

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**CRIMINAL REVISION CASE No.1653 OF 2007**

**ORDER:**

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') by the petitioner/accused is directed against the judgment dated 22.11.2007 of the learned III Additional Sessions Judge (Judge, Fast Track Court), Gadwal of Mahabubnagar District passed in CrI.Appeal No.91/2007.

1.                   **(a)**       By the judgment dated 27.06.2007 in S.C.No.377/2006 the learned Assistant Sessions Judge, Gadwal found the accused guilty of the offences punishable under Sections 448 and 354 of the Indian Penal Code (for short, 'the IPC') and convicted him under Section 235(2) of the CrPC and sentenced him to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 448 of the IPC and undergo rigorous imprisonment for a period of five years and pay a fine of Rs.500/- and suffer simple imprisonment for one month in default in payment of the said fine amount for the offence punishable under Section 354 of IPC. The learned Judge of the trial Court directed that the sentences under the said two counts shall run concurrently and had also extended the benefit of set off to the accused under Section 428 of the IPC. The learned Additional Sessions Judge while dismissing the aforementioned appeal of the accused had confirmed the judgment of the trial Court in all respects.

2.                   I have heard the submissions of the learned counsel for the petitioner/accused and also of the learned Public

Prosecutor representing the State. I have carefully perused the material record.

**3.** The learned counsel for the petitioner/accused submitted as follows: 'The Courts below did not properly appreciate the evidence. The Courts below ought to have seen that there was abnormal delay in filing the report before the police and that the said delay was not properly explained and that the said unexplained delay is fatal to the case of the prosecution as it creates a doubt as to the truthful nature of the incident and the complicity of the accused in the alleged incident. The Courts below ought to have seen that there were previous differences between the families of the informant and the accused and that, therefore, the delay in filing the report with the police which is a significant factor is sufficient to accept the defence plea that a false case is foisted and the accused is falsely implicated in the case. The Courts below ought to have seen that there are contradictions in the evidence of PW1 which are material. The Courts below having been carried away by the evidence of PW1 had failed to appreciate, in proper perspective, the important contentions of the defence and had erroneously convicted the accused. The Courts below had failed to see that there is no credible and legal evidence to record findings of conviction against the accused.'

**4.** Per contra, the learned Public Prosecutor had contended that the Courts below have appreciated the evidence brought on record by the prosecution in proper perspective and had recorded concurrent findings of fact after carefully evaluating the evidence and that, therefore, the well reasoned findings in the well considered judgments of the Courts below do not call for any

interference and that there is no merit in any one of the contentions raised in this revision by the accused and that this revision case is devoid of merit and is liable to be dismissed.

5. Now the points for determination are: -

1. Whether the prosecution was successful in bringing home the guilt of the accused, beyond reasonable doubt, for the offences punishable under Sections 448 and 354 of the IPC?
2. Whether the accused had made out valid and sufficient grounds for his acquittal of the said offences? And, if so, whether the judgment impugned is liable to be set aside?

6. **POINTS:**

6. (a) The case of the prosecution including the gravamen of the charge, in brief, is as follows: "On 21.01.2006 at about 10.00 PM, the accused who was in an intoxicated state had criminally trespassed into the house of Golla Chennamma-PW1 at Gudibanda Village of Devarakadra Mandal and caught hold of her when she was feeding her child and had stated to her that he would give land to her provided she would agree to have intercourse with him. When she was trying to move out of the house, having refused to accede to the request of the accused, he had again caught hold of her and outraged her modesty. In the meanwhile, Bala Kistamma – PW2, the mother-in-law of PW1, came to the house from the Bazaar. On seeing her, the accused had fled away from the scene."

6. (b) The Court of committal had taken the case on file as PRC1/2006 and had committed the case to the Session Division after completing the formalities. During the course of trial, PWs 1 to 4 were examined and exhibits P1 to P4 were marked. No evidence was adduced on the side of the defence.

**6. (c)** Now it is necessary to examine the evidence on record to find out whether the prosecution was successful in bringing home the charges levelled against the accused as required under law.

