

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

TUESDAY THIS THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE MRS JUSTICE ANIS

CRIMINAL REVISION CASE No.1094 of 2007

Between:

Gate Sannayappagari Narasimha Murthy @ Tailor Murthy

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PETITIONER

AND

The State of A.P. rep.by the Public Prosecutor,
High Court of A.P., Hyderabad

.....
RESPONDENT

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The Court made the following:

HON'BLE MRS JUSTICE ANIS

CRIMINAL REVISION CASE No.1094 of 2007

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ORDER:

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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 03.08.2007, passed by the Additional Sessions Judge, Hindupur, in Criminal Appeal No.70 of 2005, whereunder and whereby the

conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 376 r/w. Section 511 of Indian Penal Code, vide the judgment dated 08.12.2005 in Sessions Case No.101 of 2005 by the Assistant Sessions Judge, Hindupur, was confirmed, however, the conviction of the petitioner/accused under Section 376 r/w.Sec.511 IPC is converted into one under Section 354 IPC.

2. The revision petitioner herein is sole accused in Sessions Case No.101 of 2005 before the trial Court. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Sessions Case before the trial Court.

3. The case of the prosecution in brief is that on 29.03.2004 at mid-night while PW 1 came out from her house to attend calls of nature, the accused, who is residing in the opposite row house, came and caught hold of her hand, closed her mouth with an intention to outrage her modesty. PW 1 removed the hand of the accused from her mouth and raised cries, and on hearing her cries, PWs 2 and 3 came there, and on seeing them, the accused ran away. PW 4 chastised the accused. Thereafter, PW 1 lodged a report with the police. The police registered the same as a case in Cr.No.24/2004 against the accused. During course of investigation, the investigating officer recorded the statements of witnesses. After receiving the wound certificate and after completing the investigation, the investigating officer filed charge sheet into the court against the accused for the offence punishable under section 376 r/w.sec.511 IPC or 354 IPC.

4. The learned Magistrate took cognizance of the case against the accused and committed the same to the Court of Sessions, as the offence charged against the accused is triable by Sessions

Court. On appearance of accused, the learned Assistant Sessions Judge framed a charge against the accused for the offence punishable under Section 376 r/w.Sec.511 of IPC, for which, accused pleaded not guilty. During course of trial, the prosecution examined PWs 1 to 6 and got marked Exs.P1 to P5 and M.O.1.

5. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no defence evidence on his behalf, but marked Exs.D1 and D2 contradiction portions in 162 Cr.p.c. statements of PW 2.

6. The trial Court, after hearing on either side and after considering the oral and documentary evidence, found the accused guilty of the offence punishable under Section 376 r/w.sec.511 of IPC, convicted him for the said offence and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of six months.

7. Aggrieved by the conviction and sentence passed by the trial Court, the accused preferred Criminal Appeal No.70 of 2005 on the file of the Additional Sessions Judge, Hindupur, where the Appellate Court after reappraisal of the evidence and material on record, dismissed the appeal, while confirming the conviction and sentence passed by the trial Court. However, the conviction of the accused under Section 376 r/w.Sec.511 IPC is converted into one under Section 354 IPC.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.70 of 2005, the petitioner/accused

preferred the present revision case.

9. The learned counsel for the revision petitioner/accused argued that the accused is innocent and not committed any offence and the trial Court convicted him basing on the evidence of PWs 1 to 6, which is insufficient for conviction under Section 376 r/w.Sec.511 IPC. Further, the trial Court has not properly framed the charges and there is no proper examination of the accused, and finally prayed this Court to take lenient view and reduce the sentence.

