

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Appeal No.1597 of 2007

JUDGMENT:

This Criminal Appeal is preferred by the accused aggrieved by the judgment dated 14.09.2007 in S.C.No.2 of 2004 on the file of Special Judge for Trial of cases under SC and ST (POA) Act, 1989 - cum-I Additional Sessions Judge, Khammam, whereunder the learned Judge found the accused guilty of the offences under Sections 451 and 323 IPC and Section 3 (1)(xi) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC and ST (POA) Act") and sentenced him to undergo R.I for one(1) year and pay fine of Rs.100/- for the offence under Section 451 IPC; to undergo S.I for six(6) months for the offence under Section 323 IPC; and R.I for five(5) years and pay fine of Rs.200/- for the offence under Section 3 (1)(xi) of SC and ST (POA) Act.

2) The factual matrix of the case which led to file this appeal can be stated thus:

a) The *defacto* complainant belongs to lambada caste and she is residing at Prashanthinikethan area, Ramavaram, Kothagudem and accused also resides in the same area but does not belong to SC or ST community. The husband of the complainant deserted her and she was residing in the house of her mother along with her four (4) years old son. On 12.02.2002, her mother was away from the village on some work.

On that night, when the complainant and her son were sleeping in their house, at about 1:00am the accused trespassed into the house having gained access through the gap between the roof and the eastern side mud wall of the house and pulled the complainant and demanded her to have sexual intercourse with him. When the complainant refused and raised cries, the accused fisted her and caused simple injuries and skulked away. On hearing her cries, the neighbours came there. After her mother returned home, the complainant gave report to Police of II Town PS, Kothagudem on 14.02.2002 and same was registered as case in Crime No.10/2002 for the offences under Sections 354 and 323 IPC and after investigation police filed charge sheet against accused. The matter was taken cognizance by the learned Magistrate and committed to the Trial Court. After appearance of the accused, the Trial Court framed charges under Sections 452, 354 and 323 IPC and Section 3 (1)(xi) of SC and ST (POA) Act for which the accused pleaded not guilty and claimed to be tried.

b) During trial PWs.1 to 7 were examined and Exs.P.1 to P.5 were marked on behalf of prosecution.

c) The Trial Court having regard to the evidence of prosecutrix and other neighbouring witnesses, came to the conclusion that the prosecution clinchingly established the guilt of the accused for the offences under Sections 451, 323 and 354 IPC and Section 3 (1) (xi) of SC and ST (POA) Act and since the offence under Section 354 IPC and the offence under Section 3 (1) (xi) of SC and ST (POA) Act are in the

same lines, the Trial Court omitted the charge under Section 354 IPC and convicted and sentenced him for the rest of the offences as stated supra.

Hence the appeal.

3) Heard arguments of Sri P. Venugopala Rao, learned counsel for appellant and learned Assistant Public Prosecutor for the State (Telangana).

4 a) Learned counsel for appellant firstly argued that the accused belongs to Congress party and the *defacto* complainant belongs to Telugu Desam Party and due to political rivalry, she was used as a stooge by her party men to take political vengeance against him. Learned counsel would submit that the version of PW.1 that the accused trespassed into her house and caused the offence was not supported by PW.2, who is a neighbour. PW.2 only stated that on hearing the cries, when they rushed to the house of PW.1, she just intimated that some person trespassed into her house and she did not name the accused. Learned counsel vehemently argued that the evidence of PW.2 would raise any amount of doubt whether the accused was the assailant or some other person. This doubt would be further intensified in view of the fact that the offence was occurred in the night time and all the witnesses have stated that as it was night time, that area was dark. Therefore, the identification of the assailant as accused is highly doubtful.

b) Secondly, learned counsel argued that that the complainant has not specifically stated in the FIR that the accused has demanded her to have sexual intercourse with him. Except stating that he pulled her hand and when she raised cries he hit her on her face and retreated away, she has not specifically stated that he demanded her to have sexual intercourse with him. Such an allegation was made by her for the first time only during the evidence so as to magnify the offence and see that accused is convicted for the charge under Section 3 (1)(xi) of SC and ST (POA) Act. The Trial Court without considering this aspect, found him guilty of the said offence also. Therefore, the conviction and sentence for the said offence is not maintainable.

c) Nextly, learned counsel argued that in case the accused is found guilty, leniency may be shown as he is an auto driver and his entire family is depending on him.

