

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.780 of 2008

JUDGMENT:

1. This revision is filed by the petitioner-accused against the Judgment dated 5.6.2008 passed in CrI.A.No.22 of 2006 by the I Additional Sessions Judge, Nellore.

2. The case of the prosecution is as follows:

P.W.1-Malli Kanthamma is a resident of Uppalapadu village. The accused is also a resident of Uppalapadu village and he is running a cool drink shop in the same village. On 16.10.2004 while P.W.1 was travelling in a bus from Rajupalem to Uppalapadu, the accused who was sitting in the same bus pulled the saree of P.W.1. Then, P.W.1 warned the accused. On the same day, at about 7 p.m., while P.W.1 was in her house alone, the accused went to her house, picked up a quarrel and caught hold of her, dragged and embraced her. Then, P.W.1 shouted and pushed the accused and ran away from her house and went to the house of Malli Sudarsanamma-P.W.2 and informed her about the incident. While P.Ws.1 and 2 were going towards the house of the accused, Gunji Kondaiah, who is the brother of the accused, was found in front of the house of Alli Saheb. P.W.2 explained the incident to Gunji Kondaiah. Again, the accused went to that place and started arguing with P.W.1 and pushed P.W.2, who came to the rescue of P.W.1. Then, P.W.1 informed the incident to one Malli Kistaiah. As per the advice of Kistaiah, P.W.1 went to the police station along with P.W.2 on 17.10.2004 and gave a report to the Sub-Inspector of Police. Basing on the said complaint, a case was registered and investigated into. After completion of the investigation charge sheet was filed.

3. The learned Additional Judicial Magistrate of First Class, Kovur took the case on file and committed the same to the Court of Sessions. The learned District and Sessions Judge, Nellore made over the same to the Assistant Sessions Court, Kovur for disposal.

4. The trial Court framed a charge for the offence under Sections 452 and 354 IPC against the accused, read over and explained to him, for which he pleaded not guilty and claimed to be tried.

5. During the course of trial, P.Ws. 1 to 4 were examined and Exs.P1 to P3 were marked on behalf of the prosecution. D.Ws. 1 to 4 were examined on behalf of the accused.

6. On appreciation of oral and documentary evidence, the trial Court found the accused guilty for the offence under Sections 354 and 452 IPC. Accordingly, the trial Court convicted and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- in default to undergo simple imprisonment for three months for the offence under Section 354 IPC; and also sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- in default to suffer simple imprisonment for a period of three months for the offence under Section 452 IPC. Aggrieved by the same, the petitioner-accused filed appeal in Crl.A.No.22 of 2006 and the said appeal was dismissed. Hence, the petitioner filed this revision.

7. Learned Counsel for the petitioner submitted that the Courts below failed to appreciate the evidence in a proper perspective and that the testimony of P.Ws.1 and 3 is not corroborative and that there are differences between the families of P.W.1 and the petitioner and in order to get them

settled, the petitioner was falsely implicated and that no incident took place as alleged by the prosecution.

8. Learned Additional Public Prosecutor submitted that the trial Court has appreciated the evidence in a proper perspective and that there are no grounds to interfere with the judgment under revision.

9. P.W.1 stated in her evidence that while she was travelling in the bus at 6 p.m., the accused pulled her pyta and then, P.W.1 and L.W.3 admonished him. When she went to her house, the accused entered into her house at 7 p.m., and embraced her. She pushed him aside forcibly and went to the house of P.W.2 and informed about the incident. Then, P.W.1 and P.W.2 informed about the incident to the brother of the accused. Again, the accused came there, caught hold of the neck of P.W.2 and pushed aside. L.W.3-Suseelamma came there and admonished the accused about his behaviour.

