

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.929 of 2005

ORDER:

This Criminal Revision Case, under Sections 397 and 401 Cr.P.C., is filed by the petitioner/accused aggrieved by the Judgment, dated 02.06.2005, passed in Criminal Appeal No.13 of 2005 by V Additional District and Sessions Judge (Fast Track Court), Guntur, whereby the learned Sessions Judge confirmed the conviction and sentence passed by the Principal Assistant Sessions Judge, Tenali, in Sessions Case No.262 of 2004, vide Judgment dated 28.12.2004.

2. For the sake of convenience, the parties will be referred to as they arrayed before the trial Court.

The case of the prosecution is that on 16.07.2003 at about 7:00 PM., the accused came to the house of the P.W.1 (victim) and sat on a cot in front of her house and uttered that P.W.1's family is in risk and if P.W.1 lives with him, her problems will be solved and forced to give consent. P.W.1 cursed the accused, abused and threatened him that she will inform the same to her husband, for which the accused grew wild and shouted that even her husband will not come in his way and nothing will happen and went away. P.W.1 informed the same to her husband on the same day and he advised P.W.1 to wait for some time. While the matter stood thus, on 17.06.2003 at about 4:00 PM., on coming to know that grand son was born to L.W.4, P.W.1 went to the house of L.W.4. Thereafter, P.W.1 came out of the house, in the meanwhile the accused came and uttered that he will come to her house in the night at about 8:00 PM and asked her to get ready to fulfil his

sexual lust. P.W.1 returned to home and in the night at 7:30 pm when her husband P.W.2 was inside the house and as her son was weeping, she came out of the house and saw the accused came to her and caught hold of her right hand and asked her to satisfy his list, for which P.W.1 resisted and taken back her hand. Then the accused caught hold of her jacket and pressed her breast and pulled. Then, P.W.1 cried loudly and on hearing the same, the accused started running and escaped from the scene of offence. The same was witnessed by P.Ws.3 to 5. Thereafter, P.W.1 with the assistance of P.W.2 came to Nizampatnam Police Station on the same day night at 9:30 PM, lodged a report to P.W.7, who in turn registered a case in Crime No.18 of 2003, issued F.I.R., and investigated into. After completion of investigation, police filed charge sheet against the accused for offence punishable under Section 354 IPC.

3. The case was taken on file by the II Additional Munsif Magistrate, Repalle and after compliance of formalities under Section 209 Cr.P.C., committed the case to the Sessions Division, Guntur.

4. On appearance of the accused, 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.

5. To prove the said charge, prosecution examined PWs.1 to 7 and got marked Exs.P.1 to P.5 and M.Os.1 and 2. On behalf of defence, Exs.D.1 to D.3 were marked.

6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. He denied the incriminating material that appeared in the evidence of prosecution and reported no defence evidence.

7. Upon hearing argument of both counsel, the trial Court found the accused guilty of the offence referred supra and accordingly, convicted and sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/- in default, to suffer simple imprisonment for a period of one month. Aggrieved by the said conviction and sentence, the accused filed appeal in Criminal Appeal No.13 of 2005 before V Additional District and Sessions Judge (Fast Track Court), Guntur and the same was dismissed confirming the Judgment, dated 28.12.2004, passed in Sessions Case No.262 of 2004. Aggrieved by the said judgment, the present revision case is filed.

8. The main ground urged before the Court is that the trial Court while appreciating the evidence of P.Ws.1, 2 and 4 failed to see that they are highly interested in the prosecution case and apart from that the trial Court did not take into consideration the private complaint, in C.F.R.No.3691 of 2003 on the file of II Additional Munsif Magistrate, Repalli, filed against P.Ws.2 and 6 on the date of alleged offence, which is still pending by the date of pronouncement of judgment and that the petitioner was falsely implicated and trial Court and appellate Court committed grave error in finding him guilty for the offence punishable under Section 354 IPC and prayed to set aside the conviction and sentence passed by the trial Court confirmed by the appellate Court.

9. On 07.09.2016 when the matter is listed finally for hearing since it is a case of 2005, learned counsel for the petitioner did not represent the matter for the reasons best known to him, therefore, the revision case was directed to be listed today under the caption 'for orders'. Even today, the counsel did not appear and advance argument. On this ground, this Court cannot dismiss the criminal revision case for default, but basing on the material available record, decide the matter in accordance with law as held by the Delhi High Court reported in **Misha Sharma v. Vinod Kumar Sharma**¹, wherein it is held that the revision petition cannot be dismissed for default even if the petitioner or Advocate does not appear before the Court. The Court can examine the record and decide the revision case on merits. Therefore, persuaded by the principle laid down in the above Judgment, this Court decides to dispose of the present revision case basing on the material available on record.

