

HON'BLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL REVISION CASE No. 667 of 2005

ORDER:

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

The present criminal revision case is filed questioning the judgment passed in CrI.A.No.78 of 2002 dated 29.11.2004 on the file of the Court of the learned VIII Additional Sessions Judge (Fast Track Court), Amalapuram confirming the judgment in S.C.No.319 of 2001, dated 18.03.2002 on the file of the Assistant Sessions Judge, Razole, sentencing the petitioner to undergo simple imprisonment for a period of 5 years and to pay a sum of Rs.1,000/- to the victim as compensation for the offence under Section 354 IPC.

The case of the prosecution in brief is that the petitioner-accused and PW-1 are the neighbours and residents of Gudapalli village. On 15.04.1999 the husband of PW-1 and other family members went away to participate in Nukamma Jathra in the village. The victim and the children alone were in the house which is a thatched house without any doors. During the night, at about 10 P.M. the petitioner entered into the said thatched house, put off the kerosene lamp and pulled the saree of the victim and asked her to have sex with him. The petitioner being a neighbour, PW-1 (victim) identified him basing on the voice and raised hue and cry, on that PWs.2 to 5 came to her hut, but, by that time, the petitioner ran away. PW-1 reported the incident to the neighbours. PW-6 i.e. the husband of PW-1 returned home late in the night and the same was informed to him. On the next day, i.e. on 16.04.1999 at about

4 p.m. PW-1 gave a complaint to the Station House Officer, Malkipuram Police Station. After registration of the crime vide FIR No.31 of 1999 for the offence under Section 354 IPC, investigation was taken up and later charge sheet was filed. Thereafter, the Addl.Judicial First Class Magistrate, Razole, on 17.08.2001 committed the case under Section 209 Cr.P.C. vide order in PRC No.20 of 1999 to the Court of Session at Rajahmundry which in turn was made over to the Court of Assistant Sessions Judge, at Razole. The prosecution to prove its case examined PWs.1 to 9 and got marked three documents Exs:P-1 to P-3. After closure of the prosecution evidence, the accused was examined under Section 313 (b) Cr.P.C. by putting the incriminating the evidence in the form of questions to provide an opportunity to him to explain the incriminating circumstances appearing against him. The petitioner claimed the incriminating evidence appearing against him as false and he wanted to produce his defence witnesses. However, he reported no defence evidence at later point of time. After appreciating the prosecution evidence, the learned Assistant Sessions Judge, Razole found that the prosecution proved the guilt of the petitioner-accused for the offence under Section 354 IPC for outraging the modesty of PW-1 beyond reasonable doubt. Therefore, punished the petitioner herein with simple imprisonment of five years and to pay a sum of Rs.1,000/- as compensation under Section 357(3) Cr.P.C. by judgment dated 18.03.2002. Aggrieved by the said judgment, the petitioner filed an appeal in CrI.A.No.78 of 2002 on the file of the VIII Addl.Sessions Judge (FTC) at Amalapuram, E.G. District. The lower appellate Court after hearing both parties, was

pleased to dismiss the appeal by judgment dated 29.11.2004 confirming the judgment in S.C.No.319 of 2001. Aggrieved by the said judgment, the present criminal revision case is filed.

Learned counsel appearing for the petitioner, contended that both the Courts below based the judgment on presumptions, surmises and conjectures which are not relevant to the circumstances of the case. Though PWs.2 to 6 are not the eyewitnesses, both the Courts below, relied on them and convicted the petitioner. He also would contend that PWs.2 to 6 also went to jathra along with the husband of PW-1. He also further contended that the prosecution failed to examine the children of PW-1 as witnesses who were present at the time of offence. It is also argued that when the light in the thatched house was put off by the petitioner, the question of PW-1 identifying the petitioner may not arise. There is also delay in registering the F.I.R. i.e. the incident happened on 15.04.1999 at about 10 p.m., and the complaint was lodged on 16.04.1999 at about 4 p.m. Therefore, he sought for acquittal of the petitioner by allowing the criminal revision case.

Per contra, the learned Public Prosecutor appearing for the first respondent-State, supported the judgment of both the Courts below.