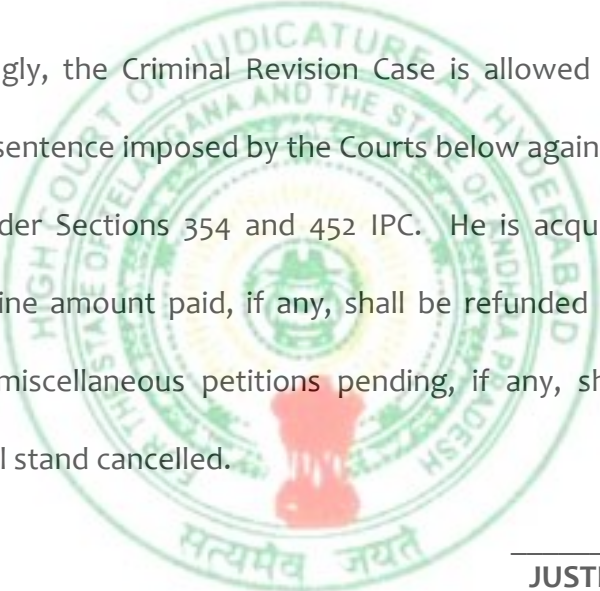
10. The entire case of the prosecution is based on the evidence of P.W.1. Admittedly, P.Ws.2 and 3 are not the eye witnesses to the first occurrence when the accused entered into the house of P.W.1 and embraced her. With regard to the second occurrence of catching hold of the neck of P.W.2 is concerned, according to P.Ws.1 and 2, in the presence of L.W.4, who is none other than the brother of the appellant herein, the accused caught hold of the neck of P.W.2. D.Ws.1 to 4, who were examined on behalf of the accused, gave a different version relating to the occurrence. D.Ws. 1 to 4 deposed regarding the previous enmity between the accused and P.Ws.1's family. In the cross-examination of the defence witnesses, nothing was elicited by the Public Prosecutor contradicting the motive alleged by the defence witnesses for the present complaint. Therefore, much credence cannot be attached to the evidence of P.W.1.

11. Further, there is inordinate delay in lodging the complaint. The occurrence took place by 7 p.m., according to P.W.1 whereas the complaint was filed on the next day at 11 a.m. When the allegations are serious in nature, the delay is very important to be appreciated because there is every possibility of implication of any person in any crime due to enmity. In the circumstances and in the absence of any cogent evidence, this Court is of the view that it is highly unsafe to convict a person more particularly, for the offence under Section 354 IPC which is punishable with minimum imprisonment of five years. The accused is entitled to the benefit of doubt.

12. Accordingly, the Criminal Revision Case is allowed setting aside the conviction and sentence imposed by the Courts below against the accused for the offence under Sections 354 and 452 IPC. He is acquitted for the said charges. The fine amount paid, if any, shall be refunded to the petitioner. Consequently, miscellaneous petitions pending, if any, shall stand closed. Bails bonds shall stand cancelled.

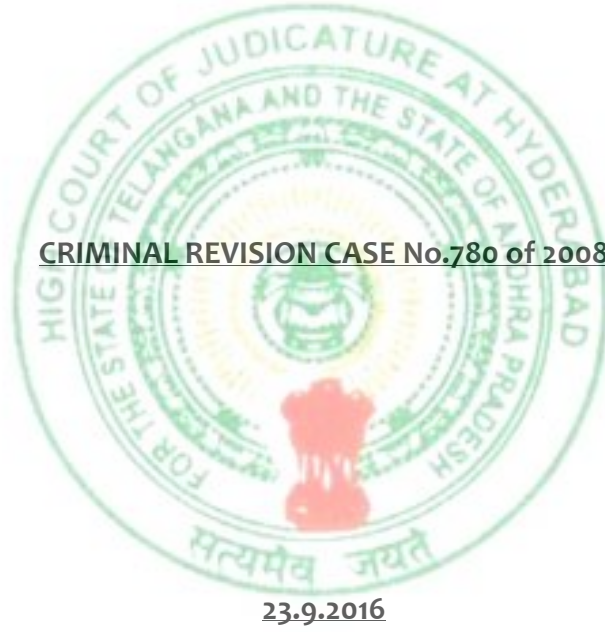
Dated: 23rd September, 2016

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JUSTICE RAJA ELANGO

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