

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.335 of 2010

JUDGMENT:

This Criminal Appeal, under Section 374(2) of Cr.P.C., is filed by the appellant/accused, challenging the judgment, dated 27.01.2010, passed in Spl.S.C.No.24 of 2009 by the Special Judge for trial of cases under SCs & STs (POA) Act, 1989, Adilabad, whereby, the Court below convicted the appellant/accused of the offences punishable under Section 354 of IPC and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and sentenced him to undergo Rigorous Imprisonment for six (06) months and to pay fine of Rs.1,000/-, and in default, to undergo simple imprisonment for one month for the offence under Section 3(1)(xi) of SCs & STs (POA) Act, 1989, by observing that the offence under Section 354 of IPC and Section 3(1)(xi) of SCs & STs (POA) Act, 1989, are one and the same, so when the appellant/accused is sentenced under Section 3(1)(xi) of SCs & STs (POA) Act, 1989, no sentence is ordered for the offence under Section 354 of IPC.

2. Heard the learned counsel for the appellant/accused, the learned Additional Public Prosecutor representing the respondent-State and perused the record.

3. The learned counsel for the appellant/accused would contend that no incident, as alleged by the prosecution, took place. The appellant/accused is falsely implicated in this case. There is no proper identification of the accused in this case. The allegations levelled against the appellant/accused do not constitute offences under Section

354 of IPC and Section 3(1)(xi) of the SCs & STs (POA) Act, 1989. Though the guilt of the appellant/accused was not proved beyond reasonable doubt by the prosecution, the Court below erroneously convicted and sentenced the appellant/accused as aforementioned and ultimately prayed to allow the appeal by setting aside the conviction and sentence imposed by the Court below against the appellant/accused.

4. On the other hand, the learned Additional Public Prosecutor representing the respondent-State would submit that there are direct witnesses to the alleged offences. The victim and the witnesses have categorically deposed in their evidence, the manner in which the appellant/accused made an attempt to outrage the modesty of P.W.1 (victim). There is consistency and corroboration in the evidence of the prosecution witnesses. The prosecution has been able to bring home the guilt of the appellant/accused beyond reasonable doubt for the offences punishable under Section 354 of IPC and Section 3(1)(xi) of the SCs & STs (POA) Act, 1989. The Court below, after analyzing the entire evidence on record in correct perspective, rightly convicted and sentenced the appellant/accused of the alleged offences. There is no infirmity in the judgment under challenge and ultimately prayed to sustain the same.

5. In view of the above rival contentions, the points that arise for determination in this appeal are as follows:

1. Whether the prosecution was able to prove beyond reasonable doubt the guilt of the appellant/accused of the offences under Section 354 of IPC and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Point:-

6. The case of the prosecution, in brief, is that on 19.10.2008 at 18:00 hours, P.W.1 (victim) went to the police station and lodged a report stating that on 19.10.2008 at about 10:00 hours, while she was collecting cotton from the agricultural fields near Ramjiguda village, an auto driver came and caught hold of her wrist with an intention to outrage her modesty. She raised hue and cries and on listening it, her relative Naitham Bheem Rao (P.W.3) and Athram Mothiram (P.W.4) came there. On seeing them, the auto driver fled away from there leaving his auto bearing registration No.AP-25-V-3102. On enquiry, she learnt that the name of the said auto driver is Shaik Isaq S/o Kareem, resident of Utnoor (appellant/accused). P.W.7-Sub Divisional Police Officer arrested the appellant/accused and produced him before the Judicial Magistrate of First Class, Utnoor. Since the offences alleged are exclusively triable by the Special Session Court, the learned Magistrate committed the case to the Court below. The Court below examined the appellant/accused, framed charges under Section 354 of IPC and Section 3(1)(xi) of the SCs & STs (POA) Act, 1989, and read over the same to the accused. The appellant/accused pleaded not guilty and claimed to be tried.

7. When the appellant/accused denied the allegations levelled against him, the burden lies on the prosecution to prove the guilt of the appellant/accused beyond reasonable doubt. To substantiate the accusations levelled against the appellant/accused, the prosecution got examined P.W.1-the victim, P.W.2-husband of the victim, P.W.3-brother of P.W.2, P.W.4-an eye witness to the alleged incident, P.W.5-a panch witness, P.W.6-the Sub-Inspector of Police who registered FIR

and P.W.7-the Sub Divisional Police Officer, who is the investigating officer of the case and who arrested the appellant/accused and conducted investigation. The prosecution also got marked Ex.P.1-complaint given to the police by P.W.1, Ex.P.2-scene of offence Panchanama, Ex.P.3-FIR in Crime No.152/2008 of PS, Utnoor, Ex.P.4-Authorisation letter by P.W.7, Ex.P.5-Rough Sketch by P.W.7, Ex.P.6-Caste Certificate of P.W.1 and Ex.P.7-Caste Certificate of the appellant/accused. On behalf of the appellant/accused, no oral and documentary evidence has been adduced.

