

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

-
Crl.A.No.1131 of 2014
-

JUDGMENT

This Criminal Appeal is preferred by the State challenging the judgment dt.02-02-2009 in Sessions Case No.406 of 2007 of the Assistant Sessions Judge, Kavali.

2. The Station House Officer, Kavali II Town Police Station filed charge sheet against the respondent Nos.1 to 16 for having committed offences under Sections 147, 148, 452, 506, 509, 307 and read with Section 149 IPC.

3. The allegation against the accused is that they are all students of Jawahar Bharathi Degree College, Kavali hailing from different villages and they are friends. P.Ws.1 to 4 are parents of P.Ws.2 and 3. P.W.1 is maintaining a mess. P.W.3, his daughter, is a student of VITS Engineering college, Kavali while P.W.2, his son, is studying B.Sc. Degree in Jawahar Bharathi Degree College.

4. It is alleged that on 15-12-2006 while P.W.3, the daughter of P.W.1 was returning from the college and when she reached near the shop of P.W.8, A-1 teased her around 4.30 p.m. and also took a photo of her with a camera having flash; that P.W.3 informed it to her parents and brother; and immediately P.Ws.1 and 2 proceeded to Nagendramma Tiffin Centre and found A-1 standing there. It is alleged that they questioned the behavior of A-1 and asked him about taking of photo of P.W.3, that they pulled the camera and noticed that it did not contain any film; and while taking the camera from A-1, P.W.1 asked him to bring his elders and take back the same and came back to their house. It is alleged that A-1 threatened P.Ws.1 and 2 with dire consequences and around 5.30

p.m. on the same day, A-1 to A-6 along with others formed themselves into unlawful assembly, armed with deadly weapons like sticks, iron rods and chains to kill P.W.1 and went to his house; A-1 beat P.W.1 with a stick but he was rescued by P.W.4 by pushing aside A-1; and in the meantime, somebody cried “police, police”, and then all the accused ran away from the scene of offence.

5. The Additional Judicial Magistrate of First Class, Kavali, registered a case in P.R.C.No.37 of 2007 and committed it to the Court of Sessions, Nellore. The Sessions Court registered the P.R.C. as S.C.No.406 of 2007 and made over the same to the Court of the Assistant Sessions Judge, Kavali.

6. On examination under Section 228 Cr.P.C., the accused denied the accusation.

7. After the charges were framed, they were put to them and they pleaded not guilty and claimed to be tried.

8. Prosecution examined P.Ws.1 to 10 and marked Exs.P-1 to P-4 and M.O.1.

9. By judgment dt.02-02-2009, the Assistant Sessions Judge, Kavali, acquitted A-2 to A-6 of all charges and convicted only A-1 under Section 509 IPC only by holding him not guilty of the other charges. Instead of sentencing A-1 to undergo imprisonment, the Court below felt that it is proper to release him under Section 4 of the Probation of Offenders Act on his executing a personal bond undertaking to maintain good conduct for a period of two years and to receive the sentence as when called upon during the said period in case he failed to keep good conduct and peace.

10. Although according to the prosecution, P.Ws.8 and 9

were direct witnesses to the incident which allegedly took place near Nagendramma Tiffin Centre, the Court below found that these witnesses did not support the prosecution during the course of trial and both P.Ws.8 and 9 had stated that they found P.W.3 weeping but they failed to identify the person from whom the camera was seized by P.W.1 in the commission of offence that took place at that time. It therefore held that their evidence is sufficient only to prove that there was an incident in which P.W.3 was made to weep by A-1 while she was returning home from college. It held that even though the camera, which was seized from A-1 by P.W.1, did not contain any film, it is clear that by using flash as if photo of P.W.3 was taken, A-1 had insulted her modesty and thus, committed an offences under Sections 509 IPC. It relied on the evidence of P.W.3 in coming to this conclusion and held that there was nothing on record to disbelieve her evidence.

