

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.9 OF 2008

JUDGMENT:

This Criminal Appeal, under Section 378(3) & (1) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the State against the judgment, dated 14.10.2005, in Criminal Appeal No.409 of 2003 on the file of the VI Additional District and Sessions Judge (Fast Track Court), Tirupati whereunder and whereby, the learned Sessions Judge allowed the appeal filed by the accused challenging the judgment, dated 30.9.2003, in Sessions Case No.217 of 2003 on the file of the Assistant Sessions Judge, Puttur, and accordingly, acquitted him for the offence under Section 354 I.P.C.

2. Case of the prosecution, in brief, is as follows:

On 6.3.2003, at about 7:00 P.M., while the victim girl – Parvathi, aged 13 years, was returning towards sugarcane crusher where her parents were working, she noticed the accused coming along with P.Ws.3 and 4 and on enquiry with the accused while she was going towards sugarcane crusher lonely, taking advantage, the accused came behind her and caught hold of her in the shadow of tamarind tree of Venkatrami Reddy with an intention to outrage her modesty and torn her petty shirt and when she raised cries, on hearing her cries, P.Ws.6, 7 and 8 came to her and on seeing them, the accused ran away and on 8.3.2003, at 7:00 P.M., on the report of P.W.1, who is the mother of the victim girl, the Sub Inspector of Police, S.R.Puram Police Station registered a case against the accused in Crime No.12 of 2003 under Section 354 I.P.C. and after completion of investigation, filed the charge sheet.

3. The charge sheet was taken on file by the learned Judicial First

Class Magistrate, Puttur and numbered as P.R.C.No.17 of 2003 against the accused for an offence punishable under Section 354 I.P.C. and after following the procedure, the case was committed to the Court of Sessions, Chittoor District. The learned Sessions Judge, Chittoor numbered the case as Sessions Case No.217 of 2003 by taking it on file against the accused for an offence punishable under Section 354 I.P.C. and made over the same to the Court of Assistant Sessions Judge, Puttur for disposal.

4. A charge under Section 354 I.P.C. was framed against the accused, read over and explained to him in Telugu for which, he pleaded not guilty and claimed to be tried.

5. To substantiate the case of the prosecution, P.Ws.1 to 12 were examined and Exs.P-1 to P-13 were marked besides case property – M.O.1.

6. After closure of the evidence on the prosecution side, the accused was examined under Section 313 Cr.P.C. He denied the evidence on the side of the prosecution. On behalf of the accused, none was examined and no documents were marked.

7. The learned trial Judge, basing on the evidence adduced and after elaborate discussion, found the accused guilty for the offence under Section 354 I.P.C. and accordingly, convicted him and sentenced him to undergo simple imprisonment for a period of five years and to pay a fine of Rs.10,000/- in default, to suffer simple imprisonment for a period of six months. Challenging the same, the accused preferred Criminal Appeal No.409 of 2003 on the file of the VI Additional District and Sessions Judge (Fast Track Court), Tirupati and the same was allowed setting aside the judgment, dated 30.9.2003, in Sessions Case No.217 of 2003 on the file of the Assistant Sessions Judge, Puttur and acquitted the accused. Aggrieved thereby, the State

preferred the present Criminal Appeal.

8. The learned trial Judge, after evaluating the evidence, mostly relied on the evidence of P.W.2, who is the victim girl, and convicted the accused for the said offence. The lower appellate Judge reversed the said finding on the following grounds:

Except P.W.2, no direct witness was produced by the prosecution to substantiate the case. As far as P.W.1, who set the law into motion, is concerned, she is not a direct witness to the incident. As far as the other witnesses, who claim to be the circumstantial witnesses, are concerned, they did not support the case of the prosecution. Further, the only evidence, which is available, is the petty shirt of the victim recovered from P.W.2 and it also did not support the case of the prosecution. Hence, the lower appellate Court is of the view that merely relying on the evidence of 13 years old girl is highly unsafe to convict the accused.

9. Heard and perused the material available on record.

10. Apart from the observation of the lower appellate Court, the evidence of P.W.2 also do not reveal any offence under Section 354 I.P.C. since for an offence under Section 354 I.P.C., there should be an intention to outrage the modesty of the victim. To prove the same, there is no evidence on record. Hence, this Court is of the view that the judgment of the lower appellate Court is in accordance with law and that judgment warrants no interference of this Court.

11. Further, in a case of acquittal, if the trial Court consists of two views and basing on one of the views, which is in favour of the accused, acquits the accused, normally, the appellate Court will not interfere with the judgment of the trial Court unless and otherwise, the evidence adduced by the prosecution clinchingly points towards the guilt of the accused. In the present case, the lower appellate Court has

considered all aspects and acquitted the accused. Hence, this Court is not inclined to interfere with the impugned judgment and the Criminal Appeal fails and is liable to be dismissed.

12. Accordingly, this Criminal Appeal is dismissed confirming the judgment, dated 14.10.2005, in Criminal Appeal No.409 of 2003 on the file of the VI Additional District and Sessions Judge (Fast Track Court), Tirupati.

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

JUSTICE RAJA ELANGO

29.7.2016
AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

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