8. P.W.1 is the victim in this case. Her evidence reveals that on 19.10.2008 at about 10:00 AM, when she was collecting cotton in her agricultural fields, the appellant/accused, who is an auto driver, came to her, caught hold of her wrist with an intention to outrage her modesty. When she raised hues and cries, P.W.3 and P.W.4 came to her and on seeing them, the appellant/accused fled away from there leaving his auto. Thereafter, she went to her home and informed the incident to P.W.2-her husband and then lodged Ex.P.1 complaint with the police. In her cross examination, P.W.1 categorically stated that the appellant/accused caught hold of her wrist at the time of incident due to which her bangles were broken and blood oozed due to bangle injuries. She further stated in her cross-examination that she do not know the accused prior to the incident.

9. P.W.2-Naitham Shambu is the husband of P.W.1 and is a circumstantial witness in this case. His evidence corroborated the evidence of P.W.1 and other witnesses. He categorically deposed that on the date of the alleged incident, when he went to home at about 04:00 PM, P.W.1 informed him that the appellant/accused caught her

hand and attempted to outrage her modesty. Thereafter, he, along with P.W.1, P.W.3, P.W.4, went to the police station to lodge a report.

10. P.W.3-Naitham Bheem Rao and P.W.4-Athram Mothiram are the eye witness to the alleged incident. They categorically deposed in their evidence that when they heard the hues and cries of P.W.1, they turned towards P.W.1 and saw the appellant/accused running away from the said place leaving his auto. Nothing had come up in the cross-examination of P.W.3 and P.W.4 to discard their testimony.

11. P.W.5-Kumra Lachu is a panch witness in this case. He stated about the conduct of Panchanama. He categorically deposed that about one year ago from the date of the alleged incident, he was called by the police, Utnoor, to the fields of P.W.2, held Panchanama at that place under Ex.P.2, and he signed on the same. In his cross-examination, he denied the suggestion that no Panchanama was conducted in this case and he did not sign on the Panchanama.

12. P.W.6-Shaik Madar is the Sub-Inspector of police, Utoor Police Station. He deposed that on receipt of a complaint under Ex.P.1 from P.W.1, he registered a case in Crime No.152 of 2008 for the offences under Section 354 of IPC and Section 3(1)(xi) of SCs & STs (POA) Act, 1989, and issued FIR under Ex.P.3. In his cross-examination, he denied the suggestion that he registered a false case against the appellant/accused in collusion with P.W.2.

13. P.W.7-G.Bhumaiah is the Sub Divisional Police Officer, Utnoor. He deposed that on receipt of a letter from the Superintendent of Police appointing him as the investigation officer in the subject crime, he took up the investigation, visited the scene of offence, held scene of offence

Panchanama under Ex.P.3 in the presence of P.W.5, recorded the statements of P.Ws.1 to 4, apprehended the appellant/accused, interrogated him, sent him to judicial custody after informing him about his legal rights and entitlements and thereafter filed charge-sheet on completion of investigation.

14. Admittedly, P.W.1 was not subjected to medical examination for the injuries sustained by her in the alleged incident and no report was filed. As the injuries sustained by P.W.1 are only simple, there was no need to get treatment from a doctor for the said injuries. As seen from the record, there is no animosity or reason for P.W.1 and other witnesses (P.W.2 to P.W.7) to depose against the appellant/accused. As seen from the entire evidence on record, there is consistency and corroboration in the evidence of the prosecution witnesses. Nothing has come up in the cross-examination of the witnesses to discard the testimony of any of them. On the other hand, no evidence was let in on behalf of the appellant/accused to disprove the testimony of the prosecution witnesses. In the absence of rebuttal evidence on behalf of the appellant/accused, the evidence adduced by the prosecution cannot be disbelieved. In view of the above, it can be safely concluded that the prosecution, by leading cogent and convincing evidence, established beyond reasonable doubt the guilt of the appellant/accused of the offences under Section 354 of IPC and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Court below, having appreciated the entire evidence on record in correct perspective, rightly found the appellant/accused guilty of the offences punishable under Sections 354 of IPC and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989. There is nothing to take a different view. There is no infirmity in the judgment under challenge. The contentions raised on behalf of the appellant/accused do not merit consideration. There is evidence on record that the victim is a member of Scheduled Tribe and the accused belong to backward community. Therefore, the Court below rightly convicted the accused for the offence punishable under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Having taken a lenient view, the Court below sentenced the appellant/accused to undergo Rigorous Imprisonment for six (06) months and to pay fine of Rs.1,000/-, and in default, to undergo simple imprisonment for one month for the offences under Section 3(1)(xi) of SCs & STs (POA) Act, 1989, which is just and adequate. There are no circumstances to vary the same. The Criminal Appeal is devoid of merit and is liable to be dismissed.

15. In the result, the Criminal Appeal is dismissed, confirming the judgment, dated 27.01.2010, passed in Spl.S.C.No.24 of 2009 by the Special Judge for trial of cases under SCs & STs (POA) Act, 1989, Adilabad.

Pending Miscellaneous petitions, if any, shall stand closed.

01st February, 2019
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Dr. SHAMEEM AKTHER, J