

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.1401 OF 2007

ORDER:

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 03.10.2007, passed by the Sessions Judge, Karimnagar, in Criminal Appeal No.155 of 2006, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offences punishable under Sections 448, 354 & 323 of the Indian Penal Code, 1860, (for short 'I.P.C'), vide the judgment dated 09.10.2006 in Sessions Case No.922 of 2005 by the Assistant Sessions Judge, Manthani, was confirmed.

2. The revision petitioner herein is the accused and respondent herein is the complainant in S.C.No.922 of 2005 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the S.C. before the trial Court.

3. The brief facts of the case are that on 08.06.2004 at about 1:00 p.m, PW.1 lodged a complaint to the police stating that on 07.06.2004 at about 9:00 p.m, she went to her house after closing her Chicken Centre, and after completing her meals, and at about 10:00 p.m when she was about to go to bed, at that time, accused knocked the door and on opening, he entered into the house, abused her in filthy language, caught hold her hands and beat her with hands. On hue and cries, her daughter PW.2 came for her rescue. But, the accused beat her also. Thereafter, their neighbours PW.4 and one Sandhya came there and on seeing them, the accused fled away from there. PW.2 and neighbours got shifted PW.1 to Manthani Nursing Home for treatment. After receiving the report, PW.5 registered the case in Cr.No.91 of 2004 for the offences punishable under Section 448, 354 & 323 of I.P.C, recorded the statements of the witnesses and later on,

handed over the case diary to PW.6, who conducted further investigation and filed charge sheet into the Court.

4. On appearance of the Accused, the Judicial Magistrate of First Class, Manthani, took cognizance of the case and as the case is exclusively triable by the court of Session, he committed the case to the District & Sessions Judge, Karimnagar, who in turn made over the case to Assistant Sessions Judge, Manthani, for disposal according to law.

5. On appearance of the accused, the Assistant Sessions Judge, Manthani, framed charges for the offences punishable under Sections 448, 354 & 323 I.P.C against the accused. During trial, to prove the case of prosecution, PWs.1 to 6 were examined and Exs.P1 to P4 were got marked.

6. After closure of the prosecution evidence, 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.

7. The trial Court, after hearing the arguments and after perusing the record, convicted the accused and sentenced him to undergo Rigorous Imprisonment for a period of six months and to pay a fine of Rs.1,000/-, and in default of payment, to undergo Simple Imprisonment for a period of two months for the offence punishable under Section 448 I.P.C; to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.1,000/-, and in default of payment, to undergo Simple Imprisonment for a period of two months for the offence punishable under Section 354 I.P.C; and to undergo Rigorous Imprisonment for a period of six months and to pay a fine of Rs.1,000/-, and in default of payment, to undergo Simple Imprisonment for a period of two months for the offence punishable under Section 323 I.P.C

8. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.155 of 2006 before the Sessions Judge, Karimnagar, where the Appellate Court after considering the oral and documentary evidence and after hearing both sides held that there is a ring of inherent truth in the case of prosecutrix; and that the trial Court has rightly convicted the accused for the offences charged and there are no reasons to interfere with the judgment of the trial Court and dismissed the appeal.

9. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.155 of 2006, the accused preferred the present revision case.

10. The learned counsel appearing for the revision petitioner/ accused argued that there is no independent corroboration in the evidence of PWs.1 & 2 and the judgments of both the Courts are based on assumptions and presumptions without any corroborative evidence; that the trial Court has not considered the contradictions and improvements in the evidence of prosecution witnesses; that the prosecution failed to explain the delay as the offence has taken place on 07.06.2004, whereas the report was given on 09.06.2004, and PW.1 has also not explained the delay in giving report to the police after two days of the incident; that there is no independent evidence to prove the occurrence, and further, when initially PW.1 was treated in the hospital, even the hospital authorities have not referred the matter to the police; that PW.1 suffered only simple injuries and no external injuries are there; that the prosecution also has not explained why the independent witness by name Sandhya, who is the neighbour to the *de facto* complainant, was not examined, and further argued that there is no sufficient evidence produced by the prosecution to prove the intention of the accused to outrage the modesty of PW.1, and the trial Court failed to appreciate all these aspects and erroneously convicted

the accused; and that PW.4, who is an independent witness, has not supported the prosecution version and finally prayed the Court to set aside the judgment dated 03.10.2007 passed in Criminal Appeal No.155 of 2006, by allowing the revision case.