11. As regards the allegation of an attack by A-1 to A-16 on P.W.1 on 15-12-2006 at 5.30 p.m., it held that P.W.1 did not mention under oath that A-1 along with 20 other students came to their house armed with sticks, iron rods and chains and entered into their house; and that the other eye witnesses also did not speak about the accused coming armed with sticks, iron rods and chains. It held that even though P.Ws.1 to 6 have alleged that P.W.1 was beaten with a stick by A-1, there is no evidence of any such injury on P.W.1 at all. It held that P.Ws.1 to 4 belong to one family, that P.Ws.5 and 6 are their tenants, therefore they are all interested witnesses and their evidence cannot be relied upon to say that A-1 attempted to beat P.W.1 with a stick. It held that there was no acceptable evidence that any of the accused including A-1 had any common intention to do away P.W.1 and there is no evidence on record that any of the accused including A-1 trespassed into the house of P.W.1. It also held that no evidence

is forthcoming as to the common intention of the accused to cause injuries to P.W.1 or any other witnesses and the offences under Sections 147, 148, 452, 307 read with 149 IPC were not made out by the prosecution against all the accused. It however held that only A-1 can be said to have committed offence under Section 509 IPC as mentioned above.

12. Questioning the same, this Criminal Appeal is filed by the State.

13. The learned Public Prosecutor contended that the judgment of the Court below is contrary to law, weight of evidence and probabilities of the case and that the ingredients to constitute offences punishable under Sections 147, 148, 452, 526 and 307 read with Section 149 IPC were made out by the prosecution against all the accused. He further contended that the Court below erred in disbelieving the evidence of prosecution witnesses which is cogent and reliable and that the Court below has not considered the evidence of prosecution witnesses in correct perspective.

14. The learned counsel for the respondents however contended that the judgment of the Court below is not liable to be interfered with in the appeal since the Court below has rightly considered the evidence on record and came to the conclusion that A-2 to A-16 had not committed any offence and that A-1 had committed only the offence under Section 509 IPC.

15. I have noted the submissions of both sides.

16. The scope of interference by an appellate Court in an appeal against a judgment of acquittal by the trial Court is well settled. In case of acquittal, there is a double presumption in

favour of the accused. Firstly, the presumption of innocence is available to him and secondly the reinforcement and reaffirmation of the said presumption by reason of his having secured an acquittal. It is not enough for the High Court in appeal to take a different view of evidence. There must be also substantial and compelling reasons for holding that the trial Court is wrong. If two reasonable conclusions are possible in the face of evidence on record, the appellate Court should not disturb the findings recorded by the trial Court.

17. In the present case, P.Ws.8 and 9 who were examined as direct witnesses for the incident of teasing which allegedly took place on 15-12-2006 around 4.30 p.m. at Nagendramma Tiffin Centre did not support the case of the prosecution during the course of trial. Except stating that they saw P.W.3 proceeding to her house crying and P.W.1 seized the camera from a boy, both stated that they cannot identify the person from whom the camera was taken by P.W.2. P.Ws.3, 8 and 9 however stated that with the help of a camera one person had taken her photo because of which P.W.3 was proceeding her house weeping. Although P.Ws.8 and 9 did not speak anything against A-1 as the person who took the photo, the evidence of P.W.3 that A-1 used the camera with flash and took her photo was rightly held by the trial Court to be believable.

18. No doubt there was no film in the camera. But the use of flash as if photo of P.W.3 was taken was rightly held by the Court below to be a gesture made with an intention to insult her modesty and the trial Court had rightly convicted A-1 under Section 509 IPC.

19. The prosecution has not been able to establish from the evidence of the eye witnesses P.Ws.1 to 6 that the accused

were armed with sticks, iron rods and chains, that they had a common intention to do away with P.W.1 and there was no evidence to establish the trespass by A-1 into the house of P.W.1 or of the common intention of the accused to cause injuries to P.W.1 or any other witnesses. The plea of the prosecution that A-1 tried to beat P.W.1 with a stick was rightly not believed because none of the witnesses including P.W.1 sustained any injury in the incident. In my opinion, the trial Court has rightly disbelieved the evidence of P.Ws.1 to 4 who are members of the same family and that of P.Ws.5 and 6 who are the tenants of P.Ws.1 and 2 regarding the attempt by A-1 to beat P.W.1 with a stick.

20. In this view of the matter, I hold that the prosecution has not been able to bring home the guilt of the accused of the offence under Sections 147, 148, 452, 526 and 307 read with Section 149 IPC beyond reasonable doubt.

21. I do not find any merit in the Criminal Appeal and the same is accordingly dismissed.

22. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 19-01-2015

kvr