

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.2563 OF 2015

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the judgment dated 25.06.2015 in Criminal Appeal No.164 of 2014 on the file of the Court of the I Additional Sessions Judge, Guntur, wherein and whereby, confirmed the order of conviction and sentence dated 02.05.2014 imposed against the petitioner in J.C.C.No.132 of 2012 on the file of the Juvenile Board-cum-IV Additional Junior Civil Judge Court, Guntur (for short, 'Juvenile Board').

2. The facts leading to filing of the present criminal revision case are briefly as follows:

On 30.04.2012 the victim/PW.1 lodged a complaint to the Station House Officer, Nagaram Police Station, who in turn registered a case in Crime No.46 of 2012 for the offences punishable under Sections 354 and 506 I.P.C. against the petitioner/Juvenile in conflict with law. After completion of the investigation, the investigating officer laid charge sheet against the petitioner for the offences punishable under Sections 354 and 506 I.P.C. The Juvenile Board has taken the case on file and numbered it as J.C.C.No.132 of 2012.

3. During the course of trial, on behalf of the prosecution, PWs.1 to 6 were examined and Exs.P.1 to P.3 were marked. On behalf of the defence, no oral evidence was adduced, but Ex.D.1 was marked.

4. The Juvenile Board after having thoughtful consideration to the oral, documentary evidence and other material available on record, arrived at a conclusion that the petitioner was found not guilty for the offences punishable under Sections 354 and 506 I.P.C. and acquitted him. However, the Juvenile Board arrived at a conclusion that the petitioner committed an offence punishable under Section 509 I.P.C., and convicted and sentenced him to be sent to special home, Visakhapatnam for a period of 25 days. The father of the juvenile was directed to pay fine of Rs.1,000/- for the offence punishable under Section 509 I.P.C. Feeling aggrieved by the order of the Juvenile Board, the petitioner preferred Criminal Appeal No.164 of 2014 on the file of the Court of the I Additional Sessions Judge, Guntur. The learned I Additional Sessions Judge, after reappraising the oral and documentary evidence, arrived at a conclusion that the petitioner found guilty for the offence punishable under Section 509 I.P.C. and confirmed the sentence. Hence, the present revision.

5. The contention of the learned counsel for the petitioner is that the Courts below convicted and sentenced the petitioner for the offence punishable under Section 509 I.P.C. without framing a charge while acquitting the accused for the offences punishable under Sections 354 and 506 I.P.C. He further submitted that even if the chief-examination of PW.1 *ex facie* taken to be true and correct, no offence is made out against the petitioner for the offence punishable under Section 509 I.P.C. He also submitted that the trial Court having acquitted the petitioner for the offences punishable under Sections 354 and 506 I.P.C., ought not to have convicted for the offence punishable under Section 509 I.P.C.

6. The learned Additional Public Prosecutor submitted that the Court can convict a person for a minor offence even without framing a charge. She further submitted that the contents of Ex.P.1- complaint clearly demonstrates that the petitioner committed the offence punishable under Section 509 I.P.C., which is a minor offence to Section 354 and 506 IPC. She also submitted that there is no illegality or irregularity in the orders of the Courts below; therefore, it is not a fit case to allow the revision.

7. The Juvenile Board gave a specific finding that the petitioner was found not guilty for the offences punishable under Sections 354 and 506 I.P.C. Neither the prosecution nor the victim has preferred any appeal challenging the order of the Juvenile Board dated 02.05.2014. Hence, the finding of the Juvenile Board that the petitioner was found not guilty for the offences punishable under Sections 354 and 506 I.P.C. became final. A perusal of the record reveals that the Juvenile Board framed charges against the petitioner for the offences punishable under Sections 354 and 506 I.P.C. It is not in dispute that no charge was framed under Section 509 I.P.C. To substantiate the arguments, the learned counsel for the petitioner has drawn the attention of this Court to the decision in **Shamnsaheb M. Multtani v. State of Karnataka**¹, wherein the Hon'ble Apex Court held at paragraph Nos.15 and 16 as follows:

“15. Section 222(1) of the Code deals with a case “when a person is charged with an offence consisting of several particulars”. The section permits the court to convict the accused “of the minor offence, though he was not charged with it”. Sub-section (2) deals with a similar, but slightly different situation.

