

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.378 of 2005

JUDGMENT:

Petitioner/accused filed this criminal revision case by invoking the provisions under Sections 397 & 401 of the Criminal Procedure Code, being aggrieved by the judgment, dated 20.01.2005 rendered in Criminal Appeal No.119 of 2001 by the III Additional District & Sessions Judge, Fast Track Court, Nellore District, whereby and whereunder the conviction and sentence of the petitioner/accused to undergo Rigorous Imprisonment for a period of five (5) years and to pay a fine of Rs.500/-, in default of suffer Simple Imprisonment for a period of six (6) months for the offence punishable under Section 354 IPC and the conviction and sentence of the petitioner/accused to undergo Rigorous Imprisonment for a period of one (1) year for the offence under Section 452 IPC recorded in judgment, dated 09.07.2001, in S.C.No.367 of 2000, by the Assistant Sessions Judge, Kavali, was confirmed.

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

Matta Premalatha (the victim P.W.1) and accused are neighbours. P.W.1's husband went to Addanki for cooli work prior to the incident. On 13.07.1999 night, P.W.1 was alone in the house and sleeping. At about 24.00 hours, the accused went to the house with an intention to have sexual lust with P.W.1 thereby knocked the door. When P.W.1 opened the door, the accused forcibly pushed P.W.1 her inside of the house and closed the doors and bolted inside and wrongfully confined P.W.1 and caught hold

of her and tried to have sexual intercourse with her to satisfy his lust. P.W.1 raised cries. On hearing the cries, P.W.2, the wife of the accused came there and chastised the accused and took her husband to her house. Thereafter, P.W.1 gave a report to the police against the accused. The police after following all formalities laid charge sheet against the accused.

3. On appearance of the accused before the trial Court, the charges under Sections 354 & 452 IPC were framed against the accused, read over and explained to him, for which, he pleaded not guilty and claimed for trial.

4. To substantiate its case, prosecution got examined PWs.1 to 6 and marked Exs.P-1 to P-3. On behalf of defence, no oral evidence was adduced, but Ex.D-1 was marked.

5. After appreciating the oral and documentary evidence available on record, the trial Court found the accused guilty of the offences punishable under Sections 354 & 452 IPC, and accordingly, convicted and sentenced him as stated above. Aggrieved by the conviction order, the petitioner filed Crl.A.No.119 of 2001. The lower appellate Court dismissed the appeal by confirming the order of the trial Court, by judgment, dated 20.01.2005. Challenging the same, the present revision case is filed.

6. Heard and perused the entire material available on record.

7. After hearing the arguments of the learned counsel for both sides and after perusing the material available on record, this Court is of the view that there are no reasons to set aside the conviction against the petitioner/accused for the offence under

Sections 354 & 452 IPC. When this Court expressed its opinion that this Court is not inclined to interfere with the concurrent findings of the Courts below, learned counsel for the petitioner submitted that he will confine his arguments only to the extent of the period of imprisonment imposed against the petitioner.

8. Being this a case for the offences under Sections 354 & 452 IPC, the evidence of the victim P.W.1 gains more importance than that of other witnesses since the other witnesses are not eye witnesses to the occurrence. P.W.2, who is the wife of the appellant turned hostile and not supported the case of the prosecution. P.Ws.3 & 4 are brothers of the victim.

9. The points for consideration raised by the learned counsel for the petitioner are that there is inordinate delay in lodging the complaint. Even though the prosecution wants to explain the said delay, they miserably failed in explaining the same. Further the contradiction in the evidence of P.W.1 that she has not raised any cries at the time of occurrence and she had raised cries only at 5.00 a.m., when the accused again threatened her when she was in the house.

10. The date of occurrence was on 13.07.1999, but the complaint was lodged on 15.07.1999 by 6.00 a.m. The reason for such delay is that she waited for her husband's arrival since he is working in some other town. P.W.4, who is the brother of the victim, failed to explain the reason for not lodging the complaint immediately. The reason given by P.W.1 is that she waited for the arrival of her husband. When the offence is heinous in nature and the allegations are grave in nature, necessarily, the complaint should be given without there being any delay. When there is a

delay, delay gives room for any amount of suspicion about the case of the prosecution. The husband of P.W.1 was also not examined to substantiate the fact that he could not reach the town within a period of two days. Apart from that, from the evidence of P.W.1 that she has not raised any hue and cry, it can be safely concluded that there was an attempt by the petitioner herein and the same was witnessed and any act of the accused informing the victim that he want to have sexual relation may not amount to offence under Sections 354 & 452 IPC. Hence, the conviction is modified to Section 509 IPC.

11. Considering the facts and circumstances of the case and also in view of the submission of the learned counsel for the petitioner, the conviction under Sections 354 & 452 IPC is altered to Section 509 IPC and the sentence of imprisonment imposed against the petitioner is reduced to that of the period, which the appellant has already undergone.

12. In the result, the conviction recorded against the petitioner/accused by the Assistant Sessions Judge, Kavali, in S.C.No.367 of 2000, vide Judgment, dated 09.07.2001, as confirmed by the III Additional District & Sessions Judge, Fast Track Court, Nellore District, in Crl.A.No.119 of 2001, vide judgment, dated 20.01.2005, for the offences under Sections 354 & 452 IPC is altered to Section 509 IPC and is hereby confirmed. However, the sentence of imprisonment imposed by the trial Court, as confirmed by the lower appellate Court, is modified to that of the period, which the petitioner has already undergone. However, the sentence of fine imposed by the trial Court shall not be interfered with.

13. The Criminal Revision Case is, accordingly, allowed in part. Consequently, the Miscellaneous Petitions pending, if any, shall stand closed.

RAJA ELANGO, J

Date: 6th September, 2016

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