

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL REVISION CASE No.819 OF 2009

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of Cr.P.C., is filed by the petitioner/accused, challenging the judgment, dated 15.05.2009, passed in Criminal Appeal No.146 of 2007 by the learned IV Additional Sessions Judge (Fast Track Court) at Mahabubnagar, whereby, the judgment, dated 13-09-2007 passed in S.C.No.727 of 2006 by the Assistant Sessions Judge, Mahabubnagar, convicting the petitioner/accused of the offence under Sections 448 and 354 of IPC and sentencing him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of one month for the offence punishable under Section 448 of IPC; and to undergo simple imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of two months for the offence under Section 354 of IPC, was confirmed. Both the substantive sentences are directed to run concurrently.

2. I have heard the submissions of learned counsel for the petitioner/accused, learned Assistant Public Prosecutor representing the Respondent/State and perused the record.

3. The case of the prosecution, in brief, is as follows:

On 03.10.2006, at about 7.30 PM, when PW.1/Boya Padma (complainant) was at her home, the petitioner/accused-Boya Thirupathaiah trespassed into her house and asked her to have intercourse with him and also gagged her mouth with her saree. While she resisted the same, her husband-Boya Sayanna came to the house and on seeing him, the petitioner/accused fled away from the scene and PW.1 informed about the incident to him. On a complaint lodged by PW.1 to that effect, the police, Balanagar, registered a case in Cr.No.276 of 2006 for the offences under Sections 448 and 354 of IPC, investigated into the crime and laid charge sheet before the Court concerned against the petitioner/accused for the said offences.

4. The learned Magistrate took cognizance against the petitioner/accused for the offences under Sections 448 and 354 of IPC, registered the same as P.R.C.No.61 of 2006 and committed the same to the Court of Session. On such committal, the Principal Sessions Judge, Mahabubnagar has made over the case to the trial Court, for disposal in accordance with law. To prove its case, the prosecution got examined PWs.1 to 5 and got marked Exs.P1 to P3. PW.1 is the complainant. PW.2 is the husband of PW.1. PW.3 is panch witness to Ex.P2 scene of offence

panchanama. PW.4 is another witness. PW.5 is the Investigation Officer. Ex.P1 is the complaint, Ex.P2 is the scene of offence panchanama and Ex.P3 is the FIR. The trial Court, after adverting to the submissions made and the oral and documentary evidence on record, recorded conviction against the petitioner/accused for the offences under Sections 448 and 354 of IPC and sentenced him as stated *supra*. Aggrieved by the same, the petitioner/accused filed Criminal Appeal No.146 of 2007 before the Court below and the Court below, after re-examination of the evidence on record, confirmed the conviction and sentence recorded against the petitioner/accused. Aggrieved by the same, the accused is before this Court as petitioner.

5. Learned counsel for the petitioner/accused would contend that the judgments passed by the Courts below are erroneous, contrary to law and weight of evidence. There is a long delay of 14 days in lodging the complaint against the petitioner/accused, which creates doubt on the prosecution case. Though it is the case of prosecution that a panchayath was held with regard to the subject incident, none of the panchayath elders were examined. There are material contradictions in the version of PW.1, which goes to the root of the matter and renders the prosecution case doubtful. The essential ingredients of Sections 448 and 354 of IPC

are not made out against the petitioner/accused. Both the Courts below ought not have based conviction on the flimsy evidence of the prosecution witnesses. The impugned judgment is based on presumptions and assumptions and ultimately prayed to allow the Criminal Revision Case as prayed for.

6. On the other hand, the learned Assistant Public Prosecutor supported the impugned judgment and submitted that there is nothing to interfere with the reasoned judgment passed by the Court below.

7. PW.1 is the victim in this case. She deposed that eight months prior to her evidence, at about 7.00 PM, while she was present at her house along with her husband (PW.2), the petitioner/accused came to her house, took away her husband somewhere and after leaving her husband somewhere, he came back to her house, caught hold of her hand and asked her to have sexual intercourse with him, hold her saree and gagged in her mouth and when she tried to raise cries, he held her neck and threatened that she should not call anyone. She resisted the acts of the petitioner/accused and called LW.3, her sister-in-law, who on hearing the cries, came to her and when LW.3 tried to catch the petitioner/accused, he slipped away from that place and ran away. She further deposed that all the villagers also gathered at her

house and proposed to hold a panchayath by summoning the petitioner/accused. Since the petitioner/accused absconded from the village, no panchayath could be held. Later, she lodged Ex.P1 complaint with the police. In her cross-examination, PW.1 stated that the petitioner/accused and her husband hail from the same family and they are agnates. She pleaded ignorance to the questions put to her in her cross-examination that the lands of the petitioner/accused and their family are situated at one of the same place.

8. PW.2 is the husband of PW.1. His evidence is that on the day of subject incident at about 7.00 PM, while he was present in his home, the petitioner/accused came to him and asked him to come out and when they both went outside, the petitioner/accused, by leaving him there slipped into the lane. When he returned home, he came to know through PW.1, that the petitioner/accused tried to molest her and when the petitioner/accused was tried to be caught by others, he ran away. The incident was informed to the village elders, the village elders tried to hold panchayath, but due to the non-availability of the petitioner/accused, no panchayath was held. Later they lodged Ex.P1 complaint with the police. In his cross-examination, PW.2 admitted that the petitioner/accused is related to him as a son by

courtesy. He also admitted that their lands and the lands of the petitioner/accused are located at the same place, that there were some quarrels during the life time of his father and the father of the petitioner/accused in connection with properties and later the same were pacified. He deposed that one Ramaiah and Chandraiah are the elders of the village to whom they informed the incident. He denied the suggestion that they did not attend the panchayath.

