

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No. 1415 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/Accused challenging the judgment dated 10.10.2007, passed by the

III Additional District & Sessions Judge (Fast Track Court), Ongole, in Criminal Appeal No.47 of 2007, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Sections 509 and 352 of the Indian Penal Code, 1860 (for short, 'IPC') vide the judgment dated 18.04.2007 in S.C.No.238 of 2006 by the Principal Assistant Sessions Judge, was modified to Section 354 IPC and sentenced to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.1000/-, in default to suffer Simple Imprisonment for six months.

2. The revision petitioner herein is accused, whereas the respondent is the complainant in S.C.No.238 of 2006 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 case of the prosecution in brief is that on 23.08.2006 at about 9.00 p.m., PW1 demanded the accused to return her amount of Rs.500/- given by her for arranging house patta, then the accused told that he would give only Rs.200/- and asked her to fulfil his lust. So saying, the accused beat her on her head, caught hold of her neck, beat on her hand by making nail scratches, caught hold of her jacket, torn it in both front and back side, caught hold of her saree and pulled it. When PW1 raised cries, her husband - PW3 and PW4 along with some others came there and then she informed the same to PW3. Later, PW1 and PW3 went to the Government Hospital where she

was examined by the Medical Officer PW5. On hospital intimation, the Head Constable of Ongole I Town Police Station recorded the statement of PW1 and sent to N.G.Padu Police Station on point of jurisdiction. The Sub-Inspector of Police PW9 registered the statement of PW1 as a case in Crime No.27 of 2006 for the offence punishable under Section 354 IPC and issued FIR. During the course of investigation, PW9 recorded the statement of PW1, seized MO1 torn jacket, visited the scene of offence, recorded the statements of witnesses and prepared rough sketch of the scene of offence. After receipt of wound certificate and after completion of investigation, PW9 filed the Charge sheet into the Court.

4. The learned Principal Assistant Sessions Judge took cognizance of the case and framed the charge against the accused for the offence punishable under Section 354 IPC. During trial, on behalf of the prosecution, PWs.1 to 9 were examined and Exs.P.1 to P.9 and MO1 was got marked.

5. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C putting the incriminatory material deposed against him. The accused denied the same and reported no oral or documentary evidence on his behalf. After hearing the arguments and after perusing the evidence available on record, the learned Assistant Sessions Judge convicted the accused for the offence punishable under Sections 509 and 352 IPC and sentenced to undergo Simple Imprisonment for six months for the offence punishable under Section 509 IPC and also sentenced to undergo Simple Imprisonment for three months for the offence punishable under Section 352 IPC.

6. Aggrieved by the conviction and sentence passed by the trial Court, the accused preferred Criminal Appeal No.47 of 2007 before the III Additional District & Sessions Judge (Fast Track Court),

Ongole, where the appellate Court after considering the oral and documentary evidence and after hearing both sides, modified the conviction to section 354 IPC and sentenced to undergo Rigorous Imprisonment for three years and to pay fine of Rs.1000/-.

7. Being aggrieved by the judgment of the appellate Court, passed in Criminal Appeal No.47 of 2007, the accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/accused argued that the medical evidence is not supported the evidence of PW1; that there are no independent eyewitnesses to the incident; that the appellate Court believing the evidence of PW1 only, convicted the accused for the offence punishable under Section 354 IPC; that the State has not preferred any appeal or revision, whereas the accused preferred the present revision; that PWs 2 to 4 deviated from the original case set up by the prosecution and that the appellate Court erred in modifying the conviction basing on the evidence of PW1 which is not corroborated by any other evidence.

The leaned counsel relied on a case-law reported in *Ram Das Vs. State of West Bengal*^[1], wherein the Hon'ble Supreme Court held as follows:

“Coming next to the sentence, it must be noted that the appellant is a railway officer of some status, and as such it was his duty to behave fairly and courteously to passengers. His conduct in forcibly trying to occupy the seat occupied by P.W.6 and her babe and assaulting her when she resisted, calls for censure, and he has added insult to injury in casting aspersions on the character of P.Ws.6 and 9. Under the circumstances, we must award the maximum sentence permissible under section 352. We accordingly sentence him to three months' rigorous imprisonment.”

and finally prayed the Court to set aside the judgment passed in Criminal Appeal No.47 of 2007.

9. On the other hand, the learned Public Prosecutor argued that on the date of incident the accused outraged the modesty of PW1 and when she raised hue and cry, PW3 and others came to the scene of offence; that the evidence of PW1 clearly shows the overt acts of the accused in pulling the blouse and saree of PW1; that after the incident PW1 gave a complaint in Ex.P.1 narrating the entire incident; that the evidence of PW1 is corroborated by Ex.P.1 and also the evidence of PW3 who is the husband of PW1 and who came to the spot immediately after the incident; that even two other witnesses turned hostile, the prosecution proved beyond reasonable doubt that the accused outraged the modesty of PW1; that the appellate Court rightly discussed the evidence of PW1 as well the doctor and convicted the accused for the offence punishable under Section 354 IPC and that finding needs no interference, and finally prayed the Court to dismiss the revision case.

10. Now, the point for determination is -

Whether the revision petitioner/accused is entitled to set aside the judgment passed by the appellate Court for the offence punishable under Section 354 IPC?

11. **Point:**

PW1, who is the victim, stated in her evidence that the accused belongs to her village; that PW3 is her husband and other witnesses are her neighbours; that on the date of incident at about 9.00 p.m., the accused was present at the bazaar in front of her house and when she demanded the accused to return the amount, the accused told her that he would give only Rs.200/- and asked her to fulfil his lust and so saying, he beat PW1 on her head, caught hold of her neck, torn the jacket from front side and also backside and caught hold of her saree and pulled it, and when she raised hue and cry, her husband PW3 and others came there; that immediately after the incident, PW1 and PW3 went to the Government hospital; that after

receiving the requisition from the hospital, the Head Constable recorded the statement of PW1 under Ex.P.1 and PW9 registered the same as a case in Crime No.27 of 2006 for the offence punishable under Section 354 IPC and issued FIR.

12. In this case, PW1 clearly stated that the accused outraged her modesty. The other witnesses no doubt turned hostile. But, the evidence of PW1 was supported by PW3, who is the husband of PW1. The appellate Court having gone through the contents of Ex.P.1 and also the evidence of PW1, held that the accused committed the offence punishable under Section 354 IPC. The appellate Court also held that the evidence of PW1 is corroborated by the evidence of doctor who issued Ex.P.4 wound certificate.

13. Even though the other witnesses turned hostile, it will not be fatal to the case of prosecution as they are not the eyewitnesses to the scene of occurrence. PW1 in her evidence clearly and categorically stated that the accused outraged her modesty and even in her cross-examination, nothing has been elicited to disprove her version and no specific suggestions were given regarding overt acts in the evidence of PW1. Further, the case-law relied on by the learned counsel for the revision petitioner is not relevant to the facts of the present case. After considering the evidence of PW1, the appellate Court rightly held that the accused committed the offence punishable under Section 354 IPC and the revision petitioner has not made out any case to interfere with the judgment of the appellate Court.

14. Accordingly, the Criminal Revision Case is dismissed, confirming the judgment dated 10.10.2007, passed in Criminal Appeal No.47 of 2007 on the file of the III Additional District & Sessions Judge (Fast Track Court), Ongole.

15. Miscellaneous petitions pending, if any, in this Criminal

Revision Case shall stand closed.

ANIS, J

Date: 17.03.2015

Anr

[\[1\]](#) AIR 1954 SC 711