

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.2534 OF 2011

ORDER:

Heard the learned counsel for the petitioner, first respondent as well as the learned Public Prosecutor appearing for the second respondent-State.

The present Criminal Revision Case is filed questioning the judgment passed in S.C.No.345 of 2008, dated 26.03.2010 on the file of the Court of Assistant Sessions Judge, Kamareddy, Nizamabad District in acquitting the first respondent for the offence under Section 354 I.P.C.

The case of the prosecution is that on 18.06.2008 at 9.30 hours, the complainant-P.W.1 came to the Police Station of Sadashiv Nagar and lodged a complaint alleging that on 17.06.2008 at about 20.00 hours, when she went to the cattle shed with her co-sister i.e. P.W.2 for collecting milk from the buffalos, the accused-first respondent herein came near to her by the side of the wall and caught hold of her shoulder from the back side and pulled her to outrage her modesty. Due to that, she raised hue and cries and called her co-sister. When the first respondent pulled her left hand, her bangles were broken at the scene. After hearing the cries of P.W.1, her brother-in-law i.e. L.Balaraju-P.W.3 came there and apprehended the first respondent. In the meanwhile, the villagers also came to the scene and beat the first respondent and pulled him to village chaudi. In the said complaint, P.W.1 further stated that three months ago, on one morning at about 5.00 hours when herself and

P.W.2 went to attend calls of nature, the first respondent pulled her and on her raising hue and cry, he ran away. Even at that time, P.Ws.1 and 2 warned the first respondent. Pursuant to the complaint, a crime was registered vide F.I.R.No.106 of 2008 for the offence under Section 354 I.P.C. After completion of investigation, a charge sheet was filed against the first respondent for the said offence. After taking cognizance of the offence, the case was numbered as S.C.No.345 of 2008. On production of the first respondent, in compliance with the procedure under Section 207 of Cr.P.C., the final report and the relevant documents enclosed thereto were supplied to him, at the time of framing of charge and when he was examined under Section 313 of Cr.P.C., he denied the charge.

To bring home the guilt of the accused-first respondent, the prosecution examined, in all, 9 witnesses and marked Exs.P.1 to P.6. On behalf of first respondent, he himself examined as D.W.1 and marked Exs.D.1 and D.2. The learned Assistant Sessions Judge, after hearing the matter and analysing the evidence brought on record, by judgment dated 26.03.2010, acquitted the first respondent for the offence under Section 354 I.P.C. by extending benefit of doubt. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioner contended that the findings arrived at by the Court below are contrary to the evidence brought on record, and therefore, it is perverse and liable to be set aside. He further contended that though the evidence of P.W.1 is not corroborated by the evidence of P.Ws.2 to 4 in all

respects, simply relying on minor inconsistencies crept in their evidence, the prosecution theory cannot be totally brushed aside. The Court below erroneously relied on Ex.D.1, which is a complaint lodged by the first respondent as a counterblast to Ex.P.1 and even gave much importance to the same. In fact, the presence of the first respondent at the cattle shed was categorically pleaded and proved by the evidence of P.Ws.1 to 4.

Per contra, the learned counsel appearing for the first respondent would submit that the first respondent was working as a farm servant in the house of P.W.1. The husband of P.W.1 is the Sarpanch of the village and on the fateful day i.e. on 17.06.2008 at about 20.00 hours, first respondent went to their house for collecting money. However, the husband of P.W.1, suspecting that the first respondent is having illicit intimacy with his wife-P.W.1, beat him and denied the payment of money to him. In that connection, the first respondent met the elders in the village on the next day and thereafter, he lodged a complaint on 19.06.2008 against the husband of P.W.1. The said complaint was registered as Crime No.107 of 2008 for the offence under Section 324 I.P.C. Investigation was taken up in the said case and a charge sheet was filed wherein it is specifically stated that the first respondent was manhandled and beaten up by the husband of P.W.1. He was also referred to a medical doctor for treatment. The learned counsel also submitted that the evidence of P.W.1 is not corroborated by the other prosecution witnesses particularly, P.Ws.2 to 4. The inconsistencies crept in their evidence and the admissions made by them will go to the very root

of the matter and create a doubt with regard to the presence of the first respondent at the scene of offence on the date of occurrence.

Having heard both the counsel and from the perusal of the material on record, the admitted facts are that P.W.1 lodged a complaint against the first respondent for the offence under Section 354 I.P.C. Her specific case is that on 17.06.2008 at 20.00 hours, the first respondent came to her, caught hold of her shoulder from back side and pulled her in the cattle shed. However, the first respondent lodged another complaint on 19.06.2008 before the same Police Station stating that on 17.06.2008 at 20.00 hours, husband of P.W.1 beat him when he went to their house for collecting money since he was working as farm servant with them. The said complaint was registered as Crime No.107 of 2008 for the offence under Section 324 I.P.C. and after investigation, a charge sheet was laid. This Court is informed that in the said charge sheet, it is specifically mentioned that the first respondent was beaten up by the husband of P.W.1 in their house. Therefore, a strong suspicion arises with regard to the presence of the first respondent at the scene of offence i.e. in the cattle shed on 17.06.2008 at 20.00 hours.

