence. P.W.4 only stated that she had seen the accused running away and P.W.1 told her that the accused beat her. The evidence of P.W.4 is inconsistent with the evidence of P.W.3 since P.W.3 had stated that P.W.1 herself came and told him about the incident, whereas P.W.4 stated that they went to the field of P.W.2 and asked P.W.1 as to what had happened. So, it is

highly doubtful as to whether P.W.1 herself came to the field of P.W.3 or P.Ws.3 and 4 went to the field of P.W.2. P.Ws.5 and 6, who are said to have acted as mediators for the scene of offence, also turned hostile. While Ex.P1 states that the prosecutrix was beaten black and blue till she lost her consciousness, there were no grievous injuries on her person, except a simple injury on the right lower jaw. P.W.7, who is the Medical Officer and who treated P.W.1, stated that only one simple injury is found on the lower jaw of P.W.1 and not any grievous injuries which are suggested under Ex.P-1 report.

13. Thus the evidence on record cannot be said to establish the guilt of the accused beyond reasonable doubt. An important aspect of the matter is that Cr.No.65 of 2006 was registered on a report given by the wife of the accused against the son of P.Ws.1 and 2 for an attempt to murder. In the said case, P.W.2 is also an accused.

14. The above facts put together suggest that on account of enmity with the accused on account of wife of the accused filing a criminal complaint for an attempt to murder against P.W.2 and his son, the present complaint was filed.

15. I completely agree with the reasoning in the judgment of the trial Court and hold that it rightly acquitted the accused. In this view of the matter, I do not see any merit in the appeal.

16. The Criminal Appeal is, accordingly, dismissed. Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

M.S.RAMACHANDRA RAO, J

24th February, 2015

sj