

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

CRL.RC.No.1939 of 2007

Oral Order:

This Criminal Revision Case is filed against the judgment dated 10.12.2007 passed by the learned III Additional District and Sessions Judge, (FTC), Mahabubnagar at Gadwal in Crl. Appeal No.158 of 2006 confirming the judgment passed by the learned Assistant Sessions Judge, Gadwal in S.C.No.444 of 2005 dated 2.11.2006 convicting the petitioner-accused under section 354 IPC and sentenced him to undergo rigorous imprisonment for three years and to pay fine of Rs.6,000/-, in default to suffer S.I. for three months, and for the offence under section 323 IPC, the petitioner accused was convicted and sentenced to undergo rigorous imprisonment for three months.

The facts in brief are that on 5-2-2003 in the evening hours at about 4.30 p.m. on the instructions of her husband to bring the due amount of Rs.1,600/-, P.W.1 went to the house of the accused-petitioner where the daughter of the accused informed that the

accused was at his thrashing yard and on reaching there when she asked him about the lent amount the accused put his hand in drawer pocket and called her to take the amount, when she reached near him, he caught her hand forcibly and dragged her upon which she raised hue and cries for which the accused gagged her, kicked in the flanks and tore her blouse, then the accused pulled her legs down, she herself rescued from him, got up immediately and came out of the thrashing yard where some of the villagers were present and revealed the incident to them. On 7-2-2003, she made complaint to the police on the basis of which a case in crime number 4/2003 under sections 354, 323 IPC was registered against the accused.

The prosecution in order to prove the guilt of the accused examined P.Ws.1 to 6 and marked Exs.P.1 to P.4. On defence side no oral or documentary evidence was adduced.

The learned Sessions Judge on consideration of the evidence on record convicted and sentenced the accused for the offence punishable under Section 354

and 323 IPC, referred supra.

On appeal, the lower appellate Court confirmed the judgment passed by the learned Sessions Judge. Hence, this revision.

Learned counsel appearing for the petitioner-accused would submit that there are several circumstances which clearly go to show that false case has been foisted by P.W.1-victim and except P.W.2 not even a single witness has been examined by the Prosecution in support of the prosecution case. According to the learned counsel, P.W.1 immediately after the incident has informed about the same to P.W.3 who came from near by temple. However, P.W.3 deposed that P.W.1 did not inform him about the incident said to have taken place in the thrashing yard "Doddi". The prosecution has not examined the daughter of the accused who is said to be in the house and infact said to have directed P.W.1 to go inside "Doddi" where the accused was said to be present. There is no medical evidence corroborating the claim of P.W.1 that there was any possibility of attack on

her. The police have not seized the jacket which is said to have been torn by the accused. Immediately after the incident P.Ws.1 and 2 said to have gone to the Sarpanch, Talari of the village and informed about the incident but the Sarpach said that he will not help in the matter and directed them to approach the police station. In spite of categorical answer from the Sarpanch, they did not go to police station and it is only after 2 days i.e. on 7.2.2003 at 2.00 p.m. P.W.1 went to the police station and lodged the complaint alleging the incident said to have been taken place on 5.2.2003.

The fate of the case depends on the testimony of P.W.1. Both the courts have accepted the evidence of P.W.1 as reliable and trustworthy. In the evidence P.W.1 deposed that on the date of incident she went to the house of the accused at about 4 30 pm to collect the amount. His daughter informed that the accused is at the cattle shed "Doddi" and she went there. She asked the accused to pay the amount to her. The accused promising to pay the amount caught

hold and dragged her to the cattle shed and tore her jacket and she wriggled out by kicking the accused but he caught hold of her both legs and fell down her and fell on her and when she raised cries he gagged her mouth with his hand and again she kicked him with both her legs. After returning home, according to P.W.1 she informed the incident to P.W.3 and also to her husband P.W.2. P.W.1 asserts that accused dragged her to the cattle shed and tore her jacket. But there is no medical evidence to that effect. When the accused has fallen her down on the ground by dragging her legs, she might have received some scratch injuries as the alleged incident took place in a cattle shed "Doddi" which is a hard soiled land. P.W.1 further admits that place where the incident took place is near to Anjaneyaswamy temple and many people will be there at that time when the alleged incident took place at about 4.30 p.m. The prosecution could not even able to establish the exact place as to where the incident took place since the panch witness turned hostile and denied about the panchanama conducted

in his presence. The investigating officer has been examined as P.W.5 and he deposed that on 7.2.2003 at about 2 p.m. P.W.1 came to Police Station presented Ex.P.1, he registered it and issued FIR.

From the above discussion and on perusal of the testimony of the evidence what is noticed is that evidence of P.W.1 does not inspire any confidence nor it conclusively establish that the accused committed offence. Both the courts below failed to appreciate the evidence on proper perspective and erroneously found the accused guilty of the offence.

In the result, the Criminal Revision Case is allowed and the impugned judgments passed by the courts below are set aside. The fine amount if any paid be returned to the petitioner-accused. Miscellaneous Petitions if any shall stand closed.

JUSTICE M.S.K.

JAISWAL

Dated:1-2-2016

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Dated 1-2-2016