

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.908 OF 2007

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ORDER:

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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 28-06-2007 passed by I Additional Sessions Judge, Khammam in CrI.A.No. 40 of 2006 whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 354 vide the judgment in S.C.No.182 of 2006 by the Assistant Sessions Judge, Sathupally confirmed the conviction and modified the sentence.

2. The revision petitioner herein is the accused and respondent herein is the complainant in S.C.No.182 of 2005 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The case of the prosecution in brief is that on 30-08-2003 at about 3.30 pm while PW.1 was working in her field, the accused who was the owner of neighbouring land went to her, caught hold of her saree and dragged her and asked her to fulfill his sexual desire. She escaped from the hands of accused. Then she raised hue and cries. On hearing her cries, PW.2 who was present in the neighbouring fields came there. On seeing him, the accused fled away from the scene of offence. It is also stated that the husband of the victim was not in the village. He returned to the village on the next day night and then she narrated the incident to her husband. Then she lodged a complaint on 02-09-2003. After receiving the complaint, PW.9 registered a complaint in a case in Cr.No.52 of 2003 and investigated into the case. During the course of investigation, he recorded the statements of witnesses and conducted scene of offence panchanama in the presence of mediators PW.6 and another person and after completing the investigation, he filed charge sheet into the court against the revision petitioner for the offence punishable under Section 354 IPC.

4. The learned Assistant Sessions Judge took cognizance of the case and framed a charge for the offence punishable under Section 354 IPC against the accused. During trial, to prove the case of prosecution, PWs.1 to 9 were examined and Exs.P1 to P.4 were marked.

5. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no oral or documentary evidence on his behalf.

6. The trial Court, after perusing the oral and documentary evidence convicted the accused for the offence punishable under Section 354 IPC and sentenced him to under go Simple Imprisonment for a period of three years and to pay a fine of Rs.1000/- in default of payment of fine to undergo simple imprisonment for one month.

7. Aggrieved by the judgment of the trial Court, the accused preferred Crl.A.No.40 of 2006 on the file of the I Additional Sessions Judge, Khammam. After considering the evidence on record, the Appellate Court passed the judgment on 28-06-2007 confirming the conviction and modified the sentence from three years to two years.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.40 of 2006, the accused preferred the present revision on the ground that the trial Court as well as the appellate Court erred in convicting the petitioner under Section 354 IPC and the ingredients of Section 354 IPC were not established by the prosecution beyond reasonable doubt and the evidence of witnesses for scene of offence is different from charge sheet contents. The prosecution failed to explain the delay in lodging complaint. It is also stated that as per the evidence of PWs1, 3 that there are no eye-witnesses to the incident. Police wantonly introduced PW.2 as an eye-witness in the charge sheet. Further the scene of offence panchanama was conducted on 01-09-2003 and whereas, the report was given on 02-09-2003 as such hit by Section 154 Cr.P.C.

9. Learned counsel appearing for the revision petitioner/

accused argued that PW.1 and PW.5 are wife and husband and the prosecution failed to explain the delay in lodging report to the police. Further as per the evidence of PW.5, he returned to the village on 31-08-2003, whereas the incident took place on 30-08-2003. Though the in-laws and brother of PW.5 are residing in immediate house of the *de facto* complainant, she failed to inform this incident to them. It is also argued that PW.6 who is elder in the village has stated that the police conducted scene of offence panchanama on 01-09-2003, whereas the complaint was lodged on 02-09-2003. Therefore, the FIR is hit by 154 Cr.P.C. It is also argued that the certificate issued in favour of the accused is admissible in evidence as it is a public document as defined under Section 79 of Evidence Act and finally prayed to allow the Revision. Learned counsel for the petitioner relied upon case law of this Court in **Aleti Bixapathi v. State of A.P. rep.by its Public Prosecutor, High Court of A.P.** , wherein, this Court held as follows:

