

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.426 OF 2007

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed assailing the judgment, dated 23.02.2007, rendered in S.C.No.871 of 2002 on the file of the learned Assistant Sessions Judge, Jagtial, whereby and whereunder, the learned Sessions Judge has acquitted respondent No.2 having found him not guilty for the offences punishable under Sections 354 and 324 I.P.C.

2. Heard Sri K. Venu Madhav, learned counsel for the revision petitioner – *de facto* complainant, and the learned Additional Public Prosecutor, who joined the revision petitioner.

3. In fact, the present revision case was admitted on 28.03.2007. Of course, no notice was ordered to respondent No.2 - accused, but, even otherwise, the patent illegality or the perversity in the order under challenge requires examination before requiring respondent No.2 to be heard. In that direction, the arguments of the learned counsel for revision petitioner are heard.

4. Substantially, the case of the prosecution is that on 23.06.2002 at 10:30 PM, while the revision petitioner, who was

examined as PW.1, was rolling beedies and her daughter, PW.2, was sleeping on a cot, respondent No.2 alleged to have gained entry into the house of PW.1 and attempted to outrage her modesty and when PW.1 raised hue and cry, PW.2 woke up and found the presence of respondent No.2, who ran away. It is also alleged that, six months prior to the date of present incident, when PW.1 was alone in the house, respondent No.2 came there and tried to molest her. The incident, which occurred on the night of 23.06.2002, was said to have reported to PW.3, who is the elder brother of PW.1. The complaint was lodged with the police concerned. The Station House Officer referred PW.1 to the Government Civil Hospital, Koratla, for issue of wound certificate in respect of the injuries sustained by her. On completion of investigation, charge sheet was laid, P.R.C. was numbered and, since, the offence punishable under Section 354 I.P.C. was exclusively triable by the Court of sessions, the learned Judicial Magistrate of First Class, Jagtial, committed the case to the Court of sessions, Karimnagar, and the same was made over to the learned Assistant Sessions Judge, Jagtial, and numbered as the present case.

5. The learned Assistant Sessions Judge proceeded with trial, since, respondent No.2 pleaded not guilty when examined under Section 228 Cr.P.C. for the charges under Sections 354 and 324 I.P.C.

6. On behalf of the prosecution, PWs.1 to 6 were examined and Exs.P1 to P4 were marked. PW.1 is the victim, PW.2 is the daughter

of PW.1, PW.3 is a circumstantial witness being brother of PW.1, PW.4 is the husband of village sarpanch, PW.5 is the Medical Officer and PW.6 is the Investigating Officer. PW.4 turned hostile. His statement under Section 161 Cr.P.C. was marked as Ex.P2.

7. The learned Assistant Sessions Judge opined that the evidence of PW.4 is of no use, since, he turned hostile and the evidence of PW.3 was excluded, since, he being a circumstantial witness. Concerning the evidence of PWs.1 and 2, the learned Assistant Sessions Judge, having found that there was irreconcilable inconsistency between the testimony of both the witnesses, thereby, arrived at the conclusion that the prosecution failed to prove either charge levelled against respondent No.2 beyond all reasonable doubt. The contradictory versions or inconsistencies in the evidence of PWs.1 and 2 were projected by the learned Assistant Sessions Judge in paragraph Nos.10 to 12. What weighed the learned Assistant Sessions Judge has been that there is complete variation between the evidence of PWs.1 and 2 and even the medical evidence was not in corroboration with the evidence of PW.1, for the reason that PW.5 – Medical Officer did not even notice any teeth mark or bite mark on injury No.1, which was asserted to by PW.2, daughter of PW.1, as according to her version, when she woke up she found respondent No.2 sitting on PW.1 and biting the ear of PW.1. The version spoken to by PW.2, while in witness box, was not consistent with the version

of PW.1. The learned Assistant Sessions Judge had formed an opinion that there must have been some sort of intimacy between PW.1 and respondent No.2 and to fortify that opinion formed by him, even expresses PW.1 was speaking falsehood for some other reason. He referred to the evidence of PW.2 stating that she woke up from sleep and found her mother and respondent No.2 on the floor and respondent No.2 was sitting on PW.1, which was not the evidence of PW.1.

8. Certain observations were made by the learned Assistant Sessions Judge in paragraph No.12 as regards not locking the door or closing the doors and the behaviour of respondent No.2 in entering into the house. When the learned Assistant Sessions Judge, having appraised the evidence before him and discarded the testimony of PWs.1 and 2, not only holding it as improbable to prove the offence, but also there has been irreconcilable inconsistency in their statements, certainly, the opinion formed by the Court below cannot be supplanted with the view of this Court. This has been the settled proposition. In such an event, it is to be held that the findings recorded by the Assistant Sessions Judge, thereby, acquitting respondent No.2, cannot be interfered with, more particularly, where the acquittal is recorded on appreciation of evidence in right perspective.

9. Therefore, the present revision case is dismissed, as it is devoid of merit. Miscellaneous Petitions, if any, pending in this revision case shall stand closed.

A. SHANKAR NARAYANA, J

November 02, 2017.
MD

