

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.1989 of 2006

ORDER:

The Petitioner-Accused preferred the present Criminal Revision Case by invoking the provisions under Section 397 and 401 of the Code of Criminal Procedure, being aggrieved by judgment, dated 01.12.2006, passed in CrI.A. No.131 of 2004 by the VI-Additional Sessions Judge, (FTC), East Godavari District at Rajahmundry, whereby the learned Sessions Judge dismissed the appeal by confirming the judgment of the II-Additional Assistant Sessions Judge, (FTC), Rajahmundry, in SC No.313 of 2003 vide judgment, dated 05.08.2004, wherein the learned II-Additional Assistant Sessions Judge found the petitioner –accused guilty of the offence under Section 354 IPC and convicted him for the said offence 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 one month.

The case of the prosecution, in brief, is as follows:

The marriage of PW.1 was performed with one Kondiparthi Suryanarayana about 12 years prior to the date of occurrence and they are living by doing coolie work. The accused used to visit the house of PW.1 in the absence of her husband and used to say that he likes her and wants to perform sexual intercourse with her. On the date of occurrence i.e. 14.07.2002, at about 12.00 noon, when PW.1 was alone in her house, the accused went into her house and forced her for sexual intercourse with him and when she refused for the same, he caught hold of her hair, fisted on her neck and private parts and dragged her on the road. On seeing the same, PWs.2 to 4 went there and admonished the accused. On the report given by PW.1, which was endorsed by the

Senior Civil Judge cum Secretary, District Legal Services Authority, Rajahmundry, the police registered a case in Crime No.39 of 2003 was registered against the accused. On 17.06.2003, the accused was arrested and was sent for judicial custody. After completion of investigation, the police filed charge sheet.

The case was taken on file for the offences under Sections 354 and 509 IPC. Thereafter, the case was committed to the Court of Sessions, East Godavari at Rajahmundry and thereafter, the same was made over to the trial Court for trial and disposal in accordance with law. On appearance of the accused, the charge under Section 354 IPC was framed, read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

To prove its case, prosecution examined PWs.1 to 7 and marked Exs.P1 and P12. On behalf of the accused no oral or documentary evidence was adduced.

The learned trial Judge after appreciating the evidence available on record, found the accused guilty of the offence under Section 354 IPC, and accordingly, convicted and sentenced him as stated above. Challenging the same, the accused preferred appeal in CrI.A. No.131 of 2004 before the VI-Additional Sessions Judge, (FTC), East Godavari at Rajahmundry. The learned Sessions Judge dismissed the appeal by confirming the conviction and sentence recorded by the trial Court for the offence under Section 354 IPC. Challenging the same, the present revision case is filed by the petitioner –accused.

Heard and perused the material available on record.

Learned counsel for the petitioner submitted that the judgment under revision suffers from material irregularities such as the delay of 7 months and 10 days in lodging the complaint since the alleged incident took place on 14.07.2002 and the complaint was lodged on 24.02.2003 and the said delay was not explained properly and the improvements in the evidence of PW.1, and therefore, he prays to allow the revision.

On the other hand, learned Additional Public Prosecutor submitted that the findings of the Courts below need not be interfered with, inasmuch as the findings are based upon proper appreciation of evidence and therefore, he prays to dismiss the revision.

Being it is a case for the offence under Section 354 IPC, appreciation of evidence of PW.1, who is an aggrieved person, is necessary prior to appreciation of the evidence of other witnesses. In the present case, except the evidence of PW.1, the other witnesses, who are circumstantial witnesses and also the eye-witnesses, have not supported the case of the prosecution. It is the evidence of PW.1 that the accused entered into her house and dragged her and also assaulted her by outraging her modesty. As per the case of the prosecution, the occurrence took place on 14.07.2002, whereas according to PW.1, she along with her husband went to the village president and reported the incident to him and as the village president did not take any action against the accused, they went to Rajanagaram P.S., and informed the incident orally to the police and thereafter, the accused was called to the police station and was let off without taking any action, and on the same day evening when PW.1 was threatened by the accused. Thereafter, on the advice of one advocate, they approached the District Legal Services Authority and presented Ex.P.1 report. According to

PW.7, who is a Senior Assistant in Legal Services Authority, PW.1 came to the District Legal Services Authority, Rajahmundry on 20.08.2002 and presented Ex.P.1 report and thereafter, the District Legal Services Authority forwarded the same to Rajanagarm police station. Admittedly, there was a delay of one month in lodging the complaint. There was no proper explanation from PW.1 for approaching the Advocate after one month of the incident. It is also deposed by PW.1 that said incident was witnessed by LWs.2 and 3. But, LWs.2 and 3 were not examined. PW.1 also deposed that there was a quarrel, and during the course of that quarrel, she was assaulted by the accused. The said occurrence would not attract the offence under Section 354 IPC. Though PW.1 deposed that the accused assaulted her with an intention to outrage her modesty, the other witnesses, who witnessed the same, according to PW.1, have not supported the case of the prosecution. Further, the delay of one month in lodging the complaint was not properly explained by the prosecution. There is no cogent evidence on record to believe the version of PW.1. Hence, this Court is of the view that benefit of doubt can be extended to the petitioner in the instant case and therefore, the judgments of the Courts below are liable to be set aside.

Accordingly, the Criminal Revision Case is allowed and the conviction and sentence recorded against the petitioner –accused by the II-Additional Assistant Sessions Judge, (FTC), East Godavari at Rajahmundry, in SC No.313 of 2003 vide judgment, dated 05.08.2004, for the offence under Section 354 IPC, as confirmed by the VI-Additional Sessions Judge, (FTC), East Godavari at Rajahmundry, in Crl.A.No.131 of 2004 vide judgment, dated 01.12.2006, are set aside. Consequently, the petitioner - accused is acquitted for the said charge. The fine amount,

paid if any, shall be refunded to the petitioner. Bail bonds shall stand cancelled and the sureties are discharged.

Miscellaneous applications, pending if any, shall stand closed.

RAJA ELANGO, J

August 05, 2016.
KTL

