

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No.62 OF 2022

Between:

Balabathula Shiva Kumar @ Shiva

... Petitioner/Accused

And

The State of Telangana,

Rep. by its Public Prosecutor

High Court of Telangana, Hyderabad.

... Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED : 10.10.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|--|--------|
| 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.A. No. 62 of 2022

% Dated 10.10.2023

Balabathula Shiva Kumar @ Shiva ... Petitioner/Accused

And

\$ The State of Telangana,
Rep. by its Public Prosecutor
High Court of Telangana, Hyderabad ... Respondent/Complainant

! Counsel for the Petitioner: Sri Shaik Madar

^ Counsel for the Respondents: Public Prosecutor

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.62 OF 2022****JUDGMENT:**

1. This Criminal Appeal is filed by the appellant aggrieved by the judgment in SC No.131 of 2019 dated 10.02.2022 passed by the Special Sessions Judge for Fast-Tracking the Cases relating to Atrocities against women-cum-VIII Additional District and Sessions Judge at Khammam, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of three years under Section 354-C of IPC. However the appellant was acquitted under Section 376(1) & 506 of IPC.

2. The case of the prosecution is that the victim/P.W.1 was running Vasavi Fancy Store at Enkoor. The appellant was running a photo studio opposite to the shop of the victim. He got acquainted with the victim and she became close and had sexual contact. They used to meet in the photo studio of the appellant. After carrying on her relation for over eight months, afraid of her family members, the victim wanted to change her behavior and kept the appellant away from sexual contact. On

30.07.2016 at about 8.00 p.m, the appellant called her to come to his studio to fulfill his sexual desire and asked why she was avoiding him. He warned her if she would not come that day, he would reveal the videotape to others which were recorded secretly while they had sex. She went to his studio where the accused had intercourse with her forcibly and warned her to come whenever he calls her to fulfill sexual his desire, failing he would reveal the videotape to others. Aggrieved by the conduct of appellant, complaint was filed.

3. The police investigated the case and filed charge sheet for the offences under Sections 354-C, 376 and 506 of IPC and Sections 66 and 67 of Information Technology Act. However, the learned Sessions Judge found that only offence under Section 354-C of IPC was made out on facts and acquitted the appellant for the other offences under Sections 376(1) and 506 of IPC.

4. Learned Sessions Judge found that there was extramarital sexual relationship in between P.W.1 and the appellant. The recorded videos were not transmitted in any electronic form. The trial Court further found that though

initially PW1 had accepted to video recording the sexual act, later she was not inclined and bluntly refused. However, recording was done by the appellant, for which reason, an offence under Section 354-C of IPC was made out.

5. Learned counsel appearing for the appellant would submit that the prosecution has failed to prove the offence under Section 354-C of IPC since the prosecution failed to prove that the video was taken without her consent. Learned counsel has drawn the attention of this Court to paras 29, 32 and 33 of the judgment to substantiate his argument. He further argued that even the learned Sessions Judge found that P.W.1 knew about filming and she promised to come back to take the video after being well dressed in one of the videos. Further, the learned Sessions Judge found that they were in extramarital relation and both the appellant and victim/P.W.1 knew what was happening and continued the relationship in the name of love. P.W.1 was administering 10 to 13 sleeping pills to her husband every time she wanted to meet the appellant. In the said circumstances, when the victim herself was consenting to the extramarital relation and being filmed, it

cannot be said that the offence under Section 354-C of IPC is made out.

6. Learned Sessions Judge further held that P.W.1 had asked the appellant to give her sleeping tablets so that she could give the same to her husband and thereafter meet him, as such, question of any forcible intercourse does not arise.

7. The learned public prosecutor submitted that the DVD's marked as MO4 were discussed by the trial Court and found that Pw1 was being filmed without her consent as such offence under section 354C is made out.

Section 354-C of IPC reads as follows:

“354-C. Voyeurism:- **Any man** who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the **perpetrator** or by **any other person at the behest of the perpetrator** or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1. For the purpose of this Section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is

using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2. Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this Section”

8. On a plain reading of Section 354-C of IPC, the three categories of persons mentioned in the section, ‘*any man*’, ‘*perpetrator*’ or ‘*any other person at the behest of the perpetrator*’ would not mean the person with whom the women engages in the sexual act. The wording of Section 354-C ‘*where she would usually have the expectation of not being observed*’ would exclude the person who engages in the sexual act. ‘*perpetrator*’ or ‘*any other person at the behest of the perpetrator*’ cannot be the person with whom the woman is engaged in sexual act with her consent.

9. Admittedly as found by the learned Sessions Judge the victim PW1 has an extra marital affair and consented to sexual intercourse over a period of time with the appellant and the filming was done when she was having sexual intercourse

willingly. In the said circumstances the appellant cannot be held liable for Voyeurism.

10. In the event of the victim consenting to capture images or any act but not consenting to spread or release (dissemination) to third persons and if such image or acts are disseminated, such dissemination shall be considered an offence. In the present case, even according to the finding of the learned Sessions Judge, the video recordings were never shared or sent to anyone. By virtue of Explanation 2 also, no offence is made out. None of the ingredients under Section 354-C of IPC are not made out against the appellant. Consequently, the judgment of trial Court in SC No.131 of 2019 dated 10.02.2022 is hereby set aside. Since the appellant is on bail, his bail bonds shall stand cancelled.

11. Criminal Appeal is allowed.

K.SURENDER, J

Date: 10.10.2023

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.62 OF 2022

Dt.10.10.2023

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