

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

Criminal Revision Case No.2271 of 2011

ORDER:-

The revision is directed against the Judgment of the learned VI-Additional District and Sessions Judge (FTC), Tirupati, in Criminal Appeal No.165 of 2008, dated 30-40-2011.

2. The petitioner/accused was charged with the offences punishable under Sections 354, 509 and 323 IPC., in S.C.No.313 of 2008 on the file of the Assistant Sessions Judge, Srikalahasti. By Judgment, dated 06-11-2008, the learned Assistant Sessions Judge found the petitioner/accused guilty of the offence punishable under Section 354 IPC., and sentenced to undergo rigorous imprisonment for a period of five years and a fine of Rs.5,000/-. The petitioner/accused was found not guilty of the charges punishable under Sections 509 and 323 IPC., and he was acquitted thereof. Aggrieved by the said conviction and sentence, the petitioner/accused preferred Criminal Appeal No.165 of 2008 and by the impugned Judgment, the learned Sessions Judge has upheld the conviction but modified the same into one under Section 355 IPC., and imposed fine of Rs.5,000/- in default simple imprisonment for three months. The sentence of imprisonment was set aside. The revision petitioner filed the present revision questioning the orders of both the Courts below holding that the petitioner/accused has committed the offence as alleged.

3. The allegations, in brief, are that the *de facto* complainant/PW.1 is the Sarpanch of the village and the petitioner/accused is a resident thereof. The *de facto* complainant/PW.1 borrowed certain amounts from the accused. The accused used to insist PW.1 to have sexual intercourse with him which PW.1 refused. On 18-11-2006 while PW.1 was going to the house of PW.3 – Jamunamma to watch television, the accused assaulted her, used criminal force, pulled her by catching hold of her hand with an intention to outrage the modesty. PW.3 and another lady Anasuyamma (PW.4) intervened and rescued PW.1 from the hands of the

accused. Five days thereafter i.e., on 23-11-2006, PW.1 lodged a complaint with the jurisdictional police which registered a case in Cr.No.59 of 2008 and issued F.I.R.

4. The contention of the petitioner/accused is that PW.1 is the Sarpanch and is in politics. Admittedly, PW.1 borrowed certain amounts from the accused. In the elections held, the accused has canvassed for the opponent of the Sarpanch-PW.1. PW.1 was not repaying the amount in spite of demands. In order to wriggle out of the said debt and due to political reasons, the Sarpanch-PW.1 filed the present complaint making false allegations that he has insulted or attempted to outrage her modesty on 18-11-2006, the complaint for which without any justifiable reason was filed five days thereafter i.e., on 23-11-2006. Learned Counsel submits that taking into consideration the above facts and circumstances, it is a clear case where a false complaint is lodged against the petitioner/accused and both the Courts below have not appreciated the evidence on record in proper perspective. It is submitted that the appellate Court having disbelieved the allegation that the petitioner/accused has committed the offence punishable under Section 354 IPC., but erroneously found the appellant/accused guilty of an offence punishable under Section 355 IPC., and imposed a fine of Rs.5,000/-.

5. On the other hand, learned Public Prosecutor submits that the petitioner/accused has committed the offence which is spoken to by PWs.1 to 4 and accordingly the Judgments under challenge do not warrant any interference.

6. The admitted case is that there are certain financial and political disputes in between the victim-PW.1 who is the Sarpanch of the village and the accused who belongs to the opposite camp of the Sarpanch-PW.1. In cases of this nature, delay in lodging the F.I.R., will have telling effect and unless there are satisfactory reasons therefor, the same cannot be ignored. In the instant case, the incident is said to have taken place on 18-11-2006 and the incident was also said to have witnessed by PWs.3 and 4 the neighbouring ladies. The jurisdictional police station is at a distance of about 10 KMs. PW.1 is a Sarpanch of the village. She is

supposed to know that the complaint of an offence of such a magnitude should be lodged at the earliest point of time. When the incident took place at 05.00 p.m., on 18-11-2006, the complaint was filed on 23-11-2006 at 08.45 a.m. There is sufficient mode of conveyance in between the village and the police station. As a matter of fact, since there are several neighbours and considering the fact that PW.1 is the Sarpanch, she ought to have filed the complaint on the same day or at least on the next day. Her keeping silent for about the matter for more than five days, creates any amount of doubt about the allegation and it gives credence to the submission of the petitioner/accused that in order to settle the financial and political disputes, false case has been foisted against him by the complainant. This delay, which is not satisfactorily explained, is fatal to the case of the prosecution.