P.W.1 in her cross-examination admitted that on her dictation, Ex.P.1 was drafted by one Mohan, who is related to her. P.W.1 along with P.Ws.3,4 and said Mohan went to the Police Station and the said persons have signed on Ex.P.1. However, she did not mention the name of Mohan in Ex.P.1-complaint. It is also stated that P.W.1 has no acquaintance with the first respondent prior to the incident. She also admitted that there

was a case registered against her husband and P.W.3 and that she does not know whether any complaint was lodged by the first respondent against her husband in view of non-payment of salary amount by him to the first respondent. Though she has categorically deposed that three months prior to the incident, the first respondent attempted to outrage her modesty, but no complaint was lodged in that regard. P.W.2, co-sister of P.W.1, deposed that she along with P.W.1 went to the cattle shed to collect milk. When P.W.1 was collecting milk, she went outside to collect the grass for the cattle. On hearing the cries of P.W.1, she rushed to the spot and noticed the first respondent caught hold of P.W.1's hand. Meanwhile, her husband-P.W.3 also came there and later, they apprehended the first respondent and he was beaten up and was taken to the gram chaudi in the village. However, in the cross-examination of P.W.2, it is elicited that the first respondent never worked as farm servant in their house and that she does not know whether the first respondent is one of the witnesses in a criminal case, which was registered against her husband. She also stated that prior to the incident, she has no acquaintance with the first respondent. The suggestion put to P.W.2 that the first respondent was working as farm servant and in respect of non-payment of salary amount, there was a case filed against the husband of P.W.1 and therefore, the present complaint was lodged in order to compromise the said case with the first respondent, is denied. The evidence of P.W.3, who is the husband of P.W.2, is that on 17.06.2008 at 20.00 hours, while he was proceeding towards the cattle shed for the purpose of walking, he heard the voices of P.Ws.1 and 2 and when he reached there, P.W.1 informed

him that the first respondent tried to outrage her modesty. Himself and his wife i.e. P.W.2 caught hold of first respondent and took him to the gram chaudi. However, in the cross-examination of P.W.3, it is elicited that he cannot say on which date, the earlier incident of outraging the modesty of P.W.1 took place in the village. He categorically admitted that he did not go to the police station in this case, but he admitted his signature on Ex.P.1. But, on the next day, at 5.00 p.m., he went to the police station since he received a call from his brother. At that time, police enquired with him whether he was there as a witness at the time of incident. P.W.4, who is the mother-in-law of P.W.3, deposed that at the time of incident, she was in the house and P.W.3 left the house for walking after having his meals. In the cross-examination, P.W.4 admitted that she has land to an extent of Ac.5.00 gts. including her son's share. But she denied the suggestion that the first respondent was working as farm servant for four years under them and they are liable to pay salary to him. It is relevant to mention that P.W.4 in the cross-examination admitted that a criminal case was pending against P.W.3 and she admitted the filing of the criminal complaint by the first respondent against her son. P.Ws.5 and 6 are the hearsay witnesses. P.W.5 deposed the presence of the first respondent at the scene of offence and by the time he rushed to the scene, P.W.2 was questioning the presence of the first respondent but he did not give any reply.

The evidence of P.W.9 is very much relevant in the present case. P.W.9 deposed that on receipt of complaint from P.W.1, on 18.06.2008 at 9.30 a.m., he registered the crime and issued Ex.P.6-F.I.R. He visited the village at 10.30 a.m. and reached the

hut of P.W.1 and enquired in the presence of P.Ws.7 and 8 and prepared the scene of offence panchanama under Ex.P.4 and drew rough sketch under Ex.P.5. P.W.9 categorically admitted in the cross-examination that on 19.06.2008 the first respondent lodged a report alleging that he was beaten up by the husband of P.W.1. The said complaint was registered as Crime No.107 of 2008 for the offence under Section 324 I.P.C., which is marked as Ex.D.1. After completion of investigation, he filed a charge sheet in the said crime against the husband of P.W.1 stating that first respondent was beaten up by the husband of P.W.1 and he had sustained injuries and was referred to a medical doctor. The charge sheet filed in the said crime would reveal that the first respondent went to the house of P.W.1 for collection of salary amount due to him by the husband of P.W.1 and at that time, husband of P.W.1 made false allegations stating that he is having illicit intimacy with P.W.1 and on that, he beat the first respondent. The said case was numbered as C.C.No.337 of 2008 and it was pending consideration.

The other important piece of evidence which raises a strong suspicion regarding the presence of first respondent at the scene of offence on 17.06.2008 at 20.00 hours is that in connection with the incident happened against him, the first respondent went to the Police Station on 19.06.2008 at 5.00 p.m. and lodged a complaint. However, he was not arrested by P.W.9 in connection with the crime reported by P.W.1. This is also one of the strong circumstances which give rise to any amount of doubt with regard to the presence of first respondent at the scene of offence. Though it is contended by the learned counsel for the petitioner that

Ex.D.1-complaint is a counterblast to Ex.P.1, after investigation, in the charge sheet filed by the prosecution in the later crime, it is established that the first respondent was present in the house of P.W.1 at the same time when the present incident is alleged to have taken place in the cattle shed. Therefore, in the light of the inconsistencies and the admissions brought on record from the cross-examination of P.Ws.2 to 5 that a criminal case has been filed by the first respondent against the husband of P.W.1 with regard to payment of salary amount, there is every possibility of first respondent being implicated in the alleged offence. Therefore, when the prosecution failed to bring home the guilt of the first respondent beyond all reasonable doubt coupled with the fact that the presence of first respondent is doubtful at the scene of offence on 17.06.2008 at 20.00 hours, as observed above, this Court does not find any irregularity or illegality in the impugned judgment passed by the learned Assistant Sessions Judge in acquitting the first respondent of the charge under Section 354 I.P.C. by extending benefit of doubt. As such there are no merits in the Criminal Revision Case and the same is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall also stand closed.

P.KESHA VA RAO,J

27th SEPTEMBER 2018.
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