

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1699 of 2007

JUDGMENT:

This appeal is preferred by appellant, against the judgment of the Special Judge for the Trial of Offences under SC & STS (POA) Act – cum – VI Additional Metropolitan Sessions Judge, Secunderabad in SC.No.188 of 2007 dated 06.12.2007, convicting and sentencing him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of three months for the offence punishable under Section 354 of the Indian Penal Code and also sentencing him to undergo rigorous imprisonment for a period one year and to pay a fine of Rs.500/- in default to suffer simple imprisonment for a period of one month for the offence punishable under Section 292 IPC.

2. The facts of the case, briefly, as per the charge sheet are as follows:

On 19.01.2007, a complaint was filed by the complainant, stating that on that day at about 9 AM, while she was about to leave from her house to college, the accused came to her house and caught hold of her hand and assaulted her, to outrage her modesty. He also threatened in vulgar language, by making gestures, intending to insult her modesty. He forced her to see vulgar video scenes/clipping stored in his mobile. Based on the said report, a case in Cr.No.40 of 2007 was registered under Section 354 and 506 IPC. After concluding the investigation, charge sheet was laid for the offences under Sections 354, 506 and 292 IPC.

On appearance of the accused, the X Additional Chief Metropolitan Magistrate, Secunderabad, after complying with the required legal formalities, committed the case to the Sessions Division, by virtue of orders in PRC.No.23 of 2007. The Sessions Judge, in turn, made over the case to the VI Additional Metropolitan Sessions Judge, Secunderabad for trial and disposal in accordance with law. The Court below, on appearance of the accused, framed charges against him for the same offences and after recording the plea of not guilty by the accused, conducted the trial of the case and examined P.Ws.1 to 7, Exs.P1 to P3 and M.O.1 on behalf of the prosecution. After concluding the prosecution evidence, the accused was questioned about the incriminating circumstances appearing in the prosecution evidence, which he denied and did not choose to examine any witness on his behalf.

3. The Court below, after appreciating the evidence and considering the material on record, passed the impugned judgment, against which the present appeal is preferred on the following grounds:

The Court below did not appreciate the omissions and contradictions in the statement of the witnesses; that the victim herself attracted the appellant and when P.W.1 asked the appellant to marry and when the appellant refused to marry her, she planned to implicate him in a false case; that the story showing blue clippings to P.W.1 is also created one and even the prosecution did not prove that the cell phone belonged to the appellant; that P.Ws.4 and 5 are planted witnesses; that the Investigating Officer planted the witnesses

for the purpose of the case, as such, according to the deposition of P.W.1, the incident took place at a distance from her house, which is ½ KM, as such, the question of seeing the alleged incident by P.W.2, who is her mother, is impossible, so also P.W.3 witnessing the incident. If really the incident took place in the presence of P.Ws.2 and 3, they would have beat the accused then and there itself but it is their evidence that only after hearing the cries, they rushed to the spot. Based on the above, appellant seeks this Court to set aside the judgment of the Court below.

4. The counsel for the appellant did not appear in spite of the matter being adjourned on 21.08.2018, making it clear that the Court shall proceed in the appeal in the absence of the appellant. Heard the Public Prosecutor.

5. Now the points that arise for consideration are as under:

1. Whether the complicity of the accused in the alleged offences is proved by the prosecution, without any doubt and whether the judgment of the Court below can be sustained.
2. To what result.

POINT No.1:

6. The victim was examined as P.W.1. According to her evidence, she was studying II year Diploma in Civil in Durgabai Deshmukh College, Ameerpet and she used to wait at Rathifile bus stop at Secunderabad, at 4 PM, after her college, to go to her house. On 04.10.2006, at 4 PM, while she was waiting at the bus stop, the accused came and introduced himself as Sujana and told that he is

a karate master and enquired her name. She did not disclose her name but later on the force of the accused, she disclosed her name. She did not disclose her address but the accused took her bus pass and noted the address. The accused expressed that he wanted to make friendship with her. But as he was a stranger, she escaped, by getting into the bus. She did not disclose the same due to her tension. She observed the accused twice or thrice in the bus stop, but she managed to escape. On 19.01.2007, the accused came to her house at 9 AM and stood in the lane. While she was going from her house to her college, the accused stopped her, caught hold of her hand and pressed her hand and shoulder and pulled her towards his body. When she tried to raise alarm, the accused threatened her and also showed blue films/clippings from his cell phone. Then she cried, on which the accused escaped.