17. "With regard to the plea that the fact that the investigation of the case already commenced before registering the First Information Report is fact, in fact, Ex.P.6 (F.I.R.) provides that the case was registered at 3.30 pm on 13-09-2006, whereas it is according to PW.12 that she received the requisition from the S.H.O. Chilakalaguda Police Station at 8 am on 13-09-2006 to record the dying declaration and by 8.20 am she went to Gandhi General Hospital for that purpose, which amply proves that it was done prior to the registration of the case. It also provides clearly that the S.H.O. Chilakalaguda Police Station also received information about the incident following which only he would have sent the requisition to the learned Magistrate for recording the dying declaration, but such a statement was not filed before the Court, which is to be taken seriously.

18. Section 156 Cr.P.C. which is relevant here provides with regards to the Police Officer's power to investigate cognizable case:

1. Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
2. No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
3. Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.

19. On the other hand, Section 154 Cr.P.C. is with regards to information to the police and their powers to investigate. This provision really sets into motion the corresponding investigation of any criminal case. But either in Section 154 Cr.P.C. or Section 156 Cr.P.C. there is no specification to the effect that no investigation of a criminal case should be commenced without registering formal First Information Report. In fact, Section 156 Cr.P.C. confers on the Police unrestricted power to investigate a cognizable offence without the order of a Magistrate or without registering a formal First Information Report. In other words, the Police can commence investigation in a criminal case on their own motion on receiving necessary information about commission of a cognizable offence even without registering the information as contemplated under Section 154 Cr.P.C. However, in order to find out how far the prosecution case is reliable, all those relevant factors are to be taken into consideration ultimately.

20. Therefore, there is no sound basis to convict the accused for the alleged offence and he is to be given benefit of doubt and ultimately he is to be acquitted setting aside the conviction and sentence recorded by the trial Court for the offence punishable under Section 302 IPC”.

10. On the other hand, learned Public Prosecutor argued that the prosecution is able to explain the delay in filing the complaint. Further in this type of cases, the delay is not fatal. In the present case, the delay is two days and the prosecution explained that on the date of incident, the husband of the *de facto* complainant was out of the village and after his return and after informing the elders of the village, Ex.P.1 was lodged by the police. As such, the prosecution is able to explain the delay. It is also argued by the learned Public Prosecutor that no suggestion was given by the petitioner to the Investigating Officer regarding *Alibi*. Further, petitioner is a neighbouring land owner of the *de facto* complainant. As per the evidence of Pws 2 and 3, they have seen the accused running away from the scene of offence, when *de facto* complainant raised hue and cries and that the prosecution is able to prove the guilt of the accused for the offence punishable under Section 354 IPC and finally prayed the Court to dismiss the Revision.

11. Now, the point for determination is --

“Whether the petitioner is entitled to set aside the judgment of the appellate Court in Criminal Appeal No.40 of 2006, dated 28-06-2007 as prayed for”?

POINT:

12. A perusal of the evidence of PW.1 shows that on 30-08-2003 at about 3.30 pm while she was removing weeds in her field, the accused who was her neighbouring land owner and railway employee came to the scene of offence and caught hold of her saree and dragged her in order to outrage her modesty. Then she raised hue and cries. After hearing the cries of PW.1, PW.2 came there and after seeing PW.2, the accused ran away from the scene of offence. PW.1 informed about the incident to PW.2. PW.3 also heard the cries of PW.1 and came to the scene of offence. After the incident PW.1 informed the acts of the accused to her co-sister-in-law PW.4 and after arrival of her husband, her husband went to PW.6 who is the elder of the village. On his instructions she filed complaint with the police. In the cross-examination of PW.1 nothing has been elicited to disprove the case. Further PW.1's evidence is supported by the evidence of PWs.2 and 3. Thus the evidence of PWs.1 to 3 is consistent regarding the manner of the incident. PW.4, who is the co-sister-in-law of PW.1, clearly stated in her evidence that PW.1 after the incident informed her that the accused tried to outrage her modesty. PW.5, who is the husband of PW.1, also stated that after returning to the village, his wife informed him about the incident. As such after hearing the same he and PW.1 went to the village elder by name Venkata Narsaiah who called the accused. But the accused did not turn-up and PW.6 being the elder advised the *de facto* complainant and PW.5 to lodge complaint to the police. The evidence of PW.6 who is elder in the village also supported the evidence of PWs1 to 5 and he clearly stated about PW.1 and PW.5 coming to him and he summoning the accused for conducting enquiry but the accused did not appear before him. As such, he advised