5) Per contra, learned Assistant Public Prosecutor would argue that since the accused resides in the neighbourhood of the complainant and a known person to the complainant (PW.1), the identification is not a problem. Learned counsel argued that sofaras the commission of the offence by the accused is concerned, though complainant and accused belongs to different parties but there was no political rivalry between them and that aspect was not elicited by the accused during the cross-examination of PW.1. Therefore, it is preposterous for the accused to argue that due to the political differences he was implicated in a false case. He further argued that since the accused slyly entered into the

house of complainant in the dark of night that too by gaining access into the house through the gap between the wall and roof and pulled her while she was sleeping, his intention was writ-large to have sexual intercourse with her. As otherwise there was no need for him to secretly enter in the house in the dead of the night. Admittedly he was not a thief and it cannot be presumed that he entered her house for stealing some money or articles. Learned Assistant Public Prosecutor thus argued that the intention of the accused was only to demand her to have sexual intercourse. He further submitted that immediately after the incident, the complainant informed about the purpose for which the accused entered her house to her neighbours and the same is stated by other witnesses also. Hence inspite of non-mentioning of that fact specifically in the FIR, still the offence under Section 3 (1) (xi) of SC and ST (POA) Act and Section 354 IPC cannot be said to have been not committed by the accused. He thus prayed to dismiss the appeal.

6) In the light of above rival arguments, the points that arise of determination in this appeal are:

- (i) *Whether the prosecution could able to bring home the offences charged against the accused beyond reasonable doubt?*
- (ii) *Whether the judgment of the Trial Court is factually and legally sustainable?*

7) **POINT Nos.1 and 2:** As stated earlier, the prosecution to establish its case examined PWs.1 to 7. PW.1 is the victim. PWs.2 to 4 are the neighbours of PW.1. PW.5 is the mediator for scene of offence examination. PW.6 is the Doctor, who examined the victim (PW.1) and issued Ex.P.4—would certificate. PW.7 is the D.S.P, who conducted investigation.

8) The evidence of PW.1 is that she was residing with her mother near Prashanthi Nikethan school of Ramavaram and she lives by selling firewood. She belongs to lambada caste. She knows the accused, who is residing in her neighbourhood. As she is an illiterate, she does not remember the date of the offence but it was occurred in the month of February, 2002. On the date of incident, her mother was away from the village. On that night, herself and her son was sleeping in their house. At about 12:00 in the midnight, the accused trespassed into the house through the gap between the wall and roof and caught hold her hand and pulled her to have sexual intercourse with him. She abused him and resisted. Then accused hit her on the right side of her face and fled away. She sustained injuries on the face and eye. She tried to catch him but she could not. On hearing her cries, her neighbours i.e, PWs.2 to 4 and others came to her house and she informed them about the incident. On the next day morning after her mother returned home, she informed about the incident to her and she got drafted Ex.P.1—report and presented to the police.

a) In the cross-examination she stated that incident took place in the night time and darkness was prevailing by then. She submitted that there was no electricity to her hut. She stated that on receiving the injury to her eye, she fell unconscious. She stated that she belongs to Telugu Desam Party and she does not know which party, the accused belongs to. She denied the suggestion that accused did not come to her house and no offence took place and she foisted a false case on account of political differences between her and accused.

