

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CRL.A.NO.1258 OF 2016

JUDGMENT

Vide the present appeal, the State has assailed the judgment in C.C.No.13/2014 on the file of VIII Special Magistrate, Hyderabad passed vide order dated 29.1.2016, whereby the respondents/accused have been acquitted for the offence punishable under Section 509 IPC.

The present appeal is filed on the ground that the learned trial court ought to have taken into consideration the evidence of P.Ws.1 and 2. On a plain reading of deposition of witnesses, it clearly goes to show that their evidence is truthful and trustworthy and there is nothing on record to show that they are speaking any falsehood against the accused.

The learned Additional Public Prosecutor appearing on behalf of the appellant submits that the court below has not considered the evidence of the prosecution properly, thereby acquitted the accused. Therefore, by reversing the impugned judgment, the present appeal may be allowed and consequently the accused be convicted.

The case of the prosecution is that on 9.1.2014 at 15-00 hours, received complaint from Smt. Kareemunnisa (L.W.1), whereby stated that on 8.1.2014 at about 11.30 hours, she was sitting with her friend at her house located to the backside of Police Station Dabeerpura. Herself and her friend were discussing some personal matters at her friend's residence. Her would-be son-in-law Mr. Azher Ahmed came at their place with his friends and the matter went on peaceful. However, all of a sudden, one person by name

Arshad started arguing with her and in front of her, insulted her daughter and as well as shouted at her by saying he is half brain and he did not care anybody. He further threatened her with dire consequences by saying that “Tumari Maku Chodun” by using most filthy language and openly gave warning to her that he is going to rape her daughter (L.W.2) and used so many bad words and vulgar language and abusive words against her and her daughter.

P.W.1 deposed before the court that on 8.12.2014 at about 11.30 hours, while herself and her friend by name Parveen along with her daughter were sitting together in the open land situated in front of the house of Parveen situated nearby the Dabeerpura PS, at that that time, A-2, who is her would be son-in-law along with his friend A-1 came there along with other four or five friends and had talks with respect to the performance of the marriage, which was going to be held between A-2 and her daughter, and that talks were held peacefully for some time. However, all of a sudden, A-1 started abusing with vulgar language, stating that he is the monarch and that he had brought pressure on A-2, for which, she told him that she is in no way concerned with the present situation and after some time, accused along with their friends went away from the place. Immediately, she went to the Dabeerpura PS and reported the matter to the police. Accordingly, culminated into the present crime.

P.W.2 daughter of P.W.1 deposed that on 8.1.2014 at about 11.30 p.m., herself, her mother P.W.1 and Parveen, who are friends of her mother were discussing in order to fix the date of her marriage, at the house of

Parveen, and at that time, both the accused came and for some, the talks were held peacefully and after that, both the accused abused her and her mother with vulgar language. When her mother asked them, why they were abusing them, for which, accused tried to beat them. Immediately, herself and her mother went to Dabeerpura P.S. and accordingly launched the complaint.

As per the complaint given by P.W.1 dated 9.1.2014, it is mentioned that incident happened on the earlier day night at about 11.30 p.m., while she was sitting with her friend at her residence. However, she did not mention in the complaint the name of her friend, with whom she was sitting. As per complaint, the incident took place at backside of P.S. Dabeerpura and at that time, they both were discussing about some of their personal matters, in the meanwhile, her would be son-in-law came at their place with friends. For some time, everything was going peacefully. However, all of a sudden, one person by name Arshad started arguing with her and in front of her, insulted her daughter as well as shouted at her by saying that "he is half brain and he don't care anybody". He also threatened with dire consequences by using most filthy language openly giving warning to her that he is going to rape her daughter.

It is also stated in the complaint Ex.P-1 that she along with her daughter went to the house of her son-in-law and were talking with his mother Zakia Begum reading the marriage, in the meantime, her son-in-law Azhar along with his friend Arshad, both entered into the house and the

matter was going peaceful, all of a sudden, her son-in-law and his friends starting arguing with her and abused her and her daughter.

The aforesaid fact can be seen from the statement recorded under Section 161 Cr.P.C.

In addition to above, as per the complaint, the incident took place at the residence of her friend, but she never mentioned the name of her friend in the complaint, but only stated in her evidence the name of her friend as Parveen.

It is admitted fact that the scene of offence is differently stated in the complaint Ex.P-1, in her evidence and in her Section 161 Cr.P.C. statement.

It is also admitted by P.W.1 in cross-examination that she did not mention the name of her friend Parveen in her complaint and number of the house of her friend, where the talks were held between them. She further admitted that she did not state to the police in her Section 161 Cr.P.C. statement that herself and her daughter sat in front of house of her friend Parveen and had talks for performing the marriage of her daughter. As stated by her, the photographs were taken at the time of engagement. But the said photographs were not given to the police.

P.W.1 further admitted that one case was filed by the mother of A-2 against her and her daughter (L.W.2) and the same is pending before VIII ACMM, Nampally, Hyderabad. She also deposed that she had filed a case against A-2 and against his family under Section 420 of IPC and the same was registered in Saidabad Police Station. She denied the suggestion that

there was no engagement between A-2 and her daughter (L.W.2) and the present case is filed against the accused in order to extract money.

It is important to note that P.W.1 stated that the incident took place in front of the house of her friend Parveen. What prevented her to mention the name of her friend as Parveen in the complaint Ex.P-1, is not forthcoming. The said Parveen is not shown as eye witness to the incident. Except P.W.1, no other witnesses were shown as eye witnesses to the incident. When the incident said to have happened in front of house of Parveen, the said Parveen is an important eye witness to the incident. However, there is no explanation why she was not shown as eye witness to the incident.

P.W.2 daughter of the de facto complainant stated that on 8.1.2014 at about 11.30 p.m., herself and her mother P.W.1 and Parveen were discussing in order to fix the date of her marriage at the house of Parveen and at that time, both the accused came and had talks for some time peacefully and thereafter, abused in a filthy language. When her mother asked them why they abused them, for which, the accused tried to beat them. However, P.W.1 has not stated in her evidence that herself and her friend Parveen were discussing to fix the date of marriage at the house of Parveen. But in the complaint Ex.P-1 shows that they were discussing about some of their personal matters. P.W.2 stated that they were discussing to fix the date of marriage. P.W.2 in her Section 161 Cr.P.C. statement stated that on 8.1.2014 along with her mother went to the house of her mother-in-law and talking with regard to her marriage date, in the mean time Azhar Ahmed along with his friend Arshad entered into the house and the matter was going

peaceful, all of sudden, Azhar Ahmed and his friend argued with her mother and abused her mother and herself in filthy language.

In view of the major contradictions in the statement of both the witnesses P.Ws.1 and 2, I find no discrepancy or any illegality in the order passed by the court below in C.C.No.13/2014.

Thus finding no merit in the appeal, the same is accordingly dismissed.

Miscellaneous petitions pending if any, shall stand closed.

SURESH KUMAR KAIT,J

DATE:04—01—2017
AVS

