

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.420 of 2005

ORDER:

This revision is preferred by the petitioner challenging the judgment of Principal Sessions Judge, West Godavari District at Eluru dated 21.12.2004 whereby the learned Judge dismissed Crl.A.No.151 of 2004 confirming the conviction and sentence as imposed by the Additional Assistant Sessions Judge, Eluru in S.C.No.73 of 2004 dated 27.09.2004, whereby the petitioner was convicted for the offence under Section 354 IPC and was sentenced to undergo rigorous imprisonment for five years and also to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months.

The brief facts of the case are that the house of the accused is situated behind the house of P.W.1-father of victim girl-P.W.2. On the intervening night of 15/16-10-2002, at about 12.00 Noon, while P.W.2 was alone in the house the accused entered into the house, embraced her, kissed on her cheek and tried to pull away the voni from her person. P.W.2 woke up and on hearing her alarms, her parents i.e. P.Ws.1 and 3 came to her rescue and on seeing them, the accused fled away from the scene of offence. On the report given by P.W.1 on 17.10.2002 under Ex.P.1, police registered a case in Crime No.118 of 2002 for the offence under Section 354 IPC and after completion of investigation, laid the charge sheet against the accused.

In order to prove its case, the prosecution examined P.W.1 to 7 and marked Exs.P.1 to P.4. On behalf of defence, no oral or documentary evidence was adduced.

The trial Court after appreciation of entire evidence on record more particularly, the evidence of P.W.2-the victim girl, convicted the accused as aforementioned. On appeal, the lower appellate Court on re-appreciation of entire evidence, dismissed the appeal.

In this case, P.Ws.1 and 3 are the parents of victim girl-P.W.2. P.Ws.4 and 5 are the elders of the village and P.W.6 is the mediator for observation of scene of offence. P.W.7 is the investigating officer, who registered the case on receipt of Ex.P.1 report, investigated into the matter and filed the charge sheet. Admittedly, the occurrence took place in the midnight. The accused is also aged about 18 years at the time of occurrence. Absolutely, there is no evidence on record to show as to how P.W.2 identified the accused in the midnight as he is the person who committed the alleged crime. It is not in dispute that the complaint itself was lodged four days after the occurrence. The explanation given by the prosecution for the inordinate delay in lodging the complaint is that P.W.2 and her parents approached the elders for compromise, but the said elders also not supported the case of the prosecution in their evidence. Considering the above discrepancies in the evidence of prosecution, this Court is of the view that merely placing reliance on the evidence of P.W.2, it is highly unsafe to convict the accused more particularly, for an offence under Section 354 IPC. Hence, the conviction and sentence imposed by the Courts below on the accused is liable to be set aside.

In the result, the Criminal Revision Case is allowed and the conviction and sentence imposed by the Additional Assistant Sessions Judge, Eluru in S.C.No.73 of 2004 dated 27.09.2004 as confirmed by the Principal Sessions Judge, West Godavari District at Eluru dated 21.12.2004 in CrI.A.No.151 of 2004 is hereby set aside. The fine amount, if any paid by the accused, shall be returned.

Miscellaneous petitions, if any, filed in this revision shall stand closed.

23.09.2016
Tsr

RAJA ELANGO,J



