

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.406 of 2006

JUDGMENT:

The appellant-Accused preferred the present Criminal Appeal by invoking the provisions under Section 374(2) of the Code of Criminal Procedure being aggrieved by the judgment, dated 17.10.2005, passed in S.C. No.111 of 2005 by the IV- Additional District and Sessions Judge, Fast Track Court, Ranga Reddy District, whereby the learned Sessions Judge convicted the appellant for the offence punishable under Section 354 IPC and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/- in default, to suffer simple imprisonment for three (3) months.

The case of the prosecution is that on 17.02.2005 at about 11.00 am, the appellant entered into the house of the victim girl Mariamma, aged about 12 years when she was alone in her house and tried to commit rape upon her. By that time, the mother (PW.1) and father of the victim girl were returning home for lunch from their work and on hearing the hue and cry of the victim from inside of their house, they entered into the house and found the victim fell down on the ground and her blouse was torn. When asked as to what happened, the victim girl showed the appellant, who was hidden in a corner of the house, and stated that he tried to outrage her modesty. Then, PW.1 and her husband and the villagers, who gathered there, caught hold the appellant and took him to the police station. On the report given by PW.1, the Sub-Inspector of Police (PW.4), Dundigal police station, registered a case in Crime No.39 of 2005 for the offence under Section 354 IPC against the appellant. PW.4 arrested appellant and sent him to judicial custody. After completion of investigation, the police filed charge sheet.

The case was taken on file for the offence under Section 354

IPC. On appearance of appellant, the charge was read over and explained to him, for which, he pleaded not guilty and claimed to be tried.

To substantiate its case, the prosecution examined PWs.1 to 4 and got marked Exs.P-1 to P-3. No oral or documentary evidence was adduced on behalf of the accused.

The learned trial Judge mainly relying on the evidence of the victim girl - PW.2, which was supported by the evidence of PW.1, mother of PW.2, found the petitioner guilty of the above charge, and accordingly, convicted and sentenced him as stated above. Challenging the same, the appellant preferred the present appeal.

Heard and perused the material available on record.

A perusal of the record discloses that there is delay in lodging the complaint. As per Ex.P2 FIR, the occurrence took place by 11.00 am, whereas the complaint was registered by 4.00 pm. The said delay in lodging the complaint was not explained by the prosecution. Unexplained delay of five hours in lodging the complaint is fatal to the case of the prosecution since it is the case of the prosecution that the accused was caught red handed and produced before the police, which is half a kilometre away from the place of occurrence. Apart from that, it is the specific case of PW.2 that her blouse was torn by the appellant. The said blouse was not produced before the Court and the Investigating Officer has also not taken any steps to recover the said material object. The Investigating Officer has also not taken any steps to prepare the rough sketch to substantiate the occurrence of the incident, as stated by PW.2. In this type of cases necessarily a rough sketch has to be prepared to know the topography of the area concerned and the availability of the entrance of the house and also the probability of entering a person in the mid day by 11.00 am. Apart

from that, PW.1 deposed in her evidence that the occurrence took place at 1.00 pm, whereas in the FIR, it was recorded that the occurrence took place at 11.00 am. Therefore, this Court is of the view that with these discrepancies in the case of the prosecution, it is highly unsafe to convict the appellant for the offence under Section 354 IPC and the judgment of the Court below is liable to be set aside.

Hence, the Criminal appeal is allowed setting aside the conviction and sentence imposed by the IV Additional District & Sessions Judge, Fast Track Court, Ranga Reddy District, vide judgment dated 17.10.2005, for the offence under Section 354 IPC. Consequently, the appellant-accused is acquitted for the said charge. The fine amount, paid if any, shall be refunded to the appellant. Bail bonds shall stand cancelled and the sureties are discharged.

Miscellaneous applications, pending if any, shall stand closed.

RAJA ELANGO, J

July 26, 2016.
KTL