“222(2) When a person is charged with an offence and facts are proved which reduce it to a

¹ (2001) 2 SCC 577

minor offence, he may be convicted of the minor offence, although he is not charged with it.”

16. What is meant by “a minor offence” for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-à-vis the other offence.”

As per the principle enunciated in the decision cited supra, if the main ingredients are common for both the major and minor offences, the Court can convict a person without framing a charge for the minor offence.

The ingredients of Section 354 I.P.C. deal with outraging the modesty of a woman. To certain extent, the ingredients of Sections 354 and 509 I.P.C. are similar.

8. PW.1 is the victim, PW.2 is the father of the victim, PWs.3 and 4 are the elders of the village and PWs.5 and 6 are the police officials. Ex.P.1 – complaint, Ex.P.2 – F.I.R. and Ex.P.3 – scene of offence were marked through PWs.5 and 6. There is no dispute with regard to lodging of complaint and the scene of offence. The learned counsel for the petitioner filed depositions along with the complaint copy. I have carefully perused Ex.P.1 – complaint. As per the allegations made in the complaint, the petitioner used to follow PW.1 and uttered some words. It is not mentioned in Ex.P.1 – complaint that he uttered words with an intention to insult the modesty of PW.1. I have carefully perused the testimony of PW.1. If the testimony of PW.1 is taken into consideration, the petitioner caught hold her hand only with an intention to outrage her modesty. The Courts below disbelieved the version of PW.1 that

the petitioner catch hold her hand with an intention to outrage her modesty. There is no whisper in the testimony of PW.1 that the petitioner uttered words with an intention to outrage her modesty. PW.2 is the father of PW.1, who is not an eye witness to the incident. As seen from the testimony of PWs.3 and 4, they came to know about the alleged incident through PW.2. Admittedly PWs.2 to 4 are not eye witnesses to the incident. PW.2, being the father of the victim, the possibility of exaggeration of facts with an intention to implicate the petitioner cannot be ruled out completely. The testimony of PWs.2 to 4 is no way helpful to the prosecution to prove the guilt of the petitioner for the offence punishable under Section 509 I.P.C. Even if the evidence of PW.1 is taken into consideration, no offence is made out against the petitioner for the offence punishable under Section 509 I.P.C. The Juvenile Board at para No.30 of its order simply recorded a finding that the prosecution has satisfactorily proved the ingredients of Section 509 I.P.C. The Juvenile Board has not assigned reasons much less cogent and valid reasons for arriving at the conclusion that the petitioner committed the offence punishable under Section 509 I.P.C. The first appellate Court also without scrutinizing the material available on record, confirmed the finding of the Juvenile Board. Mere recording of finding by the Court without sufficient evidence, much less legally admissible evidence, is not sustainable in law. Viewed from any angle, the conviction and sentence imposed against the petitioner for the offence punishable under Section 509 I.P.C. is not sustainable either in law or on facts.

9. Having regard to the facts and circumstances of the case, I am of the considered view that the prosecution failed to prove the

guilt of the petitioner for the offence punishable under Section 509 I.P.C.

10. In the result, the Criminal Revision Case is allowed setting aside the order of conviction and sentence imposed against the petitioner in J.C.C.No.132 of 2012 on the file of the Juvenile Board-cum-IV Additional Junior Civil Judge Court, Guntur, for the offence punishable under Section 509 I.P.C. as confirmed by the appellate Court in the judgment dated 25.06.2015 in Criminal Appeal No.164 of 2014 on the file of the Court of the I Additional Sessions Judge, Guntur.

11. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

Date: 23.11.2016
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T.SUNIL CHOWDARY, J

