

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL APPEAL No.353 of 2014

ORDER:

This Criminal Appeal is preferred by the State represented by the Public Prosecutor to set aside the judgment dated 26.07.2012 passed in SC No.405 of 2011 by the Principal Assistant Sessions Judge, Warangal, against the respondent – accused acquitting him for the offences under Sections 448, 354 and 506 IPC .

2. The case of the prosecution in brief was that on 07.08.2009 at 2.30 AM, the complainant, a victim woman, aged about 35 years came to Subedari Police Station and lodged a report against the respondent – accused stating that on 06.08.2009 at 11.30 PM the accused criminally trespassed into her house at Banjara Colony, Ramnagar, Hanmakonda, outraged her modesty and threatened her with dire consequences. The complainant stated in the complaint that her husband died five years ago and she had two children and she was eking her livelihood by doing coolie work. On 06.08.2009 as usual she returned home from coolie work at 6.00 PM and after having dinner she along with her children slept at 9.00 PM. The accused who was residing in the same locality, who had an evil eye on her, trespassed into her house when she was in deep sleep at about 11.00 PM, slept on her cot by her side and laid his leg with an intention to fulfil his lust and tried to outrage her modesty. She raised hue and cry and tried to catch the accused. In the tussle her blouse was torn. On her hue and cry, the colony people woke up and tried to catch the

accused. The accused threatened her with dire consequences that if she reported the matter to anybody or police, he would see her end and fled away. The colony people tried to catch hold him, but he managed to escape. Basing on the said report, Crime No.368 of 2009 was registered under Sections 448, 354 and 506 IPC. The accused was arrested on 10.08.2009 and after completing the investigation police filed charge sheet against him for the above offences. The case was taken on file by the IV Additional Judicial Magistrate of First Class, Warangal and committed to the Sessions Court, Warangal. The same was made over to the Principal Assistant Sessions Judge, Warangal for disposal in accordance with law. The Principal Assistant Sessions Judge framed charges against the accused for the offences under Sections 448, 354 and 506 IPC. The accused pleaded not guilty and claimed to be tried. The prosecution got examined PWs.1 to 8 and got marked Exs.P1 to P5. No defence evidence was adduced by the respondent – accused. After considering the oral and documentary evidence on record, the Principal Assistant Sessions Judge, acquitted the accused on all the counts.

3. Aggrieved by the said acquittal, the State preferred this appeal contending that the judgment of the learned Principal Assistant Sessions Judge, Warangal was contrary to law, weight of evidence and probabilities of the case. The learned Judge ought to have seen that the ingredients to constitute the offences punishable under Section 448, 354 and 506 IPC were made out by the prosecution

against the accused. The learned Judge ought to have seen that the evidence of PWs.1 to 4, 7 and 8 were corroborating with each other, the learned Judge had not considered the evidence of the prosecution witnesses in correct perspective. The reasons assigned in acquitting the accused were unsustainable and prayed to set aside the judgment of the trial Court.

4. Heard the learned Assistant Public Prosecutor. Notice was served on the respondent – accused. But he failed to appear before the Court and contest the matter.

5. Now, the point for consideration is whether the judgment of the trial court is sustainable or whether it needs any interference by this Court?

6. Perused the record and the evidence of the prosecution witnesses. The complainant-victim was examined as PW.1. She stated in her evidence that about 2 years 7 months ago while she was asleep at 11.30 PM she woke up as she found the accused lying beside her and placed his hand and leg on her and tried to outrage her modesty, she caught hold him, he had torn her upper garment. She raised hue and cry. Her neighbours Ramdas and Shanthi rushed to her. They had seen the accused fleeing away from her house. The accused gained entry into the house as the door was not bolted from inside of the house and he tried to commit rape on her. She stated that, she went to the police station and lodged complaint thereafter, and identified Ex.P1 as the complaint given by her. In her cross-

examination, she stated that Ex.P1 was scribed by her brother-in-law. It was suggested to her that there was a pan shop run by one Rajitha and the accused came to the said pan shop at 9.00 PM for purchase of cigarettes and a quarrel took place between her and the accused and she and her brother bet the accused in retaliation, which was denied by her. When questioned about the age of her children, she stated that her daughter was 11 years old and her son was 9 years old.

7. A neighbour of PW.1, by name, L. Ramdas, who was cited as an eye witness to the incident, was examined as PW.2. He stated that two years ago at 11.30 PM, on hearing the cries of PW.1, he along with LW.3 Tirupathi (brother-in-law of PW.1) and the brother of PW.1 rushed to the house of PW.1 and found the accused fleeing away from the house of PW.1. They chased the accused and tried to catch him. PW.1 informed them that the accused entered into her house to outrage her modesty. She lodged a complaint in the said regard.

In his cross examination he stated that his house was situated three houses after the house of PW.1, the house of PW.1 was a hut having one room and there was a door to the said house. She was having a daughter aged 14 years or 15 years old and a son 11 years old. He admitted that PW.1 made hue and cry, there was every possibility of her children waking up. He admitted that there was a pan shop at a distance of 100 yards from the house of PW.1 and he stated that he did not know whether the accused came to the said pan

shop for the purpose of purchasing the cigarettes and the brother of PW.1 picked up a quarrel with the accused and PW.1 foisted a false case against the accused.

