

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.1287 of 2007

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ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 ('the CrPC' for brevity) by the sole accused is directed against the judgment dated 20.09.2007 of the learned VIII Additional Sessions Judge (Judge, Fast Track Court), Guntur passed in CrI.A.No.152 of 2006 whereby the learned Judge while dismissing the said appeal had confirmed the conviction recorded and sentence imposed against the petitioner/accused for the offence punishable under Section 354 of the IPC by the learned Additional Assistant Sessions Judge, Tenali *vide* judgment dated 06.03.2006 in S.C.No.525 of 2001.

2. I have heard the submissions of the learned counsel for the petitioner/accused and the learned Additional Public Prosecutor representing the respondent/State. I have carefully perused the material record.

3. Now the points for consideration are: -

1. Whether the prosecution could bring home the guilt of the accused beyond all reasonable doubt for the offence punishable under Section 354 of the IPC?
2. Whether the accused had made out valid and sufficient grounds for his acquittal? And, if so, whether the judgment impugned is liable to be set aside?

4. **POINTS:**

4. **(a)** The gravamen of the charge as could be seen from the charge framed against the accused is that on 12.04.2005 at about 02:00 PM at Pothumeraka Gowdapalem village fields he had caught hold of the hand of PW1 and pulled her into the nearby bushes and outraged her modesty and had thereby committed the offence punishable under Section 354 of the IPC.

4. **(b)** Before the Court of Session, the victim/PW1, her father-in-law/PW2, the Sarpanch of the village/PW3 and the SI of police /PW4 were examined and exhibits P1 to P3 were marked. Since PW3 had turned hostile, the relevant portion of his previous statement is marked as exhibit P2. Exhibit P1 is the complaint. Exhibit P3 is the FIR. No evidence was adduced on the side of the accused.

4. **(c)** To examine as to whether the prosecution could sufficiently bring home the charge against the accused, it is necessary to refer to the evidence. **PW1**, the victim, testified to the following effect. "Venkateswara Rao/LW2 is her husband. PW2 is her father in law. LW4-Pamulamma is her mother-in-law. PW3 is the Sarpanch of her village. She knows the accused who belongs to her village and who is not related to her. On 12.04.2005 she was catching prawns in the tank situated in half acre of land of her father-in-law which her husband took on lease in view of the debt of Rs.4,000/- payable to him by his father. On that day, at about 02:00 PM she was returning from the field to her house to bring lunch. Her husband and parents-in-law were also at the field. On the way to her house, while she was proceeding on the canal bund, the accused who was coming from the opposite direction caught hold of her hand and dragged her aside. She had raised cries. The accused released her hand after she had raised cries. While raising cries, she ran towards her husband and father-in- law. She had informed to her parents-in-law that the accused had caught hold of her hand and dragged her aside and embraced her. By the time her father-in-law

rushed to the scene of offence, the accused had escaped. At that time, her husband was at the engine, which was on the other side of the field. She had informed about the incident to her husband. They all had informed about the incident to the sarpanch/PW3. PW3 had stated that he would call and chastise the accused. Four days later, PW3 had stated that the accused is not responding to his calls and had advised her to lodge a report. They had approached the police of Tsodayapalem Police Station. Her statement was recorded and her signature was obtained by the police. Exhibit P1 is her said statement. Thus the accused had caught hold of her hand, dragged her and embraced her. She does not know the intention of the accused in doing so.” Apart from the above evidence relating to the incident she had also testified that a month prior to the subject incident, the accused had tried to outrage her modesty and that she had informed about the same to the President and that he had stated that he would call the accused and enquire. **PW2** had testified to the following effect: ‘PW3 is his cousin and also the Sarpanch of the village. He knows the accused who is also a resident of his village. On 12.04.2005 PW1, his son/LW2, his wife/LW4 and his cousin/LW5 were harvesting prawns in their tank. He had let out his land to his son for raising prawns as his son has given him Rs.4,000/-. On that day, he, his wife, his son and PW1 were catching prawns. At about 02:00 PM they sent PW1 to home to bring food for them. His wife had heard the cries of PW1 and informed him. He and his wife had proceeded to the scene of offence i.e., the place from where they had heard the cries of PW1. They had found PW1 running towards them while raising cries. They saw the accused running away from the scene of offence. PW1 told them that the accused caught hold of her hand and dragged her to a side and that he did not leave her hand. After completing the catching of the prawns they went to the village and informed about the incident to the elders including the sarpanch/PW3. Four days later the elders advised to approach the police and complain.’