Her evidence that the accused came to her house, pressed her hand and pulled her and threatened her is pointed as an omission. So also her evidence that she was waiting at Rathifile bus stop on 04.10.2006 and that the accused came and introduced himself and that she escaped by getting into the bus, that she did not disclose the same to her parents and she observed the accused two or three times in the bus stop.

7. With regard to the lodging of the report, she states that she did not give the complaint for the incident which occurred on 04.10.2006.

In the cross-examination, it was elicited that she saw the accused for the first time on 04.10.2006 and for the second time when the accused came to her house. She expected that the accused was a

gentleman when he introduced himself on 04.10.2006. It was suggested to her that she tried to attract the accused to marry him and when he disclosed that he is a married person, she gave a false complaint.

8. A perusal of the report given by her would help the Court in understanding the truth in her evidence, as the material part of the evidence is pointed as an omission, which is marked as Ex.P1. She states therein that on 19.01.2007, the accused came to her house and caught her hand, assaulted her, to outrage her modesty. He also threatened in vulgar language by making gestures, intending to insult her modesty. He also forced her to see vulgar video scenes/clippings stored in his mobile. Hence, even if the omissions are taken into consideration and the evidence of P.W.1 to that extent is disbelieved, the other evidence, which corroborates the contents of Ex.P1, would suffice to hold that the accused committed the alleged offence.

9. The evidence of P.Ws.2 and 3, which is that of the mother and brother of P.W.1, would render support to the evidence of P.W.1 that the incident, as stated by her, occurred. They are the witnesses, who rushed to the spot on hearing the cries of P.W.1. P.W.2 also witnessed the accused catching hold of P.W.1 and abusing her. She also raised alarm to her son and L.Ws.4 and 5 came to the spot, on which the accused escaped. Absolutely no motives are made out against P.Ws.1 to 3 to depose falsely. Mere suggestion that P.W.1 attracted the accused and when he refused to marry her, on the ground that he is already married, she filed this false complaint, does not make out any case in favour of the accused.

10. Apart from the evidence of P.Ws.2 and 3, the evidence of P.Ws.4 and 5, which is that of independent witnesses, would also lend strong support to the evidence of P.W.1. P.Ws.4 and 5 are the witnesses, who rushed to the spot on hearing the cries of P.W.1. P.Ws.4 and 5 also saw the accused holding the hand of P.W.1. P.W.5 also saw the cell phone in the hands of the accused. Hence, all these facts spoken to by the above witnesses do not leave any doubt that the accused outraged the modesty of P.W.1. Even if the investigation did not go further, with regard to the mobile phone seized from the accused, the other evidence, which shows that the accused caught hold of the hand of P.W.1 with an intention to outrage her modesty, would suffice to prove the guilt of the accused for the alleged offence. Hence, in view of the above, this Court opines that the judgment of the Court below does not need any interference.

The point is answered accordingly.

11. At this juncture, the learned Public Prosecutor filed a letter addressed by the Sub-Inspector of Police, Chilkaiguda Police Station stating that the accused is on bail.

POINT No.2:

In the result, the criminal appeal is dismissed, upholding the conviction and sentence imposed on the appellant-accused in SC.No.188 of 2007 dated 06.12.2007 by the Special Judge for the Trial of Offences under SC & STS (POA) Act – cum – VI Additional Metropolitan Sessions Judge, Secunderabad. The period of detention/imprisonment undergone by the appellant-accused before

trial and after trial shall be set off against the term of imprisonment.
The appellant-accused, who is on bail, is directed to surrender before the trial Court, which shall commit him to the concerned jail for undergoing the remaining period of imprisonment.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

September , 2018

Note: Office to dispatch the copy of the judgment to the Trial Court forthwith.

(B/o) DSK