9. PW.3 is panch witness to Ex.P2 scene of offence panchanama. He testified that the police conducted a panchanama in his presence and that he along with LW.5 signed as witnesses to the said panchanama. During the cross-examination, PW.3 stated that the Sub Inspector of Police himself written the panchanama and that he was not read over the contents of panchanama and that he signed in the panchanama at the request of the police.

10. PW.4 deposed that on the date of Dussehra festival, in the evening hours, when she was present at her house after attending to jammy on the eve of Dussehra and while she was taking her food, she heard some cries from the house of PW.1 and when she rushed to the house of PW.1, she found the petitioner/accused

fleeing away from the scene by jumping a wall and on enquiry, PW.1 revealed the petitioner/accused tried to molest her.

11. PW.5 is a Investigation Officer. He spoke about conducting of investigation in the case, registering the subject crime, issuance of Ex.P3-FIR, examination of PW.1 and recording her statement, proceeding to the scene of offence, examining PW.4, preparing the scene of offence panchanama in the presence of PW.3 and LW.5, arresting the petitioner/accused on 18.10.2006 and laying of charge sheet before the Magistrate concerned.

12. In the instant case, the crucial witnesses are PW.1/victim and PW.4, who is the neighbour of the victim. PW.1 deposed in her evidence that when she tried to cry, the petitioner/accused held her neck and threatened her that she should not call anyone and that she resisted the petitioner/accused and called PW.4, who, on hearing her cries came to her and that when PW.4 tried to catch the petitioner/accused, he slipped away from the place and ran away. However, PW.4 nowhere deposed in her evidence that she tried to catch the petitioner/accused. PW.4 deposed that on hearing some cries from the house of PW.1, she rushed to the house of PW.1 and found the petitioner/accused fleeing away from the scene by jumping from a wall. The evidence of PW.1 has not corroborated the evidence of PW.4. In view of this material

discrepancy in the evidence of PWs.1 and 4, the presence of petitioner/accused at the scene of offence is doubtful. Except PW.4, no independent witness was examined on behalf of the prosecution. Further, though it is the case of prosecution, that a panchayath was held after the subject incident, none of the persons in whose presence the panchayath was held were examined by the prosecution. The evidence of PW.2 cannot be acted upon, since he, being the husband of PW.1, is an interested witness. Further, there is abnormal delay of lodging the complaint by PW.1. No plausible/satisfactory explanation is given by the prosecution witness for such abnormal delay. The reason shown for delay in lodging the complaint is that the village elders tried to hold a panchayath and as the petitioner/accused fled away from the village, no panchayath was held. Admittedly, the alleged incident was occurred on 03.10.2006 and the subject complaint was lodged on 17.10.2006. If at all a panchayath is to be held with regard to the subject incident, the same would have been held within a couple of days from the date of incident. The reason shown for not conducting panchayath is absence of the petitioner/accused. If the petitioner/accused is not in the village and if no panchayath could be held, no wise man would wait for 14 long days for the petitioner/accused to come to the village and

attend panchayath. In a case of this nature, PW.1 would have waited for a reasonable period and would have lodged a complaint thereafter. Under these circumstances, lodging the complaint with a delay of 14 days also creates a doubt on the case of prosecution. There is no evidence as to what transpired between the victim and her relatives and the petitioner/accused for these 14 days. Further, PW.3/panch witness stated in his evidence that the Sub Inspector of Police himself written panchanama and contents of the panchanama was not read over to him. Further, there is evidence on record to the effect that there were land disputes pending between the petitioner/accused and PW.1 and that PW.1 and the petitioner/accused are agnates. All these circumstances create a doubt on the case of prosecution. There is no cogent and convincing evidence which points the finger towards the guilt of the accused. Further, the essential ingredients of Sections 448 and 354 of IPC are not successfully made out against the petitioner/accused. The circumstances of the case, at the most, leads to suspicion. It is settled law that suspicion, however strong it may be, cannot take place of legal proof. Both the Courts below erred in properly appreciating the evidence on record. A cumulative reading of the evidence on record makes it clear that the petitioner/accused is entitled for acquittal of the charges

framed against him. Viewed thus, the impugned judgment of the Court below is liable to be set aside and the petitioner/accused is liable to be acquitted of the charges framed against him.

13. Accordingly, the Criminal Revision Case is allowed by setting aside the judgment, dated 15.05.2009 passed in CrI.A.No.146 of 2007 by the learned IV Additional District and Sessions Judge (FTC), Mahabubnagar. Consequently, the petitioner/accused is acquitted of the offence under Sections 448 and 354 of IPC. The bail bonds of the petitioner/accused shall stand discharged. The fine amount, if any, paid by the petitioner/accused, shall be refunded to him.

Miscellaneous applications, if any, pending in this Criminal Revision Case, shall stand closed.

JUVVADI SRIDEVI, J

4th November, 2022
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