Having heard both the counsel and from the perusal of the material on record, it is revealed that on 15.04.199 at about 10 p.m. when PW-1 along with her children was sleeping in the thatched house, the petitioner approached her, put off the light and tried to outrage her modesty. On hearing the hue and cries of PW-1, PWs.2 to 5 came to the thatched house and by seeing them

the petitioner ran away. The said incident was reported to the police concerned, whereupon a crime vide F.I.R.No.31 of 1999 for the offence under Section 354 IPC was registered. After investigation, a charge sheet was laid. Subsequently the matter was committed to the Court of Session vide S.C.No.319 of 2001. After appreciating the evidence of prosecution, the petitioner herein was convicted and sentenced to undergo simple imprisonment for a period of five years and to pay a sum of Rs.1,000/- as compensation to PW-1. On appeal, the said conviction was confirmed by the learned VIII Addl.Sessions Judge (FTC), at Amalapuram.

The point that falls for consideration is:

Whether the prosecution has proved the guilt of the petitioner beyond reasonable doubt and whether the judgments of both the Courts below, are legally sustainable?

While proving the guilt of the petitioner-accused, it starts with the presumption of innocence of the accused and the burden lies on the prosecution to prove the ingredients of the offence for which the accused was charged and the same has to be proved beyond reasonable doubt. PW-1 who is the victim, has categorically narrated the incident that happened on 15.04.1999 at 10 p.m. Her evidence was supported by the evidence of PWs.2 to 5 who are her immediate neighbours who rushed to the scene of offence after hearing her cries. PW-1, identified the petitioner by his voice since he was the immediate neighbour. In the normal circumstances, no woman can identify the voice of the stranger, that too when the incident happened in the dark. However, the consequences of events which have been narrated by PW-1, demonstrates that she is the trustworthy witness and there is no reason to disbelieve her

evidence. Her evidence has been supported in all respects by PWs.2 to 5. The contention of the learned counsel for the petitioner/accused that conviction of the petitioner cannot be based merely relying on the evidence of PW-1, conviction cannot be countenanced since the prosecution evidence on this aspect, is clear and it is not shaken in any respect in the cross examination of PWs.1 to 5. The evidence of single witness is sufficient to act upon, provided it is trustworthy and honest. This view has been proved by the Apex Court in COOLY JOSE v. STATE OF KERALA¹ wherein it is held as under:

“There is no impediment in law to a conviction being based upon the testimony of a single witness, provided the court comes to the conclusion that his evidence is honest and trustworthy. Hence, even if there has been one solitary witness namely PW-3, the conviction cannot be said to be bad provided that evidence was considered to be truthful, honest and acceptable.”

In fact, PW-1 being victim, stands in the place of an injured witness. Injured witness in any way would not easily substitute a wrong person for her actual assailant. This view is also approved in JAMUNA CHOWDARY v. STATE OF BIHAR².

In these circumstances, the contention of the learned counsel for the petitioner that the evidence of PW-1 cannot be trustworthy, has no force. As far as the delay in registering the F.I.R. is concerned, this Court is of the opinion that there is no inordinate delay in registering the F.I.R. In fact, according to the prosecution the incident happened on 15.04.1999 at 10 p.m. and the husband of PW-1 i.e. PW-6 came to the house late in the night. The

¹ A.I.R.1973 (SC) 944

² AIR 1974 SC 1822

complaint has been lodged on the next day i.e. on 16.04.1999 at about 4 p.m. In the villages, when any incident of this nature happens, we cannot expect spontaneous reaction from them, more particularly, in a case of this nature when it pertains to the outraging of modesty of a woman. In fact, PW-1 has categorically explained the delay for registering the F.I.R. in her evidence. Therefore, the delay of few hours is not fatal to the case of the prosecution. In fact, the said aspects have been considered by the courts below relying on the evidence of prosecution. Though the counsel for the petitioner attempted to persuade this Court to take a different view, but in the light of the evidence adduced on behalf of the prosecution, it is not possible. Therefore, this Court is of the opinion that there are no merits in the present criminal revision case and is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

P. KESHAVA RAO, J

Date: 18.06.2018
Ccm

HONOURABLE SRI JUSTICE P. KESHAVA RAO



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Date:18.06.2018

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