

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1578 OF 2008

JUDGMENT:

This Criminal Appeal is filed by the appellant/accused by invoking the provision under Section 374(2) of the Criminal Procedure Code (for short 'Cr.P.C.), against the judgment, dated 12.12.2008, passed in S.C.No.337 of 2008, by the V Additional Assistant Sessions Judge, Guntur, whereunder and whereby the learned Sessions Judge found the appellant/accused guilty for the offence under Section 354 IPC and convicted and sentenced him to undergo Rigorous Imprisonment for a period of five (5) years and to pay a fine of Rs.200/-, in default to suffer Simple Imprisonment for a period of seven (7) days.

2. The brief facts, that are necessary for the disposal of the present Criminal Appeal, may be stated as follows:

The Sub-Inspector of Police, Kothapet L&O Police Station, has laid a charge sheet in Crime No.53 of 2008 of Kothapet L&O under Section 354 IPC alleging that the *de facto* complainant Rachapudi Kumari has submitted a report to him stating that on 01.05.2008 at 1.00 a.m., while herself and the victim R. Madhavi were sleeping on a cot in the Verandah of the *de facto* complainant, the accused fell on the victim with an intention to outrage her modesty and at the alarm of the *de facto* complainant and the victim, the neighbours Patharla Sunanda, Murikipudi Nagamma, Patharla Mary, Patharla Daveedu gathered at the scene of offence and the accused took his heels and the investigation reveals that the accused only have committed the said offence.

3. The case was taken on file under Section 354 IPC against the accused. When the accused appeared before the IV Additional Junior Civil Judge, he was furnished with copies of the case record and the learned Civil Judge has committed the case to the Court of Sessions.

4. On appearance of the accused, the trial Court examined the accused under Section 228 Cr.P.C. and framed the charge under Section 354 IPC against the accused, read over and explained to him in Telugu, for which he pleaded not guilty and claimed for trial.

5. To prove its case, the prosecution examined PWs.1 to 7 and marked Exs.P-1 to P-3. On behalf of the accused, no oral or documentary evidence was adduced.

6. After evaluating the entire evidence available on record, the trial Court found the accused guilty of offence under Section 354 IPC and convicted and sentenced him as stated above. Aggrieved by the said conviction order, the appellant/accused filed the present appeal.

7. Heard and perused the material available on record.

8. From the reading of the entire evidence, all the witnesses deposed before the Court in one voice that there was an occurrence on 01.05.2008 and more particularly, P.W.1, the mother of the victim and P.W.2, the victim deposed that the accused fell on P.W.2 and P.W.1 raised cries. Thereafter the accused fled away from the scene of offence. Even though it is deposed by all the witnesses that the accused fell on the victim on the date of occurrence which took place in mid night i.e., at 1.00 a.m. But in the rough sketch as well as in the statement of the

complainant, it is nowhere stated as to how the witnesses identified the person who committed the crime. Even though it is stated by the witnesses in the cross-examination that light was available in the bathroom and also from the neighbouring houses, but the rough sketch prepared by the investigation officer does not disclose any availability of light in the mid night. In the cross-examination also, the said investigation officer admits that there is no street light, as informed by P.W.1 in her chief examination. In the absence of any light at the mid night of 1.00 a.m., from the evidence of P.Ws.1 and 2, it is observed that the person who committed the crime is the appellant is doubtful, the appellant/accused was able to create a reasonable doubt in the minds of this Court. The offence under Section 354 IPC is also punishable with a minimum sentence of five years. When there is reasonable doubt about the presence of the accused as alleged by P.Ws.1 and 2, it is highly unsafe to convict a person who is admittedly at the age of 20 years at the time of occurrence. Hence, this Court is of the view that the prosecution has failed to establish the crime with clinching evidence. Hence, the conviction and the sentence imposed by the trial Court are liable to be set aside and the appellant/accused is entitled for acquittal.

9. In the result, the Criminal Appeal is allowed by setting aside the conviction and sentence imposed by the V Additional Assistant Sessions Judge, Guntur, against the appellant/accused for the offence under Section 354 IPC, vide judgment, dated 12.12.2008, rendered in Sessions Case No.337 of 2008. The appellant/accused is acquitted for the above said offence. Fine amount paid, if any, shall be refunded to the appellant/accused.

Bail bonds shall stand cancelled and the sureties are discharged.

Miscellaneous petitions, if any, shall stand closed.

RAJA ELANGO, J

Date: 27th September, 2016

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