10. P.W.1 is the victim, who testified about the incident from the beginning as to how the accused outraged her modesty, which directly amounts to an offence punishable under Section 354 IPC, since, the petitioner pressed the private parts of P.W.1. It is evident from the material on record that the accused insisted P.W.1 to accept his proposal of satisfying his sexual lust, so as to save, her family from financial troubles. Though P.W.1 did not accept for the said proposal, the accused has committed the offence. When P.W.1 was alone in the puncha during night time, the possibility of commission of such offence cannot be ruled out.

¹ 1990 Cr.LJ. (NOC) 57 (Del.)

If the accused did not commit such an offence, there is no necessity to P.W.1 to implicate him in such an offence. P.W.2, husband of P.W.1 clearly testified about P.W.1 coming out of the house on the date of incident and on hearing the cries, he rushed out of the house and some other persons were also gathered there. On seeing them, the accused fled away from the scene of offence. P.W.3 is an independent witness, who is a neighbour of P.W.1. On hearing the cries of P.W.1, he came to the scene of offence and found that the accused was running from the scene of offence. Therefore, the evidence of P.W.3, who is an independent witness, is suffice to conclude that the accused is the person who was running from the scene of offence. When P.W.1 raised cries, if really the accused did not commit offence, he would not have fled away from the scene of offence on seeing P.W.2 and others. This is also another circumstance to believe that the petitioner committed the offence punishable under Section 354 IPC. Apart from that the evidence of P.W.4, who was standing near Donka of their village, heard some galata at the house of P.Ws.1 and 2 and on hearing the same, immediately he went there and found the accused was running away from the scene of offence. Therefore, his evidence is wholly reliable to connect the accused with the offence.

11. Besides the oral evidence of P.Ws.1 to 4, the material objects i.e., M.Os.1 and 2 marked before the Court would clearly go to show that the accused had outraged the modesty of P.W.1. It is not the case of the accused that M.Os.1 and 2 were planted for different reasons to implicate the accused in the present case. Though P.Ws.1 and 2 are wife and husband, the independent testimony of P.Ws.3 and 4 corroborated with their testimony with

regard to raising cries on P.W.1 to attract the attention of neighbours and accused has fled away from the scene of offence. This is a strong circumstance to believe that the accused is the person, who outraged the modesty of P.W.1, which is punishable under Section 354 IPC. Therefore, the trial Court totally believed the evidence P.W.2, the husband of P.W.1, and independent testimony of P.Ws.3 and 4, who witnessed the incident, while accused fleeing away from the scene of offence. Therefore, the trial Court did not commit any error in convicting the accused. The appellate Court also on re-appreciation of entire evidence on record, concluded that the petitioner has committed the offence punishable under Section 354 IPC and that lodging of F.I.R. within two hours of the incident is another strong reason to believe that the petitioner is the person, who outraged the modesty of P.W.1. Apart from that there is no enmity with P.Ws.1 and 2 to implicate the accused falsely in this case and in the absence of any ill motive, the evidence of P.Ws.1 and 2 can safely be relied on to conclude that the accused has committed the offence. There is absolutely no ground to disbelieve the prosecution case even after re-appreciation of entire evidence though it is beyond scope of revisionary jurisdiction. Therefore, I find no ground to interfere with the concurrent findings recorded by both the Courts below.

12. In view of limited jurisdiction of this Court under Sections 397 and 401 Cr.P.C., it is difficult to accept the contention of the petitioner that he was falsely implicated in this case. Apart from that one of the contentions raised by the petitioner in the grounds of revision is that the petitioner filed a private complaint against P.Ws.2 and 6 before the learned Magistrate and the same is

pending. But filing of a private complaint may be an after thought to raise appropriate defence in the present case and basing on pendency of private complaint, it is difficult to hold that the accused had committed no offence and he was falsely implicated in this case. I see no ground to reverse the concurrent fact findings recorded by both the Courts below.

13. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this revision case shall stand closed.

SEPTEMBER 14, 2017
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M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date: 14.09.2017

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