b) When the evidence of PW.1 is thoroughly scrutinised, it would show that on the night of incident she was alone in the house along with her son and the incident took place in the midnight. She stated that the accused gained entrance into her house through the gap between the roof and the wall. Her version gets corroboration from Ex.P.3—crime details form. In Ex.P.3, the Investigating Officer gave the details of the scene of offence, as per which, her house is a hut with mud walls and the roof is a thatched one. There is a gap between the roof and eastern wall by the side of the door way. This gap can accommodate one person to have ingress and aggress. As per PW.1, the accused gained entrance into her house through that gap. Therefore, it can be believed that in the dead of the night, one can stealthily enter the house of PW.1. It is true that in her evidence PW.1 admitted that there is no electricity to her hut and as it was night time, darkness was prevailing. However, it is not uncommon that during the night time, people keep glowing small lamps or candles while sleeping in the night time to attend calls of nature in the

night time. Therefore, merely because there was no electricity in the house and it was night time, it cannot be stated that PW.1 could not identify the assailant. Further, it is an admitted fact that PW.1 and accused are known persons as he resides in that locality. In that view, the identification of accused is not a problem to PW.1. Above all, the accused after entering the house, remained there for considerable period as he pulled her hand and asked for sexual favour and when she refused and resisted him, he beat her. So in that melee, there was every possibility for PW.1 to identify the accused. Hence the version of PW.1 cannot be doubted. There is a ring of truth in the version of PW.1. Though accused and PW.1 belong to different parties, that cannot be a ground to presume that she foisted a false case to implicate him. The version of PW.1 that accused entered her house in the dark of night and demanded her for sexual favour was corroborated by other witnesses also. PW.3, who is the neighbour deposed that the hut of PW.1 is behind his house. He knew the accused, he is also residing in their neighbourhood. Regarding the incident, he stated that on the night at about 12:30am, himself and his wife i.e, PW.2, heard cries from the house of PW.1. Then they rushed there, along with them one Rajeswara Rao (PW.4) also rushed there. When they went to the house of PW.1, she was weeping and she was having an injury on her right eye. When questioned, she informed them that it was the accused who trespassed into her house and caught hold her hands and pulled her by asking her to have sexual intercourse with him and when she abused him, he beat her on her right eye and fled away. He further stated that they searched for

the accused but in vain. This witness was thoroughly cross-examined but the basic fabric in his evidence could not be shattered. He denied the suggestion that no incident took place and PW.1 did not inform anything and he was deposing falsehood. Ofcourse this witness admitted that he belongs to Congress party and the accused also belongs to Congress party. As already stated supra, merely because PW.1 and accused belong to two different political groups, that alone cannot be ground to jump into a conclusion that he was implicated in a false case. What is to be noted here is that PW.3 also belongs to Congress party, like accused. If no incident had taken place, he would not have supported the version of PW.1, who belongs to opposite political party. So the version of PW.3 is having intrinsic truth in it and it supports the case of PW.1 regarding the incident proper.

9) PW.2 is the wife of PW.3 and her version supports only to some extent. She stated that the hut of PW.1 is behind their house and the accused is also resident of their neighbourhood. With regard to the incident, she stated that on the night of 12.02.2002, on hearing the cries of PW.1, herself and PW.3 went there and found PW.1 was weeping. On enquiry she informed them that some person trespassed into her house but she did not tell the name of the assailant. As her version regarding the identification of the accused is different from her 161 Cr.P.C statement, she was declared hostile by the Special Public Prosecutor ("Spl.P.P") and cross-examined with reference to her 161 Cr.P.C statement. In her cross-examination she admitted that earlier she

stated to police that when enquired, PW.1 informed them that the accused trespassed into her house and caught hold her hand and pulled her and asked her to have sexual intercourse with him and when she refused, he beat her and fled away. Thus in essence, though in her chief she did not tell about the identification of accused, however, in her cross-examination made by the Spl.P.P, she admitted that in her earlier 161 Cr.P.C statement, she stated to the effect that PW.1 informed them that the assailant was none other than the accused. Therefore, her evidence also corroborates the facts relating to the incident proper and the identity of the accused.