**6. (d)** PW1 is the victim. Her evidence is as follows: 'I know the accused. He is a resident of my village Gudibanda. About 1½ years ago at about 10.00 PM while I was at my house, the accused had entered my house and caught hold of my hand and asked me to have sexual intercourse with him saying that he would provide land to me. I ran out of the house after getting out of the clutches of the accused. My mother-in-law, who had been to a kirana shop, came there. On seeing her, the accused had fled away. I had informed my mother-in-law about the incident. I reported the matter to the Sarpanch. Thereafter, I had lodged the complaint under exhibit P1.' In the cross examination, the following points were elicited: 'My marriage was performed about seven years back. My father-in-law has three brothers. Though the three brothers of my father-in-law reside in one house, my father-in-law is a resident of a separate house. The accused is the son of one of the brothers of my father-in-law by name Masanna. Pentanna and Dasanna who are the brothers of my father-in-law have no issues. I do not know whether the said two brothers gave their lands to their other brother Masanna. All the said three brothers of my father-in-law are not alive. I do not know whether Dasanna during his life time had given a statement before the MRO, Devarkadra to the effect that my father-in-law is no way concerned with the lands and that the father of the accused alone has got right and interest in the lands. It is a fact that my father-in-law filed an appeal before the RDO, Narayanpet against the order passed by the MRO. It is a fact that the wife of the accused

filed a criminal case against my parents-in-law and my husband alleging that they beat her and the said case is pending before the Court at Atmakur. I have three children. The accused has got six children through his second wife. His house is situated adjacent to our house. My house consists of two rooms only. I, my husband, my children and parents-in-law live in the said two rooms. Our village is a small village and there may be about 100 houses. At the time of incident, my mother-in-law had been to Kirana shop while my husband and my father-in-law went to rear the sheep. It is true that generally in small villages people go to bed by 9.00 PM. My mother-in-law went to Kirana shop of Mahesh. His shop is at a distance of about 100 yards from my house. My mother-in-law went there to buy vegetables. By the time my mother-in-law had reached the house, the accused ran away. My mother-in-law did not notice him.' She had denied the following suggestions: "It is incorrect to suggest that the accused had not committed any kind of offence against me and that he has been treating me as his sister. It is not correct to say that shops will be closed by 10 PM. It is not correct to say that the accused did not at all enter into our house and that he did not catch hold of my hand and that due to previous disputes I have filed a false complaint against the accused and I am deposing incorrectly.'

**6. (e)** PW2 is the mother-in-law of PW1. She had testified as under: 'The accused is the son of the brother of my husband. About 1½ years ago at 10 PM, I went to Anganwadi of my village. While returning to my house, I heard the cries of PW1 and her children. I questioned PW1 about it. She told me that the accused caught hold of her hand and outraged her modesty. I questioned the accused, but he went away without answering.' In the cross examination, the following points were elicited: 'There

are land disputes between our family and the family of the accused since three or four years. It is a fact that the wife of the accused had filed a criminal case before the Court at Atmakur alleging that I and my husband beat her. It is incorrect to say that my brothers-in-law Pentanna and Dasanna gave their entire lands to the father of the accused. It is true that I did not state to the police that I went to Anganwadi.' She had denied the following suggestions: 'It is incorrect to say that I did not state to the police that PW1 and her children raised cries. It is incorrect to say that I did not state to the police that I questioned the accused, but, he went away without answering. It is not true to say that no incident had taken place as deposed by me and that the accused is falsely implicated due to the land disputes and that I am deposing falsehood.'

**6. (f)** PW3 did not support the case of the prosecution. It appears that as per the prosecution case he was a panch witness said to have been present at the time of observation of the scene of offence and the preparation of exhibit P2-panchanama at the scene of offence.

**6. (g)** PW4 is the Sub Inspector of police, who had investigated into the crime and laid the charge sheet. His evidence would show that on 22.01.2006 at 10.00 PM, PW1 lodged exhibit P1 report and on that the subject crime was registered against the accused. He had exhibited P3-the FIR, which was issued by him. In his cross examination he had stated as follows: "Exhibit P3-FIR was received by the Court on 24.01.2006 at 10.0 AM by Post. The investigation has not revealed any civil disputes between the family of PW1 and the family of accused. Subsequent to the present case, the wife of the accused lodged a complaint with us alleging civil disputes between her family and

the family of PW1. During my investigation, PW2 had stated to me that she went to purchase a candle whereas PW1 had stated in her report-exhibit P1 that PW2 went to buy vegetables. PW2 did not state to me that she went to Anganwadi. My investigation has not revealed as to which shop PW2 went. PW2 did not state to me that PW1 and her children raised cries. PW2 did not state to me that she questioned the accused and that he went away without answering. PW1 lodged the complaint on 22.01.2006 at 5.30 PM.'

