

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.153 OF 2007

ORDER:

This Criminal Revision Case is filed by the petitioner/appellant/accused under Sections 397 and 401 of the Code of Criminal Procedure, 1973 challenging the judgment, dated 22.1.2007, in Criminal Appeal No.59 of 2006 on the file of the V Additional Sessions Judge (Fast Track Court), East Godavari at Rajahmundry whereunder and whereby, the learned Sessions Judge dismissed the appeal filed by the petitioner against the judgment, dated 17.3.2006, in Sessions Case No.250 of 2004 on the file of the Assistant Sessions Judge, Ramachandrapuram.

2. The brief facts that are necessary for the disposal of the case are as under:-

The house of the accused is located near the house of Kada Venkata Lakshmi (L.W.1). L.W.2 is the husband of L.W.1. The accused frequently used to visit the house of L.W.1 and play with her children. On 19.5.2004, L.W.2 brought the children to Mutyalamma festival and L.W.1 was alone in the house at 3 P.M. The accused took the opportunity of the loneliness of L.W.1, trespassed into the house and caught hold of her hands with a view to have intercourse with her, pushed her on the cot and tried to fall upon her. L.W.2, who returned to the house and witnessed the incident, caught hold of the accused and asked Kada Nagamani (L.W.5) to bring her in-laws and she brought the parents of the accused. On seeing them, the accused escaped. L.W.1 sustained injury on her right knee. On the statement of L.W.1, a

case in Crime No.47 of 2004 was registered under Section 354 I.P.C. and investigated into. During the course of investigation, M.Bhaskara Rao (L.W.11) observed the scene of offence, prepared rough sketch, recorded the statements of witnesses and arrested the accused. After completion of investigation, the Sub-Inspector of Police, Pamarru filed a charge sheet against the accused for the offences under Sections 448, 323 and 354 I.P.C.

3. The learned Judicial First Class Magistrate, Ramachandrapuram committed the case to the District and Sessions Court, Rajahmundry. The learned Sessions Judge made over the case to the Court of the Assistant Sessions Judge, Ramachandrapuram for disposal according to law.

4. After appearance of the accused, he was charged under Sections 448, 354 and 323 I.P.C. for which, he pleaded not guilty. So, the accused was placed for trial.

5. On behalf of the prosecution, P.Ws.1 to 8 were examined and Exs.P-1 to P-4 were got marked.

6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the same. On behalf of the accused, none was examined and Exs.D-1 and D-2 were got marked.

7. After considering the evidence on record, the trial Court held that the prosecution has not proved the guilt of the accused for the

offence punishable under Section 323 I.P.C. and accordingly, acquitted him for the said charge under Section 235(1) Cr.P.C. However, the trial Court held that the prosecution has proved the guilt of the accused for the offences punishable under Sections 354 and 448 I.P.C. and accordingly, convicted him under Sections 235(2) and 28(3) Cr.P.C. and sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of one month for the offence punishable under Section 354 I.P.C., and to undergo simple imprisonment for a period of three months and to pay a fine of Rs.100/-, in default, to undergo simple imprisonment for a period of ten days for the offence punishable under Section 448 I.P.C. Challenging the same, the accused preferred the aforementioned appeal and the same was dismissed confirming the judgment of the trial Court on the ground that the trial Court has not committed any error. Challenging the said judgment, the petitioner filed this Criminal Revision Case.

8. This being a case for the offences under Section 354 and 448 I.P.C., the evidence of P.W.1, who is the victim lady, gains more importance and hence, her evidence has to be appraised to decide the issue in this revision. P.W.1 is the wife of P.W.2. P.W.3 is the mother-in-law and P.W.4 is the co-sister of P.W.1. On 19.5.2004, P.W.2 along with his children went to the festival of Goddess Mutyalamma and P.W.1 was alone in the house at 3:00 P.M. Then, the accused, who is a neighbourer, took advantage of her loneliness and trespassed into the house with a view to have intercourse with her, caught hold of her hands and

pushed her on the cot by using force and tried to fall upon her. P.W.2, who returned to the house to take his wife, caught hold of the accused and asked P.W.4 to call his mother and the parents of the accused. P.W.4 went and called the parents of the accused. On seeing them, the accused got relieved and fled away. During the struggle, P.W.1 received injury on the right knee. As P.W.2 is an eye witness to the incident, he deposed in the same manner before the trial Court as that of P.W.1.