Apart from the evidence in regard to the incident proper, PW2 had further testified about a prior incident by stating that while PW1 and her husband were watering the prawn tanks , the accused caught hold of PW1 and demanded to satisfy his lust and that on that she had raised cries and that when her husband came, the accused ran away and that they had reported about that incident also to the elders and that at that time, the accused had admitted his guilt and had assured that he will not repeat the said acts. **PW3**, the Sarpanch, did not support the case of the prosecution. However, he had stated that two months prior to the incident in this case, PW1 had complained to him that the accused is using vulgar words against her as and when he used to find her alone. He was cross examined by the learned Additional Public Prosecutor, since he did not fully support the case of the prosecution.

4. (d) Coming to the points elicited in the cross examinations of these witnesses and also the defence contentions, it is to be noted first that as rightly contended by the learned counsel for the accused the previous incident in which the accused was alleged to have indulged in a similar act of outraging the modesty of PW1, is not a part of the gravamen of the charge. However, the fact remains that PW1 mentioned about this incident, which had happened about one month prior to the subject incident, in her exhibit P1 report. She had also deposed about that incident in her evidence. PW2 her father-in-law had also stated about the earlier incident in his evidence. He had further stated that after the said earlier incident the matter was reported to the elders including the President and that at that time the accused had pleaded guilty and had also assured that he would not repeat the same. Though PW3 had not supported the case of the prosecution, he had deposed to the effect that PW1 complained to him on one occasion that the accused was using vulgar words against her as and when he used to find her alone. Therefore, this version of the witnesses PWs 1 and 2 in

regard to the similar prior incident cannot be stated as an exaggeration or an improvement in view of the fact that this evidence not only finds support from her report but also from the other evidence on record.

4. (e) Coming to the other points elicited in the cross examination of PW1 on the aspect of subject incident and the contentions based on such points, it is necessary to refer to the relevant portions in the cross examination of PW1, which were being relied upon by the defence. The said aspects are to the following effect: - 'There are prawn tanks by the side of our prawn tanks. There will be watchman at the tanks. The distance between our tank and the village is 5 acres baru. The accused came towards me from the opposite direction when I was 20 or 30 yards away from my tank towards the village. At the scene of offence on one side there is a canal and on the other side there is a tank of A. Subba Rao. The incident in which the accused caught hold of my hand, dragged me aside and embraced me had happened within about 15 minutes. I did not sustain injuries in the incident. From the scene of offence I ran towards the tank raising cries. On hearing the cries, my parents in law came running towards me.'

4. (f) It was first contended that admittedly there will be a watchman at the tanks and that there are other prawn tanks nearby where people will be generally present attending to their works and that it is borne out by record that people will be grazing cattle on the canal bund and that hence, the scene of offence is not a secluded place and therefore, the allegation that the accused had tried to outrage the modesty of PW1 at that place is highly improbable. It is also contended that though the place of offence is a place surrounded by prawn tanks, canal bund and fields etcetera where people would be attending to their works, no independent witness was cited and examined. However, PW1 in her evidence had stated on this aspect that there are no wet lands near the tanks and that all the persons will be present at the tanks in the

evening hours only i.e., at the time of dropping the feed for the prawns and that nobody will be present at the tanks during the lunch hour. Further, as rightly contended by the learned Additional Public Prosecutor the offences like the one alleged against the accused would be committed finding an opportune time when there is nobody else except the victim. Coming to the contention that no independent witness was examined, as already noted in cases of this nature, the *overt acts* would be committed by the accused against the victim at a secluded place and at an opportune time when there is nobody else in the vicinity of the scene and that therefore, the contention that no independent witness was cited and examined cannot be countenanced. In the well considered view of this court in a case of this nature, the evidence of PW1/the victim alone, if it is probable and inspires confidence, is by itself sufficient to base a conviction.

4. (g) It is next contended that according to PW1, the incident took a time of about 15 minutes and that despite the said fact she did not sustain any injuries is also highly improbable and would suggest that the incident is false. A careful reading of the testimony of PW1 would show that she had stated that it took about 15 minutes for the accused catching hold of her, dragging her aside and embracing her etcetera. Therefore, it may be possible that she may be referring to the whole incident from the time she had spotted the accused till she raised cries and ran towards her prawn tank where she has seen her parents-in-law coming towards her. Therefore, her testimony that the incident took place for about 15 minutes and the fact that she did not sustain injuries in the incident cannot be a ground to disbelieve her version in regard to the incident proper. It was also sought to be contended that she did not state in her exhibit P1 report and also in her statement to the police that she had complained to PW3. When a suggestion was given to the effect that she did not state in her exhibit P1 report and statement