**6. (h)** Though the Courts below had recorded concurrent findings of fact, the learned counsel for the petitioner/accused forcefully contended that the evidence brought on record is inherently improbable and that the delay in lodging the complaint, the serious civil disputes between the family of PW1 and the family of the accused, the important contradictions and omissions in the evidence of PWs 1 and 2, the version of PW2 that she went out of the house at 10 PM in the night and that the further version of PW1 that her husband and the father-in-law were rearing the sheep at 10 PM in the night and the other circumstances improbably the version of PW1 and create any amount of doubt about the veracity of her statement and the statement of PW2 and that all the circumstances brought out in the cross examinations of PWs 1, 2 and 4 and the inherent improbabilities in the case are sufficient to hold that the evidence brought on record is not credible and that in any view of the matter the accused is entitled to a reasonable benefit of doubt and an acquittal.

**6. (i)** On the other hand, the learned Public Prosecutor contended that the concurrent findings of fact recorded by the Courts below need not be interfered with.

**6. (j)** The indubitable legal position is that ordinarily it is not open for this Court to interfere with the concurrent findings of the Courts below specially by re-appreciating the evidence and that while exercising revisional jurisdiction this Court has to satisfy itself as to the correctness, legality or propriety of any finding recorded by the inferior Court and that this Court has to exercise the revisional power and supervisory jurisdiction so as to prevent the miscarriage of justice and to correct any irregularity. Further, even the concurrent findings of the Courts below can be interfered with when there are compelling and substantial reasons and when the findings recorded by the Courts below are clearly unreasonable.

**6. (k)** Before proceeding further, it is to be noted that under Section 354 of IPC, the accused, if found guilty, shall be punished with imprisonment which shall not be less than five years. The proviso to the penal provision as applicable in the State of A.P. provides that for adequate and special reasons to be mentioned in the judgment, the Court may impose a sentence of imprisonment for a term which may be less than five years, but it shall not be less than two years. When one of the offences with which the accused is charged prescribes a minimum sentence of imprisonment, a casual approach to the issue involved in the matter is impermissible. Keeping in view the above settled legal position, now the evidence on record is to be closely scrutinized.

**6. (l)** In regard to the incident proper, PW1 in her examination in chief stated crisply as under: 'While I was at my house at Gudibanda village at about 10 PM, the accused entered into my house and caught hold of my hand and asked me to have sexual intercourse with him saying that he would provide land to

me. I ran out of the house after escaping from the clutches of the accused.' She did not state any thing else in regard to the overt acts of the accused except stating that he caught hold of her hand and asked her for a sexual intercourse with him. She had further stated that in the meanwhile, her mother-in-law who had gone to the Bazaar, came to the house and that on seeing her, the accused had fled away from the scene. She did not state that her mother-in-law having come there questioned the accused. In her cross examination she had further clarified by stating that 'By the time my mother-in-law reached the house, the accused ran away. My mother-in-law did not notice him.' Thus, from her evidence there is no other witness to the incident. She did not also state that she had raised cries at the time of the incident. Per contra, PW2, the mother-in-law of PW1, had testified that while returning to her house from the Angganwadi of the village, she heard the cries of PW1 and her children and that she had questioned PW1 about it and on that PW1 had told her that the accused caught hold of her hand and outraged her modesty and that on that she had questioned the accused, but he went away without answering. But PW4, the Investigating Officer, had stated that PW2 did not state to him that she had questioned the accused and that he went away without answering. Further, PW1 had stated in her cross-examination that her mother-in-law PW2 went to a kirana shop, which was at a distance of 100 yards, to buy vegetables. But she had herself admitted in her evidence that in small villages like her village people go to bed by 9 PM. Therefore, it is doubtful as to whether her statement that PW2 went to kirana shop at 10 PM in the night on that day to purchase vegetables is true. On the other hand, PW2 had stated that she went to Anganwadi of the village. On this aspect, PW4, the Investigating Officer had stated that

during investigation PW2 had stated to him that she went to purchase a candle whereas PW1 had stated in her report-exhibit P1 that PW2 went to buy vegetables. These discrepancies clearly go to show that both PWs 1 and 2 are trying to explain away about the absence of PW2 at the house at 10 PM on the date of incident. PW1 had also stated that her husband and father-in-law were rearing the sheep at that time. As rightly contended it is hard to believe that at 10 PM in the night the male members of the family are rearing the sheep. She did not speak of the place at which her husband and father-in-law were rearing the sheep. The Investigating Officer had also stated that PW2 did not state to him that PW1 and her children raised the cries. Therefore, in the well considered view of this Court, these are inherent improbabilities in the case of the prosecution, which the Courts below ought to have taken into consideration while appreciating and evaluating the evidence on record.