11. On the other hand, the learned Public Prosecutor appearing for the State argued that the delay cannot be fatal in these types of cases; that after receiving the injuries, PW.1 became unconscious, she was taken to the hospital and thereafter, she came to police station and lodged the complaint; that evidence of PWs.1 & 2 is consistent and corroborative with each other; that accused is also the resident of the locality, where PW.1 resides and the evidence of PWs.1 & 2 clearly established the fact that on the date of incident, at about 10:00p.m, the accused trespassed into the house of PW.1 and tried to outrage her modesty and also attacked her with his hands on her chest and also on her abdomen, and therefore, the charges levelled against the accused were clearly established; and that the findings of both the Courts below are concurrent and needs no interference and prayed the Court to dismiss the revision case.

12. Now, the point for determination is --

Whether the prosecution could bring home the guilt of the accused for the offences punishable under Sections 448, 354 & 323 of I.P.C, with which he is charged?

13. **P O I N T**: A perusal of the evidence of PWs.1 & 2 shows that they are the residents of Manthani. PW.1 is a widow living with her daughter PW.2 and running a Chicken Centre. On the date of incident i.e., on 07.06.2004 at about 10:00 p.m, accused knocked the door of their house. When PW.1 opened the door, accused trespassed into their house, abused PW.1 in filthy language, caught hold of her hands and indiscriminately beat her. Further, after the incident, when PW.2 raised hue and cries, neighbours came to her rescue and after seeing them, the accused ran away and thereafter, the neighbours of PWs.1 &

2 shifted PW.1 to Government Hospital, Manthani. Thus, the evidence of PWs.1 & 2 is consistent regarding the trespass made by the accused into the house of PW.1. In the cross-examination, the only suggestion made by the learned counsel for defence to the witnesses before the trial Court is that because of old enmity, PW.1 filed a false complaint. As the evidence of PWs.1 & 2 corroborated with each other on all material particulars, mere giving a suggestion about old enmity without specifying the nature of enmity and giving particulars will not help the case of the accused. Therefore, both the Courts below rightly believed the evidence of PWs.1 & 2 to bring home the charges under Sections 448 & 323 of I.P.C against the accused.

14. Coming to the charge under Section 354 of I.P.C is concerned, on the date of incident, accused trespassed into the house of PW.1, used criminal force and with an intention or knowledge attacked PW.1, who is a widow residing in her house with her teenaged daughter. It is not explained by the defence as to what made the accused to go to the house of PW.1 in the wee-hours of the dark night. The evidence of PW.1 clearly shows that accused tried to outrage her modesty by attacking on her private parts. The contention of the learned counsel for revision petitioner that non-examination of other neighbour by name Sandhya is fatal to the case of prosecution cannot be accepted because the evidence of PWs.1 & 2 regarding the manner of attack by the accused is consistent in all material aspects. Further, the evidence of PWs.1 & 2 is supported by the evidence of the doctor as well as PW.4. Therefore, both the Courts below also rightly convicted the accused of the charge under Section 354 of I.P.C. Thus, the prosecution able to prove the charges levelled against the accused for the offences punishable under Sections 448, 354 & 323 of I.P.C beyond all reasonable doubt and the findings of the trial Court and the Appellate Court needs no interference of this Court.

15. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 03.10.2007, passed by the Sessions Judge, Karimnagar, in Criminal Appeal No.155 of 2006.

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

ANIS, J

Date: 30.01.2015
sr