to the police that she had complained to PW3, she denied the suggestion as 'not true'. In her report, exhibit P1, while referring to the earlier incident, she had specifically mentioned in her report that after the earlier incident on a complaint made to the President and elders, they had chastised the accused and that from that day onwards the accused bore grudge against her and that he had repeated the same incident the second time and that after consulting her people, she had lodged a report having come to the police station with a wish that the accused should be punished. Therefore, from her report it appears that a consultation was made with the elders before lodging a report and therefore, the non mention of the name of PW3 specifically in her report and her statement is not a material omission. It is also contended that the incident had taken place allegedly on 12.04.2005 but the complaint was belatedly lodged with the police on 16.04.2005 at about 02:30 PM. i.e., after four days and that the said delay is fatal to the case of the prosecution. As already noted, immediately after the incident, even as per the version in the exhibit P1, consultation was made and then a report was lodged. It was explained in the evidence of PW1 that immediately after the incident and after returning from the fields in the evening, the matter was reported to PW3 and that he had promised to call and chastise the accused and that 4 days later he had stated that the accused is not responding to his calls and advised her to lodge a report. PW2 also had corroborated the version of PW1 in this regard and had stated that the elders advised PW1 four days later to approach police and complain to the police with regard to the subject incident. Therefore, the facts that the matter was placed before the elders and that as per their advise the report was lodged by PW1 would show that the delay is sufficiently explained and that therefore, the delay is not fatal as sought to be contended by the defence. A strong motive for false implication was not even suggested to the material prosecution witnesses. The bald suggestion that due to political factions a case was foisted against the accused is of no avail.

4. (h) Therefore, on examination of the points elicited in the cross examination in juxtaposition with the contentions and also the facts and circumstances of the case, this court is of the considered view that either the points elicited in the cross examination or the contentions based on the evidence are not sufficient to accept the contention that the accused is entitled to a reasonable benefit of doubt. In the well considered view of this court, the points elicited in the cross examination and the contentions raised are not sufficient to dislodge the prosecution case which is well established. Therefore, the contentions that the testimony of PW1 is an exaggerated testimony and is riddled with improbabilities and inconsistencies and that her evidence renders the whole prosecution case untrustworthy and that the accused was falsely implicated in the case by lodging a false report after consultations and deliberations and that the courts below had failed to properly appreciate the evidence and that the accused is entitled to a benefit of doubt are all devoid of merit. Therefore, this court finds that the well reasoned findings of guilt and the findings in support of the conviction recorded by the courts below against the accused for the offence punishable under Section 354 of the IPC do not brook interference. Points are accordingly answered against the accused.

4. (i) Coming to the quantum of sentence, the learned counsel for the accused would submit that the accused was aged about 26 years of age at the time of the alleged incident in the year 2005 and that the father of the accused had become mentally disabled having sustained a head injury in a tractor accident and that the wife of the accused is also a patient of Asthama and his son is in his teens and is a student and that if the accused is sentenced to a long term of imprisonment not only his future but also the future of his young son would be ruined and that all his family members would be put to great hardship. However, Section 354 of the IPC prescribes a minimum

sentence of five years for the offence punishable under Section 354 of the IPC but, under the *proviso* the court may, for adequate and special reasons, impose a sentence of less than five years subject however to the rider that the minimum sentence shall be two years. Taking into consideration the fact that the trial court had imposed sentence to undergo rigorous imprisonment for three years and fine of Rs.1,000/- coupled with in default sentence, this court is of the well considered view that the substantive sentence of imprisonment can be reduced to two years while maintaining the fine amount in view of the extenuating and mitigating circumstances and the explanatory statement offered on behalf of the accused and also in view of the special circumstances in which the family of the accused is placed.

5. In the result, the Criminal Revision Case is dismissed. However, the substantive sentence of imprisonment is modified and is reduced to two years while maintaining the sentence of fine. The accused shall be entitled to the benefit of set off as held by the Court below. It is stated that the accused is at large being on bail. Therefore, the accused is directed to surrender before the trial Court within two weeks from the date of the receipt of a copy of this order. On failure of the accused to do so, the trial Court shall take steps for his apprehension and send him to prison for serving the remaining period of sentence.

Miscellaneous petitions pending, if any, in this criminal revision case shall stand closed.

M.SEETHARAMA MURTI, J

30th January 2015
Vjl