

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.595 OF 2008

JUDGMENT:

This criminal appeal is preferred by the State by invoking the provision under Section 378 (3) & (1) of the Code of Criminal Procedure being aggrieved by the judgment, dated 24.01.2006, rendered in S.C. No.291 of 2004, by the Assistant Sessions Judge, Proddatur, whereby and whereunder the learned Judge found the respondents – accused not guilty of offences under Sections 448, 323 and 354 IPC and found the 2nd respondent – A2 not guilty of the offence 323 IPC and also found the 1st respondent – A1 not guilty of the offence under Section 355 IPC and accordingly, acquitted them of the said offences.

The brief facts of the case are that the Sub-Inspector of Police, Nagari Police Station, filed charge sheet against A1 to A8 in Crime No.4 of 2004 under Sections 448, 355, 323 and 353 r/w.34 IPC with the following allegations:

On 10.01.2004, while D.Jayanthi (PW-1) was alone in her house at Bugga Agraharam village of Nagari Mandal, between 8-30 p.m., to 9-00 p.m., A1 to A8, who are inimical terms with PW.1 trespassed into her house, abused her in filthy language making allegations as she wrote a complaint against their family without their permission and beat her with hands. A1 beat her with a chappal on her cheek, A2 pushed her down and kicked her with legs and A3 to A8 caught hold of her, dragged her into the street, torned her saree and blouse, beat with hands and were outraged her modesty in the public place with an intention to insult her. On the report given by PW.1, the Station House Officer, Nagari PS, registered a case in Crime No.4 of 2004 against A1 to A8 for

the offences under Sections 448, 355, 323 and 354 r/w.34 IPC. After completion of investigation, the police filed charge sheet.

The case was taken on file by the Judicial Magistrate of First class, Nagari, vide PRC No.6 of 2004 against A1 to A8 for the offences punishable under Sections 448, 355, 323 and 354 r/w.34 IPC and after following the procedure as laid down under Sections 207 to 209 Cr.P.C., learned Magistrate committed the case to the Court of Sessions, Chittoor District. The learned District and Sessions Judge, Chittoor, numbered the case as S.C. No.291 of 204 and made over the same to the trial Court for trial and disposal in accordance with law. During the pendency of the case, accused No.7 died and hence, the case against him was dismissed as abated.

On appearance of the accused, charges under Sections 448, 323 and 354 IPC were framed against A1 to A6 and A8, a charge under Section 323 IPC was framed against A2 and a charge under Section 355 IPC was framed against A1 and the above charges were read over and explained to them, for which they pleaded not guilty and claimed to be tried.

To prove its case, prosecution examined PWs.1 to 9 and marked Exs.P.1 to P.7. On behalf of the accused, no oral evidence was adduced, but Exs.D1 to D5 were marked.

After evaluating the oral and documentary evidence adduced by the prosecution witnesses, the trial Court found the respondents – accused Nos.1 to 6 and 8 not guilty of the offences alleged against them and accordingly acquitted them of the offences alleged against them,

respectively. Challenging the same, the State preferred the present appeal.

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

From a reading from the entire material available on record and the judgment of the trial Court, it is clear that the learned Sessions has appreciated the evidence in a proper manner on factual and legal aspects. While acquitting the respondents, the learned Sessions Judge has observed as follows:

“The evidence of PW.8 shows that he did not receive any complaint prior to Ex.P.1. PW.8 who registered a case against the accused deposed that he did not receive any complaint prior to Ex.P.1 and on 13.1.2004 he received Ex.P.1 complaint from PW.1. In view of the evidence of PWs.8 and 9 the evidence of PW.1 will not inspire confidence that she gave oral statement against the accused on 10.01.2004 and she presented written complaint against the accused on 11.1.2004. If really PW.1 presented oral complaint or written complaint to the S.I. of Police, definitely there will be some action by the Police against the culprits. In view of the above said fact, the evidence of PW.1 that she presented a report to the S.I. of Police Nagari P.S., cannot be accepted.

Another aspect that has to be considered in the case is that the alleged incident was took place on 10-1-2004 and PW.1 went to the Sub-Divisional Police Officer, Chittoor and presented Ex.P.1 and on the endorsement of the Sub-Divisional Police Officer, Chittoor, PW.8 registered a case against the accused as crime No.4/ 2004 under section 448, 355, 323 and 354 r/w.34 IPC and he submitted Ex.P.6 original F.I.R. to the Judicial Magistrate of First Class, Nagari. Ex.P.6 was reached to the Judicial Magistrate of First Class Court on 19.1.2004 by post. The Court is situated near to the Nagari Police Station and no reason was offered by PW.8 for sending Ex.P.6 original F.I.R. to the Court on 19.1.2004. If really the case was registered on 13-1-2004 at about 1-45 P.M. definitely the said Ex.P.6 will reached to the Court immediately either on the same day or atleast on the next day. The reaching on Ex.p.6 to the court on 19-1-2004 will give some reasonable suspicion about the registering of the case and about the incident. The non explanation of the delay in reaching the F.I.R. for about 7 days is one of the point that can be considered against the prosecution. By

relying upon the above decisions and the discussion made above, I am of the opinion that the evidence adduced by the prosecution will not be sufficient to say that the prosecution has proved its case against the accused beyond all reasonable doubt. In view of the above said discussion I answered this point against the prosecution and in favour of A.1 to A6 and A8."

In a case of acquittal, if the trial Court considered two views and basing on one of the views, which is in favour of the accused, acquits the accused, normally this Court will not interfere with the judgment of the trial Court unless and otherwise, the evidence adduced by the prosecution clinchingly points towards the guilt of the accused. Hence, as rightly pointed out by the learned trial Judge, the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt and this Court is of the view that the trial Court has rightly acquitted the accused disbelieving the case of the prosecution. This Court is not inclined to interfere with the judgment of the trial Court and hence, the appeal is liable to be dismissed.

Accordingly, the Criminal Appeal is dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed.

August 11, 2016.
KTL

RAJA ELANGO, J