

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1574 of 2006

ORDER:

The Petitioner-Accused preferred the present Criminal Revision Case by invoking the provisions under Section 397 and 401 of the Code of Criminal Procedure, being aggrieved by judgment, dated 17.08.2006, passed in CrI.A. No.89 of 2004 by the I-Additional Sessions Judge, Mahabubnagar, whereby the learned Sessions Judge confirmed the conviction and sentence imposed against the petitioner by the Assistant Sessions Judge, Wanaparthi, in SC No.157 of 2003 vide judgment, dated 03.09.2004, wherein the learned Assistant Sessions Judge convicted the petitioner for the offence punishable under Section 354 IPC and sentenced him to undergo simple imprisonment for two years and to pay a fine of Rs.5,000/- in default, to suffer simple imprisonment for six (6) months.

The case of the prosecution, in brief, is that on 16.06.2002 at about 11.00 pm, when the de facto complainant was sleeping along with her husband in front of their house, the petitioner –accused came there and caught hold of the hand of the de facto complainant and pulled her. Then, the de facto complainant raised hue and cry and on hearing the same, the husband of the de facto complainant woke up and chased the accused, but the accused escaped. On the next day morning at 9.00 am, the de facto complainant lodged a complaint before the Sub-Inspector of Police, Weepangandla Police Station. Basing on the said report, a case in Crime No.49 of 2002 was registered and investigated into. The accused obtained anticipatory bail from this Court and as per the direction of this Court, he surrendered before the A.S.I. of Police, Weepangandla Police Station and was released on bail after furnishing

two sureties. After completion of investigation, the police filed charge sheet.

The case was taken on file for the offence under Section 354 IPC and the same was numbered as PRC No.62 of 2002. After following the procedure under Section 209 Cr.P.C., the case was committed to the Court of Sessions since the offence is triable by the Sessions Court. Thereafter, the District and Sessions Court made over the case to the trial Court for disposal in accordance with law. On appearance accused, the charge under Section 354 IPC was read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

To substantiate its case, the prosecution examined PWs. 1 to 7 and got marked Exs.P-1 to P-5. After closure of the prosecution evidence, the statement of the accused under Section 313 Cr.P.C., was recorded. On behalf of the accused, DW.1 was examined and Exs.D1 to D4 were marked.

The learned trial Judge mainly relying on the evidence of PW.1-victim, PW.2-husband of PW.1 and PW.3-brother of PW.2, found the accused guilty of the above charge, and accordingly, convicted and sentenced him as stated above. Challenging the same, the petitioner preferred appeal in CrI.A. No.89 of 2004 before the I-Additional Sessions Judge, Mahabubnagar. The learned Sessions Judge after re-appreciation of the evidence, dismissed the appeal by confirming the conviction and sentence recorded by the trial Court. However, the fine amount paid by the accused was ordered to be paid to the victim, as compensation. Challenging dismissal of the appeal, the present revision case is filed by the accused.

Heard and perused the material available on record.

Learned counsel for the petitioner submitted that the judgments of both the Courts below are contrary to law and that the Courts below came to the conclusion that the petitioner committed the said offence, without taking into consideration the discrepancies in the prosecution evidence and that PW.1 developed her version by deposing before the Court that she identified the petitioner – accused in the lighting of the streetlight available nearby her house and therefore, he prays to allow the revision.

On the other hand, learned Additional Public Prosecutor submitted that the findings of the Courts below need not be interfered with, inasmuch as the findings are based upon proper appreciation of evidence and therefore, he prays to dismiss the revision.

Being it is a case for the offence under Section 354 IPC, the evidence of the victim i.e. PW.1 gains importance. The occurrence took place, even according to the complainant, at 11.00 pm, on 16.06.2002. According to the evidence of PW.1, the accused pulled her hand when she was sleeping along with her husband in the outside of her house and on hearing her hue and cry, when her husband tried to caught hold of the accused, he escaped from the place of occurrence. It is also deposed by PW.1 that she can identify the accused since there is a streetlight in front of her house and in the lighting of that streetlight, she saw the accused. She further deposed that on hearing her cries, PW.3 and others came to the scene of offence. The evidence of PW.1 was corroborated by the evidence of PWs.2 and 3. The prosecution examined the relatives of PW.1 only, but it did not examine any of the independent witness to support the version of PW.1. The trial Court as

well as the appellate Court believed the version of PW.1 which was supported by PWs.2 and 3 and convicted and sentenced the accused. But, the fact remains that in her chief-examination, PW.1 stated that she saw the accused in the lighting of the streetlight, available nearby her house. The said fact of availability of streetlight nearby her house is not stated by PW.1 in Ex.P.1 - complaint or in her statement under Section 161 Cr.P.C., or in the statement recorded by the Magistrate under Section 164 Cr.P.C. For the first time, PW.1 deposed before the Court that she could identify the accused in the lighting of the streetlight available nearby her house. The said omission amounts to material contradiction and the same can be said as an improvement by PW.1. Hence, the version of PW.1 that there is a streetlight available nearby her house and she could identify the accused, would create a doubt about the case of the prosecution. In view of the discrepancies in the evidence of PW.1, much credence cannot be attached to the evidence of other witnesses.

Therefore, this Court is of the view that with the above discrepancies in the evidence of PW.1, it is highly unsafe to convict the petitioner - accused for the offence under Section 354 IPC and the judgments of the Courts below are liable to be set aside.

Hence, the Criminal Revision Case is allowed and the conviction and sentence imposed by the Assistant Sessions Judge, Wanaparthi, vide judgment, dated 03.09.2004, in S.C. No.157 of 2003, for the offence under Section 354 IPC, as confirmed by the I-Additional Sessions Judge, Mahabubnagar, in CrI.A. No.89 of 2004 vide judgment, dated 17.08.2006 are set aside. Consequently, the petitioner-accused is acquitted for the said charge.

The fine amount, paid if any, shall be refunded to the petitioner – accused. Bail bonds shall stand cancelled and the sureties are discharged.

Miscellaneous applications, pending if any, shall stand closed.

RAJA ELANGO, J

August 02, 2016.
KTL

