

**HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRL.A.No.1147 OF 2016**

**JUDGMENT:**

This criminal appeal is filed under Section 378(4) of Cr.P.C challenging the acquittal of respondent by calander and Judgment dated 23.09.2016 in Sessions Case No.203 of 2014 on the file of Assistant Sessions Judge, Gudur for the offence punishable under Section 354 of IPC.

2. The Sub-inspector of Police, Sydapuram Police Station, SPSR Nellore received a complaint from the *de facto* complainant-PW1-Nandimandalam Madhavi alleging that the accused outraged her modesty at fair price shop in the presence of PWs.2 to 5. On receipt of the complaint, the police registered a Crime No.117 of 2012 under Ex.P.1, issued FIR and during investigation, PWs.1 to 5 were examined, recorded their statements under Section 161(3) of Cr.P.C. and collected material Exs.P.1 to P.8.

3. After completion of entire investigation, the charge sheet was filed before the Judicial Magistrate of First Class for the offence punishable under Section 354 of IPC and the learned Judicial Magistrate after following necessary procedure, committed the matter to Sessions Division, Nellore as the offence was triable by Court of Sessions exclusively. On receipt of record from the Judicial Magistrate, the Sessions Division, registered the same as S.C.No.203 of 2014 and made over to the Assistant Sessions Judge, Gudur.

4. The Assistant Sessions Judge, after securing presence of the accused, upon hearing arguments of the learned Additional Public

Prosecutor and accused, framed charge for the offence punishable under Section 354 of IPC, explained the same to him in Telugu, the accused pleaded not guilty and claimed to be tried.

5. During trial, prosecution examined PWs1 to 7 and marked Exs.P.1 to P.8. After closure of the prosecution evidence, the accused was examined under Section 313 of Cr.P.C explaining the incriminating material that approved against him, in the evidence of prosecution witnesses, the appellant/accused denying the incriminating evidence and reported no defence evidence.

6. Upon hearing both counsel, the trial Court found the accused not guilty for the said offence and acquitted him as there was no corroborative evidence to the testimony of PW.1-victim. Even the evidence of victim was not consistent on the material aspect of the occurrence of incidence.

7. Aggrieved by the judgment of the trial Court, the prosecution preferred this appeal raising various grounds, mainly that the sole testimony of PW.1 is sufficient, which inspires confidence of this Court and in the absence of any material inconsistencies, the Court ought to have convicted the accused/respondent for the said offence. But the trial Court on erroneous appreciation of evidence found the accused not guilty and acquitted him erroneously and prayed to set aside the same and convict the accused for the said offence exercising power under Section 378(3) of Cr.P.C.

8. During hearing, learned counsel for the appellant contended that the testimony of PW.1 is worthy of credence and there is no rule that the victims evidence requires any independent corroboration more particularly in the offences against women and

therefore, failure to produce any corroborative evidence to the testimony of PW.1 is not a ground to acquit the accused for the serious offence punishable under Section of 354 IPC and drawn the attention of this Court to the testimony of PW.1, who testified and narrated as to how the incident occurred on 01.11.2012 at about 05.30 hours and giving complaint to the police, Ex.P.1. On the basis of Ex.P.1-complaint and evidence of PW.1, the Court has to record conviction of the accused for the said offence.

9. From a perusal of the judgement of the trial Court it is clear that except evidence of PW.1, no independent witness supported the case of the prosecution, more particularly, about occurrence of incident on 01.11.2012 and even evidence of PW.1 is not consistent on the material aspect about date and time of occurrence of incidence. Ex.D.1 marked in the cross examination of PW.1 shows that the incident was not occurred on the date, which she has spoken.

10. According to the prosecution, on 01.11.2012 at about 03.30 PM PW.1 went to fair price shop situated in the village as she was not given oil packet during earlier month, she was asking fair price shop dealer Venkateshwarlu to supply oil packet, then the dealer was convincing her and that in the meantime, the accused intervened, came upon her, abused her as she was begging like prostitute, caught hold of tuft of her hair and fisted on her back, pulled her blouse and torned the same. Thus, he outraged her modesty in the presence of PW.3-Ramakrishnam Raju and PW.4-Chenchu Narasaiah and PW.2-Sivarama Raju and they interfered and rescued her. Thereupon, she gave complaint to the police-Ex.P.1. As seen from Ex.P.1-complaint, it was given on 01.11.2012

at 05.30PM and her evidence with regard to the incident narrated in Ex.P.1 is totally different from the incident narrated before the Court in her examination. Ex.D.1 is contradiction. She stated that she did not state before the police as the incident occurred on 01.11.2012 and gave report on 02.12.2012. Thus, there is any amount of inconsistency about the occurrence of incident. The contents of Ex.P.1 clearly suggest that no incident was occurred on the dates stated by her in the examination in chief. In the cross examination of PW.1, the entire evidence of PW.1 was shattered. Thus, there is clear inconsistency about time and date of occurrence and lodged report with the police marked as Ex.P.1. Therefore, evidence of PW.1 inspires no confidence of this Court, thereby on the basis of such inconsistent evidence of PW.1 without insisting independent corroboration, the Court cannot record conviction of the accused for the serious offences punishable under Section 354 of IPC.

11. The independent mediators, who allegedly present at the time of incident, did speak nothing about the occurrence of incident and interference and rescue of PW.1 in the said incident. They totally turned hostile and therefore, there is absolutely no independent corroboration to the testimony of PW.1 to record conviction of the accused for the said offence.

12. The trial Court on elaborate discussion of the evidence of PW.1, with reference to the law declared by the Apex Court in **Namdeo v State of Maharashtra**<sup>1</sup> and **Ramnaresh and others v State of Chattisgarh**<sup>2</sup> concluded that the Court can record

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<sup>1</sup> 1996(1) MhLJ 652

<sup>2</sup> 2012(4)SCC 257

conviction if the evidence of victim inspires confidence and credit worthy. However, discussed the evidence at length in para 4 of page 5 and pointed out several inconsistencies in the testimony of PW.1, more particularly regarding lodging of complaint and incident. In para 9.4, the Court observed that the complaint was lodged on 06.11.2014 at 14 hours for the incident that occurred on 01.11.2012, but not on 01.10.2012. Because of such inconsistencies, the trial Court did not believe testimony of PW.1.

13. Even after reappraisal of entire evidence by this Court, I find that PW.1 is not wholly reliable evidence in view of inconsistencies pointed out in the earlier para, and recording conviction against the accused, while exercising power under Section 378 of Cr.P.C, is difficult.

14. In **Kallu @ Masih and others v State of Madhya Pradesh**<sup>3</sup> the Apex Court discussed about the scope of Section 378(4) of Cr.P.C., limitation and the powers on the Court to interfere in the acquittal recorded by the trial Court and held as follows:

*“While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.*

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<sup>3</sup> AIR 2006 SC 831

15. By applying the principle in the above judgment, on appreciation of entire evidence of PW.1, it is clear that her testimony is inconsistent in material aspect and does not inspire confidence of this Court and on such testimony, no credence can be attached. Therefore, on the strength of evidence of victim, PW.1, this Court cannot interfere with the finding recorded by the trial Court as it is based on appreciation of evidence. Therefore, I find no ground to grant such relief to the appellant and the appeal is liable to be dismissed.

16. Accordingly, the criminal appeal is dismissed.

Pending miscellaneous petitions in the criminal appeal, if any, shall stand closed.

17.02.2017  
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**M.SATYANARAYANA MURTHY,J**