PWs 1 and 5 to give report to the police. The evidence of PW.7 cannot be considered, as he turned hostile to the prosecution case. PW.8 is the mediator to the scene of offence and PW.9 is the Investigating Officer who registered crime in Ex.P.2 and issued FIR. PW.9 also conducted scene of offence panchanama under Ex.P.3 and after completing the investigation, he filed charge sheet. In the cross-examination also no suggestion was given that the accused was not present in the village on the date of incident. The main contention of the petitioner is that PW.6 who is elder in the village stated in his

evidence that the police conducted the panchanama on 01-09-2003 and therefore, PW.1 lodging Ex.P.1 on 02-09-2003 is hit by Section 154 Cr.P.C. Therefore, the petitioner is entitled for acquittal. A perusal of the evidence of PW.6 shows that the police came to the village on 01-09-2003 and conducted the panchanama on 01-09-2003. He never stated that the police conducted the panchanama in Cr.No.52 of 2003 and in the cross-examination of PW.6 the said fact was not elicited. Therefore, the evidence of PW.6 in that regard cannot be connected to the facts of the present case. That the police conducted scene of offence panchanama in Cr.No.52 of 2003 on 02-09-2003 and the evidence of PW.6 in that regard need not be any credence and it is not fatal to the prosecution case.

13. The next submission of the learned counsel for petitioner is that the alleged incident took place on 30-08-2003 and as per the evidence of PW.5 he returned to the village on 31-08-2003, thus the *de facto* complainant ought to have given the complaint on the next day i.e. on 01-09-2003, but she gave the complaint on 02-09-2003, and therefore, the delay is not explained by the prosecution. PW.1 in her evidence clearly stated that on the date of alleged incident, her husband PW.5 is not in the village. Soon after his arrival, she narrated about the incident to him, who intturn brought the said fact to the notice of PW.6 who is the elder of the village. PW.6 summoned the accused for conducting enquiry, but the accused did not turn-up. As such, as per the advise of PW.6, PW. 1 lodged a complaint Ex.P.1 with the police. In this regard, PW.1 and PW.5 have clearly explained the delay caused in filing Ex.P.1 to the police. Thus, the evidence of PWs.1 to 9 is consistent to prove the case of the prosecution that the accused tried to outrage the modesty of PW.1 on 30-08-2003 and after hearing hue and cries, PWs 2 and 3 came to the scene of offence and they have seen the accused running away from the scene of offence. The case relied upon by the petitioner's counsel is totally different from the facts of the present case. In the case law relied by the counsel for the petitioner, the Dying declaration was

recorded at about 8.20 am, whereas the case was registered at 3.30 on the same day. Therefore, there is delay in registering the case and it was hit by Section 154 Cr.P.C. In the present case, Ex.P.1 was lodged on 02-09-2003 after receiving the complaint Ex.P.1 from the *de facto* complainant. As such, the case relied by the petitioner's counsel has no application to the facts of the present case. Thus, the prosecution is able to prove the guilt of the accused beyond reasonable doubt and the trial Court as well as the Appellate Court rightly convicted the accused. Further the appellate Court has taken lenient view and reduced the sentence from three years to two years and the finding of the trial Court in imposing the conviction and the appellate Court confirming the conviction and modifying the sentence needs no interference.

14. Accordingly, the Criminal Revision Case is dismissed.

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

ANIS, J

10-03-2015

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