10) We have further corroboration from PW.4. He deposed that the house of PWs.2 and 3 is situated by the side of his house. He knows PW.1 and also accused and the accused resides in their neighbourhood. Regarding the incident he stated that in the year 2002, during night he heard cries of PW.1 and when himself and his wife went to her hut, PWs.2 and 3 came there and they all found PW.1 was weeping. When they enquired PW.1, she informed them that the accused trespassed into her house and beat her. He stated that he did not enquire about the reason for the said assault and he left the place. Since this witness has not stated about the purpose of accused entering the house of PW.1 and his demanding her to have sexual intercourse etc., facts, Spl.P.P on permission declared him as hostile and cross-examined him with reference to his earlier 161 Cr.P.C statement. He denied to have stated as contained in Ex.P.2 which is the portion of his earlier 161 Cr.P.C

statement. Though this witness did not support the prosecution with reference to the purpose for which the accused entered the house of PW.1, still his evidence supports the prosecution story with regard to the accused entering the house of PW.1 on the night of incident.

11) So on a conspectus of the evidence of PWs.1 to 4, it is manifest that the accused skulked into the house of PW.1 on the night of incident and demanded her to have sexual intercourse with him and when she refused, he caused her injuries. The injuries sustained by PW.1 were spoken by PW.6, who is the Civil Assistant Surgeon, Kothagudem. He stated that he found the contusion of 3 x 2 cm on the left side of forehead and another contusion of 3 x 1 cm below the left eye and both the injuries were simple in nature. He issued Ex.P.4—wound certificate. Thus it can be said that the prosecution could establish the offences committed by the accused. The argument of learned counsel for appellant that the identity of the accused is a doubtful one and that accused was implicated in a false case due to political rivalry, does not stand to scrutiny.

12) The delay in lodging FIR was also well explained by the prosecution. Right from beginning, the version of PW.1 is that on the night of incident, her mother was not there in the village. Even in Ex.P.1—report also she stated that three (3) days prior to the incident, her mother went to see her grandmother and she was there alone in the house along with her 4 years old son. Her case is that after her mother returned home on 14.02.2002, she informed her and gave report to

police. Having regard to the nature of the offence, it is natural for PW.1 to wait for the arrival of her mother to inform about the incident before rushing to the police. Therefore, the prosecution could explain the reason for delay.

13) Then coming to the offence under Section 3 (1) (xi) of SC and ST (POA) Act, it says that whoever not being a member of a Scheduled Caste or a Scheduled Tribe, assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with an intention to dishonour or outrage her modesty, is liable for punishment with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine. In the instant case, PW.1 belongs to lambada caste and she is a scheduled tribe and accused does not belong to SC or ST community and the facts proved would disclose that he assaulted and used force to her with an intention to dishonour her and outrage her modesty. Therefore the act of the accused squarely falls within the ambit of Section 3 (1) (xi) of SC and ST (POA) Act and also under Section 354 IPC. Since both the offences are more or less similar, the Trial Court rightly omitted Section 354 IPC and convicted him for the offence under Section 3 (1) (xi) of SC and ST (POA) Act. So also the offences under Sections 451 and 323 IPC, are also made out from the facts and evidence. Therefore, the Trial Court rightly convicted him for those offences also.

14) Now coming to the quantum of sentence, having regard to the submission of learned counsel for appellant that he is an auto driver and

his entire family is depending on him, this Court is of the considered view that the sentence imposed on him by the Trial Court for the offence under Section 3 (1) (xi) of SC and ST (POA) Act can be suitably reduced, as the Trial Court imposed maximum punishment.

15) Accordingly, this Criminal Appeal is partly allowed and the sentence imposed by the Trial Court for the offence under Section 3 (1) (xi) of SC and ST (POA) Act is reduced to **two (2) years** with a fine of Rs.200/- in the interest of justice. The sentence imposed by the Trial Court for the offences under Sections 451 and 323 IPC shall hold good. All the substantive sentences shall run concurrently. The remand period if any undergone by the accused shall be given set off. The Trial Court is directed to issue warrant to secure presence of the accused to serve the sentence.

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

U. DURGA PRASAD RAO, J

Date: 02.07.2018

Note: Registry is directed to send a copy of this judgment to the concerned Court forthwith.

(b/o)
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