

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.168 of 2008

JUDGMENT:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 22.12.2006, in CrI.A.No.83 of 2006, on the file of the IV Additional District & Sessions Judge, at Warangal, whereunder and whereby the conviction and sentence of the petitioner/accused to undergo Simple Imprisonment for a period of five (5) years and to pay a fine of Rs.3,000/-, in default to suffer Simple Imprisonment for a period of three (3) months for the offence punishable under Section 354 IPC recorded in judgment, dated 02.05.2006, in S.C.No.202 of 2006, by the Assistant Sessions Judge, at Jangaon, was confirmed.

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

The victim Shaik Fatheema and her husband Shaik Elias are originally hail from Nellore and both of them came down to Nalapogula Village to eke out their livelihood and both of them were engaged for doing the coolie work in the mango garden of one Ch.Raghava Reddy. On 01.03.2006 the husband of the victim has left to Nellore to attend some work and stayed there. On 07.03.2006 at about 2.00 p.m., the victim was proceeding to her work place in order to attend her work by passing near through Pittala Marri, the accused came behind the victim and caught hold of her hand in order to outrage her modesty and then she made hue and cry and one Pasunoori Sathaiah, Charubudla Sampath

Reddy and Kothi Pedda Somaiah rushed near to her in order to save her and on seeing them, the accused absconded.

The victim informed the incident to her husband through phone on the night of 07.03.2006 and on the following day morning, her husband came and then a report was lodged with the police Lingala Ghanpur and the police registered a crime and took up investigation and after the investigation, the police charge sheeted the accused for the offence under Section 354 IPC.

3. The learned Judicial Magistrate of First Class, Jangaon, took the charge sheet on file as P.R.C.No.12 of 2006 for the offence under Section 354 IPC and committed the case to the Court of Sessions, Sessions Division, Warangal, by his order, dated 27.03.2006, as the offence which levelled against the accused is exclusively triable by the Court of Sessions.

4. On committal, the learned Principal District and Sessions Judge, Warangal, has taken P.R.C.No.12 of 2006 on file as S.C.No.202 of 2006 and made over the case to the file of the Court below for disposal according to law.

5. The accused was examined under Section 239 Cr.P.C. and when the charge under Section 354 IPC was framed, read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

6. To substantiate the charges, the prosecution examined P.Ws.1 to 5 and got marked Exs.P-1 to P-5.

7. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence appearing against him in the evidence of

P.Ws.1 to 5. He denied the same. On behalf of the accused, no witnesses were examined, but Ex.D-1 was marked.

8. The trial Court, after considering the evidence on record, found the accused guilty of the offence punishable under Section 354 IPC and sentenced as stated above. On appeal, the said conviction and sentence was confirmed. Hence, the present Criminal Revision Case.

9. Now the point for determination is whether the judgment of the lower appellate Court is correct, legal and proper?

10. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent and perused the material available on record.

11. The evidence on record shows that P.W.1 stated that she is residing at Nalapogula village and on 07.03.2006 when her husband Shaik Elias was away at Nellore, she was proceeding to the fields, the accused namely Suruguri Narsaiah, came from behind in a stealthy manner, dragged her to nearby trees with an intention to outrage her modesty, made her to lie on the ground forcibly and as such she raised hue and cry and hearing the same, one Sampath Reddy came to the scene of offence and at that time the accused left from the place of offence. As such, she returned back home weeping and then intimated about the incident to her husband at Nellore on phone and as such her husband returned on the next day i.e., 08.03.2006. As such both of them proceeded to the police station and lodged a complaint to the police vide Ex.P-1.

12. P.W.2, who is her husband also narrated that on the night of 07.03.2006, his wife, i.e., P.W.1 informed him about the

accused trying to outrage her modesty while she was proceeding to the fields. As such he returned to the Nalapogula village on the next day and went along with his wife to the police station and lodged a complaint.

13. P.W.3 stated that he has not witnessed the incident in spite of the prosecution contention that he was an eye witness. But, indirectly mentioned that he has come to know about the accused playing mischief with a girl. P.W.4 stated that on 07.03.2006 while he was attending to his work at Pittalamarri, he heard shouting of P.W.1 at about 2.00 p.m., claiming that she was being outraged by the accused. As such, he ran to P.W.1 and noticed the accused running away from the said place and at that time, P.W.1 informed him about the accused trying to outrage her modesty by holding her hand. He also stated that the police conducted scene of offence panchanama in his presence and drew the sketch of the same. P.W.3 turned hostile.

14. P.W.4, another eye witness, deposed before the Court that on hearing the cries of P.W.1, he went to the place of occurrence and he saw the accused running away from the place of occurrence.

15. P.W.5 stated that on receiving the complaint from P.W.1 vide Ex.P-1, a FIR was registered vide Ex.P-5 and after completing the formalities, recorded the statements of P.Ws.1, 2 to 4 and other witnesses, prepared the scene of offence panchanama at the place of offence, drew the rough sketch of the same, arrested the accused and sent him for judicial remand.

16. The learned trial Judge as well as the lower appellate Judge relied on the evidence of P.Ws.1 and 4 and convicted the accused as stated above.

17. More particularly, being this is an offence under Section 354 IPC, this Court intend to appraise the evidence of P.W.1, who is the aggrieved person. According to P.W.1, the occurrence took place on 07.03.2006 and the complaint is lodged on the next day. The reason for the delay explained by P.W.1 was since her husband was in Nellore, after his arrival, she lodged the compliant, but in the said complaint, she has not stated the following points:

1. that the accused caught hold of her hand;
2. that the accused dragged her to the bushes near the tress; and
3. that the accused made her to lie on the ground and attempted to outrage her modesty.

Whereas P.W.1 has much improved than what has been stated by her in her complaint regarding the attempt that the petitioner caught hold of the hands of the victim and dragged her and she has also not stated that she was forced to lie on the ground. The evidence of P.W.4 is also only to an extent of seeing the accused running from the place of occurrence. If the statement of P.W.1 inspires the confidence of the Court, then the conviction can be recorded, but the reading of Ex.P-1, which not even discloses any commission of offence, a case is registered for an offence under Section 354 IPC. The subsequent statements improved by P.W.1 to attract an offence under Section 354 IPC and the contents of the evidence are also highly improbable, since it happened by 2.00

p.m. on the date of occurrence and the so-called eye witness, i.e., P.W.3 also turned hostile in this case. Hence, this Court is of the view that placing reliance on the evidence of such witnesses, convicting a person that too which is punishable with minimum punishment of five years is highly unsafe.

18. This Court is also convinced with the findings of the Courts below. Hence, this Court is not inclined to interfere with the judgments of the Courts below.

19. Considering the facts and circumstances of the case, the Criminal Revision Case is allowed and the judgment, dated 22.12.2006, passed in Crl.A.No.83 of 2006, by the IV Additional District and Sessions Judge, at Warangal, confirming the judgment in S.C.No.202 of 2006, dated 02.05.2006, passed by the Assistant Sessions Judge, at Jangaon, is set aside and the petitioner/accused is acquitted of the offence under Section 354 IPC. The fine amount, if any, paid by the petitioner/accused is directed to be refunded to him. Bail bonds, if any, shall stand cancelled.

20. Accordingly, the Criminal Revision Case is allowed. Consequently, the Miscellaneous Petitions, if any, pending in this criminal revision case shall stand closed.

RAJA ELANGO, J

Date: 23rd August, 2016

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