

SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.1656 of 2007

JUDGMENT:

This appeal is preferred by appellant/accused, against the judgment of the Special Judge for Economics Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad passed in S.C.No.397 of 2007 dated 16.10.2007, convicting and sentencing him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.500/- and in default, to undergo simple imprisonment for a period of six months for the offence punishable under Section 354-B of the Indian Penal Code and also sentencing him to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 448 of IPC. Both the sentences shall run concurrently.

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

On 08.04.2007 at about 13:00 hours accused, while passing in front of the house of house of complainant, noticed that the complainant was alone in her room and entered into her room, caught hold of her hand and kept it aside, removed her pallu and pressed her breast with his hands. Complainant raised cries and the neighbours who came to her rescue, noticed the accused fleeing away from the spot. A report was given with the said

allegations, based on which, a case was registered for the offences punishable under Sections 448 and 354 of IPC.

During the course of investigation, the scene of offence panchanama was conducted; and the statements of the witnesses were recorded. The accused was arrested and sent to judicial custody. After concluding the investigation, charge sheet was laid for the offences under Sections 448, 354 IPC.

On appearance of the accused, the IX Additional Chief Metropolitan Magistrate, Hyderabad, after complying with the required legal formalities, committed the case to the Sessions Division, by virtue of orders in PRC. No.17 of 2007. The Sessions Judge, in turn, made over the case to the VIII Additional Metropolitan Sessions Judge, Hyderabad 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 5, Exs.P1 and P2 and no M.Os, are marked, 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 examined D.Ws.1 and 2 on his behalf.

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 following grounds:

The Court below failed to see the evidence of D.W.1 and D.W.2, who gave a clear picture and trustworthy evidence before the Court; simply it relied upon the evidence of the P.Ws.1 to 3; even P.W.1 did not mention the name of L.Ws.3 and 4; the Court below has not noticed the contradictory statements of the P.W.1 and failed to appreciate the evidence of witnesses. Based on the above grounds, the appellant seeks this Court to set aside the judgment of the Court below.

The learned counsel for the appellant did not appear in spite of the matter being adjourned on 20.08.2018, making it clear that the Court shall proceed in the appeal in the absence of the appellant.

Heard the learned Public Prosecutor.

Now the points that arise for consideration are as under:

1. Whether the prosecution succeeded in proving the guilt of the accused for the offence under Sections 354 and 448 of IPC and whether the judgment of the Court below can be sustained.

2. To what result.

POINT No.1:

P.W.1, victim herself, stated that on the date of offence while she was sleeping alone in her room, at about 1 p.m., accused entered into her room forcibly, caught hold her hand, pulled her saree pallu and pressed her breast with his hand. She raised cries. The neighbours came to her rescue. Accused fled away from scene. Later she lodged a complaint. The evidence of P.W.1 is in accordance with the version given in the complaint. Before lodging the complaint, she telephoned to her husband and after her husband came, they went to the Police Station and reported the same. P.W.1 was cross-examined and her evidence remains unshattered even after the cross-examination. The omissions that were pointed out in her 161 statement do not affect her evidence and they can be considered as immaterial omissions.

D.Ws.1 and 2 are no other than the wife and sister of the accused. Hence, the Court below had rightly disbelieved their evidence as it is self serving evidence. Apart from the evidence of P.W.1 there is evidence of P.W.3, who witnessed the accused running out from the room of P.W.1, on the date of incident. Hence, there is an ample corroboration to the evidence of P.W.1. The sole testimony of the victim can form basis for the conviction of the accused if it inspires confidence. The Court below recorded that the evidence of P.W.1 is trustworthy and it does not suffer from any legal infirmity. This Court also arrives at the same opinion after considering the evidence and hence does not find any

reason to interfere with the impugned judgment and this appeal is liable to be dismissed.

The point is answered accordingly.

POINT No.2:

In the result, the criminal appeal is dismissed by confirming the sentence imposed in the impugned judgment.

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

Date: 28.08.2018

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

(**B/o**) LSK

JUSTICE T. RAJANI

