

HONOURABLE JUSTICE G.SRI DEVI

CRL.A.No.244 of 2011

JUDGMENT:

This appeal is directed against the judgment of the learned II Additional Metropolitan Sessions Judge, at Hyderabad, in S.C.No.288 of 2010 dated 11.02.2011, whereby the appellant/accused was convicted for the offence punishable under Section 354 of I.P.C. and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/- in default of payment of fine, to suffer simple imprisonment for a period of two months.

The case of the prosecution is that on 25.05.2010, P.W.1, who is working as Assistant Commissioner and Executive Officer of Sri Yellamma Pochamma Temple, Balkampet, Hyderabad, lodged a complaint stating that one of the devotees complained that on 25.05.2010 at about 1225 hours while the female devotees were offering their prayers to the Goddess Sri Yellamma and Pochamma Temple premises by taking rounds around the Dwaja Stambham, the appellant/accused, moved behind the female devotees and touched their backs and misbehaved with them. Further, the accused has opened his pant zip and exposed his private parts to the female devotees and insulted their modesty. Basing on the said complaint, the

Police, S.R.Nagar Police Station, Hyderabad, registered a case in Crime No.584 of 2010 for the offence punishable under Section 354 of I.P.C. After completion of investigation, charge sheet has been filed against the accused under the aforesaid offence.

The plea of the accused is one of total denial. The prosecution, in order to prove its case against the accused, examined P.Ws.1 to 5 and got marked Exs.P1 to P4. The learned Additional Metropolitan Sessions Judge, on appraisal of entire evidence, both oral and documentary, held that the prosecution has proved its case against the accused for the offence under Section 354 of I.P.C. and accordingly convicted and sentenced him as stated supra. Aggrieved by the said conviction and sentence, the appellant/accused preferred the present appeal.

Learned Counsel for the appellant/accused submitted that the judgment of the trial Court is based on unjustified presumptions and assumptions, which resulted in grave miscarriage of justice. The trial Judge wrongly came to the conclusion that the appellant/accused has committed the offence under Section 354 of I.P.C. though the ingredients of the above Section are not attracted. It is also submitted that the

trial Court failed to appreciate the fact that there are number of contradictions in the evidence of the prosecution witnesses and also failed to appreciate that they did not support the case of the prosecution. It is further submitted that the impugned judgment is illegal, untenable and arbitrary and the same is liable to be set aside. He further submitted that P.Ws.2 and 3, who are alleged to be the eyewitnesses to the incident, have turned hostile and none of the victims were examined by the prosecution. Hence, he prayed for setting aside the conviction and sentence passed by the trial Court against the appellant/accused.

On the other hand, the learned Additional Public Prosecutor appearing for the respondent/complainant submitted that there is sufficient material to show that the appellant/accused was accountable for the commission of offence and, therefore, the conviction and sentence passed by the Court below is justified and no interference is called for from this Court.

In the light of the aforesaid submissions, the point for consideration is whether the conviction and sentence imposed by the trial Court against the appellant/accused needs any interference from this Court or not?

Before admitting to the evidence, it is necessary to have a glance at Section 354 I.P.C.

Section 354 of I.P.C. reads as follows :-

“Assault or criminal force to woman with intent to outrage her modesty. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

In order to prove its case, the prosecution examined P.Ws.1 to 5. P.W.1 is the complainant, P.Ws.2 and 4 are alleged to have witnessed the occurrence and both of them did not support the case of prosecution. P.Ws.3 and 5 are the formal witnesses, out of whom, P.W.5 is the Investigating Officer of the crime.

The evidence of P.W.1, who lodged the complaint, is that he is working as Assistant Commissioner and Executive Officer of Sri Yellamma Pochamma Temple, Balkampet, Hyderabad and he saw the appellant/accused in the Temple. On 25.05.2010 one Mallesham (L.W.2) brought the appellant/accused and informed him that he was misbehaving with the female devotees and as such he gave a complaint-

Ex.P1 and the police came to the temple and recorded his statement. In the cross-examination, he admits that he does not have any personal knowledge about the incident and he has not seen any incident. A perusal of his evidence clearly shows that except lodging the complaint he does not know anything about the incident.