**6. (m)** Further, there are serious land disputes between the family of PW1 and the family of the accused is admitted by both PWs 1 and 2. In fact, it was brought out in the evidence of PW1 that an order was passed by MRO, Devarkadra to the effect that the father-in-law of PW1 is unconcerned with the lands and that the father of the accused had alone a right and interest in the lands and that therefore, the father-in-law of PW1 had preferred an appeal before the RDO, Narayanpet and the same is pending. PW2 had also admitted that there are land disputes between her family and the family of the accused since three or four years. Therefore, it is clear that there are land disputes even prior to the alleged incident in this case. After the incident in this case as could be seen from the evidence brought out on record, the wife of the accused had filed a criminal case in the Court at Atmakur

alleging that she was beaten by PW2, her husband and the husband of PW1. However, PW4, the Investigating Officer stated very strangely that his investigation has not revealed any civil disputes between the families of PW1 and the accused. Therefore, it appears that his investigation is perfunctory. Therefore, in the case on hand, there are serious previous civil disputes in regard to the lands between the families of PW1 and the accused is clearly established. Motive no doubt is a double edged weapon and it can be made use of by any one party against the other party and it may be a reason for the commission of the offence or for false implication. Therefore, in such case, the evidence has to be scrutinized with caution. The evidence on record does not stand the test of scrutiny.

**6. (n)** In the case on hand, there is one more facet which, in the well considered view of this Court, shall be considered in favour of the accused. The incident had taken place on 21.01.2006 at 10.00 PM. The incident has immediately come to the notice of PW2, the mother-in-law of PW1. But, no report was promptly lodged with the police. Admittedly, exhibit P1-report was lodged on 22.01.2006 at 5.30 PM. In the facts peculiar to this case, the delay in lodging the complaint shall be viewed as a circumstance in favour of the accused in view of the serious land disputes between the families of PW1 on one hand and the family of the accused on the other. Though PW1 had stated in her evidence that after the incident the matter was reported to the Sarpanch, she did not state so in her exhibit P1-report given to the police. In the said report, PW1 had alleged that at that time the accused was in an intoxicated state and that she was giving milk to her child, but she did not advert to the said aspects in her evidence. She did not also state in her report that her husband

and her father-in-law were not at the house and that they were rearing the sheep. Therefore, the evidence of PW1 appears to be not credible and is unreliable. The Sarpanch to whose notice the incident was allegedly brought was not examined. PW2, the mother-in-law of PW1, did not support the case of PW1 that the matter was reported to the Sarpanch of the village immediately after the incident. Therefore, the findings of the Courts below that there was explanation for the delay cannot be countenanced.

**6. (o)** In the facts and circumstances peculiar to the case and in the light of the evidence discussed supra, this Court finds that the Courts below have not properly appreciated the evidence on record and had failed to take note of the fact that the evidence of PWs 1 and 2 is discrepant and is not consistent and that the Courts below had also failed to note that a close scrutiny of the entire evidence brought on record would itself suggest that the evidence brought on record is inherently improbable and is unbelievable and it is not certain from the evidence that the incident has happened as alleged in the prosecution case. Viewed thus, this Court finds that there are compelling and substantial reasons for interfering with the concurrent findings of the Courts below which are clearly unreasonable. Accordingly, this Court finds that the evidence adduced on behalf of the prosecution was wholly insufficient to establish the charges levelled against the accused. The points are accordingly answered in favour of the accused and against the prosecution.

**7.** In the result, the Criminal Revision Case is allowed and the judgment of the Court below passed in CrI. Appeal No.91/2007 confirming the judgment of the trial court in S.C.No.377/2006 finding the accused guilty is set aside and the accused is

accordingly acquitted of the offences punishable under Sections 448 and 354 of the IPC. The bail bonds of the accused shall stand cancelled and the fine amount, if any, paid shall be refunded to the accused after the further appeal or revision time is over.

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

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**M.SEETHARAMA MURTI, J**

19<sup>th</sup> January 2015  
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