

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.550 of 2006

ORDER:

The present Criminal Revision Case is preferred by the petitioner/*de facto* complainant questioning the order of acquittal recorded by the learned I-Additional Sessions Judge, Ongole, by judgment dated 3.1.206 in Criminal Appeal No.134 of 2003 setting aside the conviction recorded under Section 235 (2) of Criminal Procedure Code, 1973 (for short, 'Cr.P.C.') for the charge under Section 376 read with Section 511 of Indian Penal Code (for short, 'I.P.C.') and the sentence of rigorous imprisonment for a period of seven years and fine of Rs.5,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of one month and apportioning Rs.2,500/- to be paid to the victim from the fine amount of Rs.5,000/-.

2. Heard Sri T. Nagarjuna Reddy, learned counsel for the revision petitioner/*de facto* complainant, and the learned Assistant Public Prosecutor for the 1st respondent-State of Andhra Pradesh.

3. It appears that service was not completed, though, it was ordered way back in 2006 itself. The present Criminal Revision Case has been coming up since 2006 and on 21.3.2013, this Court passed the order, thus:

“Learned counsel for the petitioner is permitted to take out personal notice on the second respondent/accused by registered post with acknowledgement due on or before 30.03.2013 and

file proof of service. Failure to service notice, the revision shall stand dismissed.

Post after service of notice.”

4. Despite passing the said order by this Court, Registry has not noted under the relevant column i.e., ‘office note’ in the proceeding sheet, whether proof of service was filed or not?

5. The direction given on 21.3.2013 when not complied with, the present Revision ought to be viewed as stand dismissed.

6. The learned counsel for the petitioner fairly submits that in case the Court finds that there is sufficient material in the matter, the only course open is to remit the matter to the appellate court as the appellate court reversed the conviction recorded and sentence inflicted by the trial Court. He would submit that he has addressed letter to the petitioner even.

7. On merits, the learned counsel for the petitioner would point out the relevant portion of the judgment of the appellate court, of course reference to factual aspects and inherent infirmities in the prosecution case.

8. Now, turning to the findings recorded by the appellate court so far as testimony of P.Ws.2 and 3 are concerned, it is clear that they were not eye-witnesses to the incident. The contradictory versions occurring in the testimony of P.Ws.2 and 3 were noted by the learned Appellate Judge as P.W.2 stated that when herself and P.W.3

were proceeding at a distance of one furlong they heard cries of P.W.1 whereas P.W.2 stated that they were at a distance of 20 to 30 feet. This was noted by the appellate Court. He points out that P.W.6- Investigating officer in his cross-examination stated that P.W.2 did not state before him that she went to the scene of offence by raising shouts or about her meeting P.W.3. Likewise, even in Ex.P1 (First Information Report) there is no whisper about the arrival of P.Ws.2 and 3 and a portion containing thereof in Ex.P1 is extracted to the effect that the accused beat P.W.1, fisted twice on neck of P.W.1 and when she started raising shouts the respondent ran away apprehending that neighbouring land owners would rush to the place of incident. Certain omissions were also pointed out by the learned Appellate Court in sub-paragraph (E) of paragraph-9 and observing that discrepancies and inconsistencies in the evidence of P.Ws.1 to 3 vis-à-vis the omission of the names of P.Ws.2 and 3 in Ex.P1, makes it sensitive to hold that P.Ws.2 and 3 are planted witnesses, instead of accepting their version in a positive manner. The findings recorded in paragraph-10 are also to the effect that neither clothes were torn nor the person of P.W.1 received any scratches as the case of P.W.1 is that she was dragged to a considerable distance. The learned appellate Court held that the said story is improbable to accept. The learned Appellate Judge has also extracted the description of the language in vernacular portion in paragraph-10 in testing the reliability of the testimony of P.W.1. It is according to the learned Appellate Judge that even the Doctor was not examined and that also accounts for an

infirmity in the prosecution case. The learned Appellate Judge held that the evidence was not properly appreciated by the learned Assistant Sessions Judge, Kandukur, and, thereby misdirected himself in recording conviction. When definite findings have been recorded by the Appellate Judge, as referred to in the above, certainly, it is not a case where interference is warranted.

9. Therefore, the present Criminal Revision Case is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

Dt.02.11.2017
gbs

A. SHANKAR NARAYANA

