

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL REVISION CASE No. 2271 of 2016

JUDGMENT:

This Criminal Revision Case is directed against the judgment of the VIII-Additional Sessions Judge, Miryalaguda, passed in CrI.A.No.158 of 2014 dated 02.09.2016, by which the conviction and sentence of rigorous imprisonment for a period of six years, imposed against the revision petitioner/accused for the offence under Section 354 of I.P.C. in S.C.No.607 of 2012 dated 14.11.2014 by the Assistant Sessions Judge, Miryalaguda, was modified to three years simple imprisonment, while confirming the sentence of fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months.

It is the case of the prosecution that the revision petitioner/accused used to tease one Bairu Renuka (P.W.1) by saying that he fell in love with her and to fulfill his sexual lust, otherwise he would put an end to her life. P.W.1 and her husband Bairu Sekhar (P.W.2) reprimanded the revision petitioner/accused. On 13.07.2012, while P.W.1 was waiting for an auto to go to her village, the revision petitioner/accused came there, insisted her to come on his motor cycle to fulfill his lust, caught hold of her hand and also threatened that she would face dire consequences if she did not accept his demand. Hence, the revision petitioner/accused was tried for the offence punishable under Section 354 of I.P.C. The prosecution has examined P.Ws. 1 to 8 and got marked Exs.P1 and P10 to prove the

guilt of the accused. Neither oral nor documentary evidence was adduced on behalf of the accused. On a perusal of the entire evidence, both oral and documentary, the trial Court found the revision petitioner/accused guilty of the offence under Section 354 of I.P.C. and accordingly convicted and sentenced him to undergo rigorous imprisonment for a period of six years and to pay a fine of Rs.5,000/-, in default of payment of fine, to undergo simple imprisonment for a period of six months.

In an appeal preferred by the revision petitioner/accused against the aforesaid conviction and sentence, the learned VIII-Additional Sessions Judge, Miryalaguda, confirmed the conviction but modified the sentence recorded by the trial Court as stated supra. Aggrieved by the same, the revision petitioner/accused preferred this Criminal Revision Case.

Heard learned Counsel for the revision petitioner/accused and learned Additional Public Prosecutor appearing for the respondent/State.

It is mainly submitted by the learned Counsel for the revision petitioner/accused that there is a delay of three days in lodging Ex.P1 complaint by P.W.1 and there is no plausible explanation for the said delay by the prosecution. He further submits that both the trial Court and the appellate Court failed to appreciate the fact that there was a dispute between the complainant and the family of the revision petitioner/accused since two years. He further submits that the

prosecution failed to examine any independent witness from the place where the alleged incident took place and that both the Courts below erroneously relied upon the evidence of the complainant and her relatives.

Learned Additional Public Prosecutor submits that P.W. 1 is the victim and she has no axe to grind against the revision petitioner/accused and that her testimony is fully corroborated with the evidence of P.Ws.2 and 5. He further submits that delay in presenting Ex.P.1 complaint has been properly explained by P.Ws. 1 and 2 and, therefore, the delay is not fatal to the case of prosecution. It is lastly submitted that the evidence of P.Ws.1, 2 and 5 is cogent and convincing and their testimony has been rightly appreciated by the trial Court and the appellate Court and that both the Courts gave a categorical finding that the revision petitioner/accused outraged the modesty of P.W. 1 and, therefore, the conviction and sentence passed against the revision petitioner/accused is justified and no interference is warranted.

In order to prove its case, the prosecution has examined P.Ws.1 to 8. Out of them, P.W.1 is the victim, who gave Ex.P1 complaint to the police; P.W.2 is the husband of the victim; P.W.3 is the alleged eyewitness to the incident; P.Ws.4 and 5 are the circumstantial witnesses, P.Ws.6 and 7 are the panch witnesses for scene of offence and P.W.8 is the Investigating Officer.

The first and foremost contention of the learned Counsel for the revision petitioner/accused is that there was a delay of three days in lodging the complaint and that no satisfactory explanation has been given by P.W.1 for the said delay.

It is not in dispute that the complaint, Ex.P.1 was given by P.W.1 three days after the alleged incident. Based on the complaint/ Ex.P.1, the case was registered by the police. For the delay of 3 days in preferring the complaint, P.W.1 has not given any satisfactory explanation, either in the complaint or in her evidence. P.W.1 in her evidence stated that as her husband was out of station, she could not give the complaint to the police on the date of incident. But in her cross-examination, she has deposed that she did not inform the police that her husband (P.W.2) was out of station for two days. Moreover, the evidence of P.W.5, who is the brother-in-law of P.W.1, is that he had gone to the revision petitioner/accused and questioned him as to how he has misbehaved with his sister-in-law (P.W.1). However, P.W.5 has not given any information to the police immediately thereafter; rather he has waited for his brother's arrival, which clearly indicates that, the complaint has been lodged after much deliberations and consultations. The evidence of P.W.2, who is the husband of P.W.1, is also not convincing to the extent that prior to this incident, the revision petitioner/accused had misbehaved with his wife, but no report whatsoever was lodged on the earlier occasion, rather his relation with the revision petitioner/accused was very

cordial, which transpires that there was no such incident on the alleged date or prior to that. In order to take revenge against the revision petitioner/accused regarding civil disputes, the implication of the revision petitioner/accused in the false case cannot be ruled out.

That apart, P.W.3, who is said to be the eyewitness to the incident, turned hostile and did not support the case of the prosecution. Like wise, P.W.4, who is the circumstantial witness, also turned hostile and did not support the case of the prosecution. Even the panch witnesses, who were examined as P.Ws.6 and 7, did not support the case of the prosecution. The evidence of P.Ws.2 and 5 is hearsay evidence and they are not the eyewitnesses to the occurrence. Hence, there is absolutely no corroboration to the evidence of P.W.1. That apart, P.W.8/Investigating Officer, in his cross-examination categorically admitted that he did not ascertain about the ownership of the Motor Bike on which the revision petitioner/accused came to the scene of offence and that he did not seize the said Motor Bike. He also admitted that he did not investigate whether any acid was brought by the revision petitioner/accused in his motor cycle and he did not examine the persons from whom P.W.1 was attending tailoring classes. The Investigating Officer has not offered any explanation as to why he has not prepared any spot map or why he has not examined any of the

nearby shopkeepers where the alleged occurrence said to have taken place.

Except the evidence of P.W.1, without any corroboration, no other evidence is available on record to show that the revision petitioner/accused has an intention to commit the offence under Section 354 of I.P.C. and hence the prosecution has not proved its case beyond all reasonable doubt and, therefore, the revision petitioner/accused is entitled to the benefit of doubt. Both the trial Court as well as the appellate Court have not properly appreciated the evidence on record and have given the findings on false assumption of facts, which are not sustainable and hence the same are liable to be set aside.

For the reasons stated above, Criminal Revision Case is allowed. The conviction and sentence imposed on the revision petitioner/accused, by the Courts below, for the offence punishable under Section 354 of I.P.C, are hereby set aside and the revision petitioner/accused is acquitted of the said offence. The bail bonds, if any, executed by him shall stand cancelled and his sureties shall be discharged. The fine amount, if any, paid by the revision petitioner/accused shall be refunded to him.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G.SRI DEVI

22-01-2020
Gsn/gkv