7. The specific allegation of the victim PW.1 is that when she was going to the house of her neighbour-PW.3 at about 05.00 p.m., the accused has committed the offence of asking her to satisfy him and pulling her by holding the hands. The incident is said to have taken place on the street. 05.00 p.m., is a time when admittedly several people will be moving around. There are several houses adjacent to the place where the alleged incident is said to have taken place. Learned Counsel appearing for the petitioner/accused rightly submits that it is difficult to believe that the petitioner/accused would have attempted to outrage the modesty of the village Sarpanch in broad day light on the street surrounded by several residential houses.

8. PW.1 deposed that prior to becoming Sarpanch she was working as a school teacher. The accused used to come to the school and propagate there that she is having illegal contacts with other teachers in the school. The accused was also giving such false information to the husband of PW.1 stating that PW.1 is maintaining illegal contacts with other teachers. She also admits that prior to the incident, she borrowed Rs.11,000/- from the accused promising to repay the same with interest. If really, the petitioner/accused was indulging in malicious propaganda against PW.1 and was even going to the extent of informing her husband

that PW.1 is maintaining illegal contacts with some teachers, PW.1 would not have borrowed a sum of Rs.11,000/- from the petitioner/accused. It is further in the evidence of PW.1 that on the date of the incident since there was no television connection in the house, she was going to the house of PW.3 for watching the television. She deposed that on the way, the accused caught hold her hand and she questioned him as to why he is doing that. The accused told her that if she satisfies him, he is ready to give some more amounts to her. The incident is said to have been witnessed by two neighbours – PWs.3 and 4. Seeing them, the accused left the place.

9. PW.2 is the husband of the victim and he is not an eye-witness to the incident. His evidence is based on what was told to him by his wife. The material evidence is that of PWs.3 and 4. PW.3 deposed that on the date of the incident, while she was cooking food outside, she saw PW.1 coming there and also saw the accused pulling PW.1 by catching hold her hand. She further says that she questioned the accused as to why he caught hold the hand of PW.1 and thereafter the accused left the hand of PW.1. She further speaks about the presence of PW.4. PW.4 deposed that on the date of the incident, she heard some galata near the house of PW.1 and she went there and found the accused holding the tuft of PW.1 and beating her.

10. It is noticed that the evidence of PWs.3 and 4 is inconsistent with regard to the incident proper. That apart, the evidence of PWs.3 and 4 is not in accordance with what is claimed by PW.1.

11. Not only that the evidence is inconsistent and lacks credibility, the delay in lodging the F.I.R. coupled with the existence of financial and political disputes between the accused and the complainant would create a doubt as to whether the incident as alleged has really taken place. As already stated, in the broad day light, on a street surrounded by houses, the accused is alleged to have invited the victim to satisfy his lust and on her refusal, he is alleged to have caught hold her hand. PW.4 would have it that she saw the accused catching hold the tuft of PW.1 and beating her. PW.3 claims to have seen the accused catching hold the hand of

PW.1.

12. In view of the foregoing circumstances, I find it difficult to hold that the evidence of PWs.1, 3 and 4 is inspiring confidence for holding the petitioner/accused has committed the offence punishable under Section 354 IPC., or for that matter, the offence under Section 355 IPC., for which the learned appellate Court has found the accused guilty. The evidence on record has not been properly appreciated and there are material irregularities and the conviction and sentence cannot be sustained. The point is accordingly answered.

13. In the result, the Criminal Revision Case is allowed setting aside the Judgments of 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 the petitioner/accused shall be refunded.

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

M.S.K.Jaiswal, J

August, 2015

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