9. The evidence of P.W.1 can be believed and conviction can be recorded on the basis of the evidence adduced by her, but she nowhere stated in her evidence that when the accused caught hold of her, pulled her on the cot and tried to fall on her, she resisted his acts or attitude by raising cries. Even it is not her case that after arrival of her husband also, she raised any cries or tried to resist the accused and relieve herself from the clutches of the accused. It is her further case that on arrival of her husband, herself and her husband raised cries and thereafter, the other witnesses gathered in the place of occurrence. She also admits in the cross examination that while P.W.2 was entering into the house, the accused was trying to pull her on the cot and subsequently, improved her version saying that while her husband was entering into the house, the accused was lying on her. The natural conduct of a person that too, a lady alleging that the accused, who is known to her and also in good terms, caught hold of her, pushed her and tried to fall on her and her behaviour of not making any cries or resisting the accused creates a doubt in the mind of Court.

10. Further, P.W.1 informed that her husband and accused scuffled with each other and during the said occurrence, accused sustained injury whereas she sustained injury and she was treated by P.W.8 – Doctor, who found three injuries on her body. She has not stated the injuries sustained by her and has not given any reasons as to how she sustained injuries in the course of said act. Whether P.W.1 has sustained injuries in the hands of the accused or in the hands of her husband is in question. Therefore, omission on the part of P.W.1 to inform how she has sustained the injuries also creates a doubt in the mind of the Court. Even though there is no suggestion contrary to the case of the prosecution, it is always the duty of the prosecution to prove its case beyond all reasonable doubt that the accused intended to commit the crime of outraging the modesty of P.W.1. The evidence of P.W.1, which is supported by P.W.2, does not inspire confidence of this Court and this Court is of the view that it is highly unsafe to convict the accused placing reliance on the evidence of P.W.1. and that too, for an offence which is punishable with minimum imprisonment of five years.

11. In view of the above observations, this Court is of the view that the prosecution has miserably failed to connect the accused with the crime for the offences under Sections 354 and 448 I.P.C. and therefore, the judgments of the Courts below are liable to be set aside.

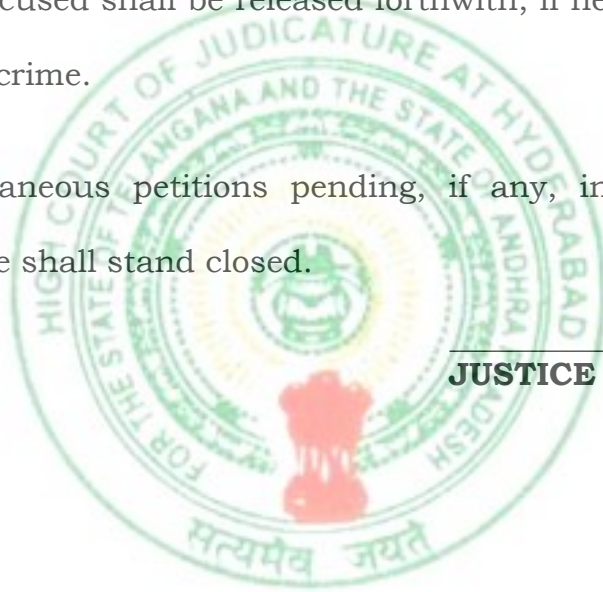
12. Accordingly, the Criminal Revision Case is allowed setting aside the conviction and sentence recorded in the judgment, dated

17.3.2006, in Sessions Case No.250 of 2004 on the file of the Assistant Sessions Judge, Ramachandrapuram, which was confirmed in the judgment, dated 22.1.2007, in Criminal Appeal No.59 of 2006 on the file of the V Additional Sessions Judge (Fast Track Court), East Godavari at Rajahmundry against the petitioner/accused for the offences punishable under Sections 354 and 448 I.P.C. and accordingly, he is acquitted of the said charges under Section 235(1) Cr.P.C. The fine amount, if any, paid by the petitioner/accused shall be refunded to him. The petitioner/accused shall be released forthwith, if he is not required in any other crime.

13. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

26.9.2016
AMD

JUSTICE RAJA ELANGO



THE HONOURABLE SRI JUSTICE RAJA ELANGO



CRIMINAL REVISION CASE No.153 OF 2007

Date:26.9.2016

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