

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.1308 OF 2006

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondent-State.

The present Criminal Revision Case is filed questioning the judgment passed in CrI.A.No.116 of 2004, dated 28.07.2006 on the file of the Court of I Additional District & Sessions Judge, Ranga Reddy District at L.B.Nagar to the extent of confirming the conviction and sentence for the offence under Section 382 I.P.C. in S.C.No.28 of 2003, dated 12.10.2004 on the file of the Court of III Additional Assistant Sessions Judge (FTC), R.R.District, whereunder the petitioner was convicted for the offences under Sections 382 and 307 I.P.C. and was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- for the offence under Section 382 I.P.C. and further sentenced to undergo rigorous imprisonment for five years for the offence under Section 307 I.P.C. and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months. Both the sentences were ordered to run concurrently.

The facts, in brief, are that on 13.08.2002, the petitioner-accused went to the house of Someshwara Sharma i.e. P.W.2 at 3.00 p.m. and enquired his whereabouts with his wife-P.W.3. When she replied that P.W.2 is not in the house, the accused went back and all of a sudden, came into the house and throttled the neck of P.W.3 and forcibly snatched away her gold Mangalasuthram and two gold bangles from her. Immediately,

P.W.3 made a hue and cry seeking attention of Satyamma and others and she fell down unconscious. P.W.3 was taken to Kamineni Hospital, where she regained consciousness. On the complaint given by P.W.1, who is the younger brother of P.W.2, a crime was registered vide F.I.R. No.495 of 2002 for the offences under Sections 356, 382 and 307 I.P.C. After investigation, a charge sheet was laid against the accused. The learned Additional Assistant Sessions Judge, after taking cognizance of the offence, numbered the same as S.C.No.28 of 2003. After complying with the formalities under Section 207 of Cr.P.C. in furnishing the report along with the documents to the accused, the accused pleaded not guilty.

The prosecution, in order to bring home the guilt of the accused, in all, examined P.Ws.1 to 9 and got marked Exs.P.1 to P.7 apart from exhibiting M.Os.1 to 4. After closure of the evidence, the petitioner was examined under Section 313 of Cr.P.C. showing the incriminating evidence brought on record during the course of the prosecution evidence, for which the petitioner denied. The petitioner has not examined any witness in defence.

The learned III Additional Assistant Sessions Judge, after appreciating and analysing the evidence brought on record, convicted and sentenced the petitioner-accused as indicated above, by judgment dated 12.10.2004. Aggrieved by the said judgment, the petitioner filed CrI.A.No.116 of 2004 on the file of the I Additional District & Sessions Judge, R.R.District at L.B.Nagar. The lower appellate Court, after hearing the arguments, through judgment dated 28.07.2006 acquitted the petitioner for the offence

under Section 307 I.P.C. by giving benefit of doubt, but confirmed the conviction and sentence imposed by the trial Court for the offence under Section 382 I.P.C. Against the said judgment to the extent of convicting and sentencing the petitioner for the offence under Section 382 I.P.C., the present Criminal Revision Case is filed.

The learned counsel for the petitioner-accused would contend that the petitioner and P.W.3 are known to each other. Prior to the incident, P.W.3 paid a sum of Rs.6,000/- to the petitioner for the purpose of supplying wood and since the petitioner has not supplied the wood as promised, there was a rift between the petitioner and P.W.3, which led to the incident in question. In fact, the petitioner has not committed any offence much less the offence as alleged against him. There is inconsistency in the evidence of P.W.3 with regard to the statement given before P.W.9 and the petitioner has not snatched away the M.Os.1 to 3 from P.W.3 i.e. the victim. He also contended that the injuries sustained by P.W.3 are simple in nature and the evidence of P.W.7 is not supporting the case of the prosecution. In fact, both the Courts below erred in convicting the petitioner for the offence under Section 382 I.P.C. since there is no sufficient material to attract the ingredients of the said offence.

Per contra, the learned Public Prosecutor appearing for the respondent-State submitted that the evidence of P.Ws.3,6,7 and 9 clinchingly established the offence under Section 382 I.P.C. against the petitioner and he supported the impugned judgment.

The issue that crops up for consideration is:-

‘Whether the prosecution established the guilt of the petitioner for the offence under Section 382 I.P.C.?’

To appreciate the same, the evidence of P.Ws.3,6,7 and 9 is material. P.W.3 is the victim and in her evidence, she has categorically narrated the incident that happened on 13.08.2002 at 3.00 p.m. It is her specific case that on ascertaining that her husband i.e. P.W.2 is not in the house, though the petitioner went out, all of a sudden, turned back and pounced on her, throttled her neck and stolen/taken away the gold Mangalasuthram and gold bangles from her. During the course of investigation, the stolen articles, marked as Exs.M.Os.1 to 3, were recovered from the custody of the petitioner in the presence of P.W.6. The evidence of P.W.6 is consistent in this aspect. The doctor, who is examined as P.W.7, after examination of P.W.3, found the following injuries:

- “1. Abrasions horizontally over left elbow.
2. Multiple abrasions over both sides of neck.
3. Contusions of finger mark shape on both sides of neck and front of the neck.”

He has also opined that the said injuries were caused approximately three hours prior to the examination. Even the investigating officer, who is examined as P.W.9, corroborated the evidence of P.Ws.3 and 6. Thus the prosecution established the offence under Section 382 I.P.C. beyond all reasonable doubt. Though the said prosecution witnesses were cross-examined by the petitioner, nothing is elicited to discredit their evidence.

The scope of revision under Section 397 & 401 of Cr.P.C. is very limited. Unless and until the petitioner establishes any

perversity or otherwise illegality on the face of the record with regard to the findings arrived at by both the Courts below, the petitioner cannot succeed in attempting to find fault with the said findings. In the case on hand, though the petitioner made sincere efforts to persuade this Court that the prosecution failed to establish the offence under Section 382 I.P.C. against the petitioner, in the light of the evidence of P.Ws.3,6,7 & 9, the same cannot be accepted. Therefore, this Court is of the opinion that there are no merits in the Criminal Revision Case and the same is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed. The learned counsel appearing for the petitioner requested this Court that in view of the relationship between the petitioner and P.W.3 and cause of incident pertains to payment of Rs.6,000/- given for supply of wood, this Court may take a lenient view by modifying the imposition of sentence under Section 382 I.P.C. into a fine amount. However, in the light of the evidence of P.W.7, with regard to the injuries on the neck of P.W.3, this Court is not inclined to accept the said request.

As a sequel, the interlocutory applications pending, if any, shall stand dismissed.

P.KESHAHA RAO,J

17th SEPTEMBER 2018.
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