

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Revision Case No.1496 of 2006

Between :-

Telugu Venkateswarlu .. Petitioner

and

The State of A.P.
Rep.by its Public Prosecutor,
High Court, Hyderabad .. Respondents

DATE OF JUDGMENT PRONOUNCED: 6th August, 2015

SUBMITTED FOR APPROVAL:

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

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| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of Judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether His Lordship wish to see
the fair copy of the Judgment? | Yes/No |

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

Criminal Revision Case No.1496 of 2006

ORDER:-

This Criminal Revision Case is directed against the Judgment of

the learned V-Additional Sessions Judge (Fast Track Court), Kurnool at Nandyal, in Criminal Appeal No.30 of 2006, dated 04-09-2006 confirming the conviction and sentence of rigorous imprisonment for a period of three years and fine of Rs.500/- in default to suffer simple imprisonment for three months for the offence punishable under Section 354 I.P.C., imposed against the revision petitioner/accused by the learned Principal Assistant Sessions Judge, Nandyal, in S.C.No.230 of 2005, dated 16-02-2006.

2. It is the case of the prosecution that on 06-01-2005 at about 03.00 p.m., when PW.1 was carrying paddy grass from the hayrick yard of PW.2, the accused, who is the revision petitioner herein, came behind and caught hold her and began to pull her saree with intent to outrage her modesty. Subsequently, when PW.1 raised cries, PWs.2 and 3 rushed to the spot and on seeing them, the accused ran away.

3. The contention of the petitioner/accused is that in the village there are two political groups belonging to Congress and Telugu Desam and since the accused is a supporter of Congress Party and the husband and relations of the victim are the sympathizers of Telugu Desam, the false complaint is foisted. It is further submitted that the prosecution has not examined the maid-servant who is said to have been present near the scene of offence on the ground that she is not prepared to support the case of the prosecution. Learned Counsel submits that the duty of the prosecution is to place all the evidence available on record but a material witness cannot be held back even though listed merely on the ground that such a person is not intending to support the case of the prosecution. The further contention of the accused is that when the incident is said to have taken place on 06-01-2005 at 03.00 p.m., in the afternoon, and even though the Mahanandi P.S., is just about 3 KMs., away from the village with plenty of conveyance, the complaint is filed at 04.00 p.m., on 07-01-2005. This delay of more than 24 hours coupled with another delay of about 24 hours in the FIR reaching the Court speaks volumes about the case of

the prosecution of being not genuine.

4. Learned Public Prosecutor, on the other hand, submits that the prosecution has proved the case against the accused beyond reasonable doubt and the delay in lodging the complaint is satisfactorily explained and both the Courts below have considered the evidence on record in proper perspective and have held the accused guilty warranting no interference.

5. The brief case of the prosecution is that the victim PW.1 and the accused are the residents of the same village and are known to each other. On 06-01-2005 at about 03.00 p.m., the victim PW.1 went to the hayrick of PW.2 and was returning with the bundle of grass. In the meantime, the accused came from behind and pulled her saree and tried to kiss her. The victim raised cries, hearing which PWs.2, 3 and others rushed there and seeing them, the accused ran away. As the husband of the victim was away from the village and after discussion in the family for about two days, the complaint was filed on 07-01-2005. Immediately, the F.I.R., was registered but the same was received by the jurisdictional Magistrate, which was at about 18 KMs., from Mahanandi P.S., on 08-01-2005 at about 03.00 p.m., in the afternoon.

6. The plea of the accused is one of denial and it is his contention that since he supported the political opponent of the husband of the victim, he has been falsely implicated and it was seen to it that after the complaint was lodged, the petitioner/accused was arrested and remanded to judicial custody where he was detained for more than 22 days.

7. The allegation is that the petitioner/accused pulled the saree of PW.1 and attempted to kiss her from her behind. Immediately the neighbours came there and the accused ran away. To this extent, PW.1 deposed, and PW.2 who is the father-in-law and PW.3 the aunt of PW.1 also deposed that on hearing the cries, they went there and found PW.1 and the accused grappling with each other. According to

PW.2, when they went there, the accused and PW.1 were grappling with each other but according to PW.3 when they went there, they have seen the accused pulling the saree of PW.1. As already stated, the incident was also said to have been witnessed by an independent witness by name Laxmi Devi who has been listed as Prosecution Witness No.6. She has not been produced before the Court on the ground that she do not intend to support the case of the prosecution.

8. The statement of the victim was recorded by the S.I. of Police at 04.00 p.m., on 07-01-2005. The incident took place on 06-01-2005 at 03.00 p.m. The distance between the village and the Police station is 3 KMs. It is admitted by PW.1 that both the days i.e., 06-01-2005 and 07-01-2005, they have discussed about the issue and thereafter came to Police Station and lodged the complaint. In the complaint-Ex.P.1 it is mentioned that when the victim was returning with grass heap, somebody came from behind and pulled her saree. After narrating the other details, the victim says that it is the accused who came from behind and pulled her saree. The nature of the allegation such is that the delay in lodging the F.I.R., if not properly explained, will affect the credibility of the case of the prosecution. In the instant case, even though PW.1 was in the company of her elders, who are examined as PWs.2 and 3, and they have seen the incident, for more than 24 hours they did not thought it proper to inform the police. Except for saying that they held discussions throughout these 24 hours, nothing is mentioned as to why the complaint was not filed on 06-01-2005 itself even though there is sufficient mode of conveyance available from the village to the police station. The husband of the victim was not in the village either on 06-01-2005 or on 07-01-2005 when the complaint was filed.

9. The delay in lodging the F.I.R. apart, when the F.I.R., was registered involving a crime of this magnitude, it is incumbent on the part of the investigating agency to dispatch the F.I.R., to the jurisdictional Magistrate with utmost expedition so as to rule out the

possibility of there being any accusation of it being ante-dated. In the instant case, the F.I.R., was received by the jurisdictional Magistrate on 08-01-2005 at 02.30 p.m., through a Police Constable. It means that when the incident is alleged to have taken place at 03.00 p.m., on 06-01-2005, the information thereof has reached the jurisdictional Magistrate, which was at a distance of about 20 KMs., only on 08-01-2005 at 02.30 p.m., in the afternoon. This delay, taking into consideration the nature of the allegation and the plea of the accused, cannot be said to be trivial to be ignored.

10. In that view of the matter, finding the accused guilty of the offence punishable under Section 354 I.P.C., on the basis of the above record, cannot be sustained. Both the Courts below have not properly appreciated this aspect and have erroneously convicted. The point is answered accordingly.

11. In the result, the Criminal Revision Case is allowed setting aside the conviction and sentence imposed by both the Courts below. 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

6th August, 2015
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