10. On the other hand, the learned Public Prosecutor argued that on 29.03.2004 PW 1 and her son were slept in their house, at mid-night when PW 1 came out of the house to attend calls of nature and was returning from calls of nature, the accused, who is residing in the opposite house of PW 2, came from her behind, caught hold of her hand, closed her mouth and laid her on ground with an intention to outrage her modesty. PW 1 removed his hand from her mouth and raised cries, then PWs 3 and 4 came there and on seeing them, the accused ran away from the scene of offence. Thereafter, when PW 1's husband came from the Mill, she informed the said fact and both of them went to the police station and lodged Ex.P1 complaint with the police. The evidence produced by the prosecution clearly shows that the accused who is residing in the opposite house of PW 2, knowing fully well that the husband of PW 1 was not in the house, tried to outrage the modesty of PW 1, as such, PW 1 and her husband rightly gave Ex.P1 complaint to the police. After receiving the complaint, the police registered the same as a case and took up investigation. It is also argued that PW 1 was sent to the Government Hospital for medical examination and PW 5-the Doctor, who treated her found some abrasions on her right cheek and issued Ex.P3 wound certificate. It is further argued that to disprove

the evidence of PWs 1 to 6, nothing has been elicited in the cross examination of the witnesses produced by the prosecution, therefore, the prosecution is able to prove the guilt of the accused for the charge levelled against the accused.

The learned Public Prosecutor also argued that the appellate court after taking lenient view, modified the conviction from Sec.376 r/w.Sec.511 IPC to Sec.354 IPC and confirmed the sentence imposed by the trial Court, and there is no infirmity in the findings of both the courts below warranting interference by this Court and prayed this Court to dismiss the present revision.

11. Now the point that arises for consideration is whether the petitioner is entitled to set aside the judgment of the appellate Court dated 03.08.2007, passed in CrI.A.No.70/2005, as well as the judgment of the trial Court dated 08.12.2005, passed in S.C.No.101/2005.

12. Point:

PW 1 is the *de facto* complainant. In her evidence, she stated that PW 2 is her husband, PW 3 is her mother-in-law and PW 4 is her neighbour and the accused is residing in the house situated opposite to her house. She further stated that on 29.03.2004 herself and her son were slept in their house after her husband went to spinning mill to attend his work. At mid night, she woke up and went outside to attend calls of nature and while returning after finishing her calls of nature, the accused came from her behind and caught hold of her hand, closed her mouth and laid her on ground with an intention to outrage her modesty. She removed the hand of accused from her mouth and raised cries and on hearing her cries, PWs 3 and 4 came there to rescue her and on seeing them, the

accused ran away from the scene of offence. After hearing galata, PW 4 also came there and found women folk at the scene. After her husband returned from the Mill, PW 1 informed the incident to him. Both of them went to the police station and lodged Ex.P1 report with the police.

13. To support the evidence of PW 1, PW 3, her mother-in-law and PW 4, her neighbour were examined. Their evidence, in all aspects, is consistent regarding the manner of the incident. The evidence of

PW 4, some extent, is relevant for the prosecution. He stated that when he heard the galata, he came to the scene of offence and found some ladies present at the house of PW 1 and thereafter, he did not support the prosecution case. PW 5, the Doctor, who examined PW 1 and issued Ex.P3 wound certificate, stated that he examined PW 1 and found some abrasions on her right cheek. The evidence of PW 1 in this regard is corroborated with the evidence of PW 5-Doctor and Ex.P3 wound certificate. The other evidence of PW 6 discloses that he is the investigating officer, who conducted investigation and filed charge sheet into the court.

14. A perusal of the evidence of PWs 1 to 6 clearly establishes that the accused tried to outrage the modesty of PW 1 on 29.03.2004. The evidence of PW 1 does not depart from what she stated in Ex.P1. Further, there is no need for a married woman to implicate the accused when nothing had happened. Therefore, the evidence of PWs 1 to 3 is consistent and trustworthy to believe that the accused tried to outrage the modesty of PW 1. Therefore, the appellate Court rightly converted the charge from Sec.376 r/w.Sec.511 IPC to Sec.354 IPC, and the findings of both the Courts below needs no interference, as the prosecution has established

the guilt of the accused beyond all reasonable doubt.

15. For the aforesaid reasons, the Criminal Revision Case is dismissed confirming the conviction and sentence. The trial Court shall take steps, in accordance with law, for apprehending the accused for serving the sentence.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

ANIS, J

Date: 24.03.2015

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