P.W.2, who is alleged to be an eyewitness to the incident, did not support the prosecution case. Though he was cross-examined at length no incriminating material could be elicited against the appellant/accused.

P.W.3, who registered Ex.P3 F.I.R., in his evidence, deposed that on 25.05.2010 at about 1.00 P.M., he received a phone call from P.W.1 and he visited the temple, where he received Ex.P1-Complaint and on receipt of the same he registered a case in Crime No.584 of 2010 for the offence under Section 354 of I.P.C. against the appellant/accused. In the cross-examination, he admits that no female devotees have given complaint and that the name of the accused was not mentioned in the complaint. Except registration of crime and issuance of the First Information Report (Ex.P3), nothing has been stated by P.W.3 against the appellant/accused.

P.W.4, who is also an eyewitness to the incident, did not support the case of prosecution. Though she was cross-examined at length no incriminating material could be elicited against the appellant/accused.

P.W.5 is the Investigating Officer, who conducted investigation in the above crime. In his evidence, he deposed that he examined P.Ws.1, 2 and 4 and L.W.2, visited the scene of offence and apprehended the accused.

The case of the prosecution is that on the date of incident the accused moved behind the female devotees, who were taking rounds (Pradakshinas) around Dwaja Stambham in Yellamma and Pochamma Temple, Balkampet, S.R.Nagar, Hyderabad, touched their backs and misbehaved with them. The evidence of P.W.3 would show that on receipt of a telephonic call from P.W.1, he went to the Temple and received the complaint (Ex.P1). He admits that the name of the accused was not mentioned in the complaint. However, the evidence of P.W.5-Investigating Officer would show that on the date of incident itself, he apprehended the accused, who was present in the office of P.W.1. Though the accused was present in the office of P.W.1, what prevented P.W.1 in mentioning the name of the accused in the complaint (Ex.P1). No explanation was

given by the prosecution in this regard; rather the presence of the appellant/accused at the place when the complaint was lodged becomes doubtful.

Apart from that, a charge under Section 354 of I.P.C. is one, which is very easy to make, and is very difficult to prove. A careful approach has to be adopted by the Court while dealing with a case alleging outraging the modesty of a woman. The essential ingredients of the offence under Section 354 of I.P.C. are that (1) the person assaulted must be a woman; (2) that the accused must have used criminal force on her; and (3) that the criminal force must have been used on the woman intending thereby to outrage her modesty.

In the instant case, the prosecution neither recorded the statements of any of the female devotees nor cited them as witnesses and the prosecution failed to examine Mallesham (L.W.2), who brought the accused before P.W.1, stating that the accused misbehaved with the female devotees. Since the prosecution failed to examine any of the victims and the alleged eyewitnesses, who were examined as P.Ws.2 and 4, did not support the case of the prosecution, there is nothing to prove the ingredients of offence under Section 354 of I.P.C. against the

appellant/accused and hence, the appellant/accused is entitled for acquittal on this score also.

For the aforesaid reasons, I am of the view that the prosecution miserably failed to adduce any evidence to prove that the accused had committed an offence punishable under Section 354 of I.P.C. beyond all reasonable doubt and the appellant/accused is entitled for acquittal.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 11.02.2011 passed in S.C.No.288 of 2010 on the file of the II-Additional Metropolitan Sessions Judge, Hyderabad, for the offence punishable under Section 354 of I.P.C., are set aside and the appellant/accused is acquitted of the said charge. The bail bonds of the appellant/accused are hereby cancelled and his sureties are discharged. The fine amount, if any, paid by the appellant/accused shall be refunded to him.

JUSTICE G.SRI DEVI

07-02-2020
Gsn