8. The brother of PW.1 by name Banoth Bhura was examined as PW.3. He stated that he was a resident of Pedavangara village. PW.1 was his sister. She was a widow. He went to the house of PW.1 from his village. He slept in the shed (paaka) in front of the house of PW.1. He heard the cries of PW.1 at 11.00 PM, woke up and rushed to her and found the accused fleeing away from the house of PW.1. PW.1 informed him that the accused entered into the house and when she raised hue and cry, he fled away. He stated that Tirupathi, Ramdas and Shanta rushed to the house of PW.1 on hearing the cries of PW.1. He along with PW.1 and others went to the police station at 2.00 AM and PW.1 lodged the complaint.

He stated in his cross examination that he slept in front of the house of PW.1 in the court yard, it was during rainy season the incident took place and on hearing the cries, he woke up and found the accused fleeing away from the house of PW.1. He chased and caught hold the accused at his house but the accused escaped and thereafter, the police arrested him. He stated that LW.3 Tirupathi (brother-in-law of PW.1) rushed to the house of PW.1 on hearing her cries immediately and by the time he woke up, the accused was on the way to his house.

9. Another neighbour of PW.1, by name, P. Shanta, was examined as PW.4. She stated that about 3 years 6 months ago, at about 11.00 PM, she heard the cries of PW.1. She along with Tirupathi, PWs.2 and 3 rushed to the house of PW.1. On enquiry, PW.1 informed her that accused entered into her house and outraged her modesty by tearing her blouse and when she raised hue and cry, he fled away. She stated that she had seen the accused fleeing away from the house of PW.1 and found the blouse of PW.1 torn.

In her cross-examination she stated that the house of PW.1 was situated two or three houses after her house. She stated that she had not seen the accused tearing the blouse of PW.1, she had seen the accused fleeing away from the house of PW.1 towards his house, which was situated towards her house.

10. The panch witnesses for the crime details form were examined as PWs.5 and 6. Both these witnesses turned hostile and stated that police obtained their signatures on some papers two years ago.

11. The Head Constable of Subedari Police Station, who registered the FIR, was examined as PW.7. He stated that on 07.08.2009 at 2.30 AM, PW.1 came to the police station and lodged the report. Basing on it, he registered a case in Crime No.368 of 2009 for the offences under Sections 448, 354 and 506 IPC and issued FIR. He stated that he recorded the statement of PW.1, visited the scene of offence on the following day morning, drafted the crime detail form in

the presence of mediators and also examined PWs.2, 3, 4 and LW.3 Tirupathi and recorded their statements.

12. The Sub-Inspector of Police of Subedari Police Station, who investigated the case, arrested the accused and filed charge sheet, was examined as PW.8. He stated about the investigation conducted by him and that he arrested the accused on 10.08.2009 at 11.00 AM and on interrogation, the accused confessed the crime and he produced him before the Court and after investigation, filed charge sheet.

13. LW.3 Tirupathi – the brother-in-law of PW.1 was reported to have expired as such he could not be examined. PW.4 stated in her evidence about the expiry of LW.3 Tirupathi.

14. The trial court observing that PW.1 had not stated about her brother PW.3 rushed to her house on hearing her hue and cry, and PWs.2 and 4 stated about PW.3 and LW.3 rushing to the house of PW.1, considered it as inconsistency in the evidence of PWs.1 to 4. The trial court also observed that PW.3 initially stated about sleeping in front of the house of PW.1 and subsequently, in his cross examination shifted his version by stating that he slept in front of the house in the court yard, also considered it as an inconsistency. The trial Court also observed that non-examination of the children of PW.1 was fatal to the prosecution case and considered them as material witnesses to the case of the prosecution. The trial court also made an observation that PW.1 stated about not bolting the door of

the house from inside and therefore, accused managed to gain entry into the house and the said explanation did not appeal to the reason as she should have bolted the door from inside before going to sleep, being a widow and having minor children which was not in the normal state of things. The trial court also observed that there was a delay of more than 12 hours in lodging the complaint. The trial Court observed that the incident having taken place at Hanmakonda town where the police station of Subedari was situated, it was quite possible for lodging the complaint at least in the early hours of 07.08.2009.

15. The trial Court also pointed out that Ex.P.5 Crime Detail Form did not show the house of PW.1, but would show the house one Guguloth Bujji as the scene of offence and it was not the case of the prosecution that PW.1 was called as Bujji. None of the prosecution witness including PW.1 stated that Bujji was no other than PW.1. Thus, the occurrence of the incident at the house of PW.1 itself was doubtful.

16. PW.1 stated in her evidence on 20.03.2012 that the incident took place at 11.30 PM about 2 years 7 months ago. As per the FIR, the complaint was given on 07.08.2009 at 2.30 hours. All the witnesses also stated about lodging the report immediately in the police station at the time of the incident itself. The Head Constable examined as PW.7 also stated that PW.1 lodged the complaint on 07.08.2009 at 2.30 AM. As such there was no delay in lodging the report. Immediately after the incident that occurred on 06.08.2009 at

11.30 PM on the mid night itself, PW.1 went to the police station accompanied by other witnesses PWs.2 to 4 and lodged the report. Thus, the observation of the trial Court that there was a delay in lodging the report is considered not proper as it was contrary to the oral and documentary evidence on record.

17. The trial Court also observed that there was delay in dispatch of the FIR to the Court. But the FIR was received by the IV Additional Judicial Magistrate, Warangal on 07.08.2009 at 4.00 PM. The delay of dispatching FIR in the absence of any explanation was also considered as fatal to the case of the prosecution by the trial Court. But how the said delay in dispatching FIR to the court was fatal was not explained by the trial Court. Each and every delay was not fatal to the prosecution case unless there is a suggestion as to the false implication of the accused due to the said delay. There was no cross examination on PW.7 with regard to the delay in dispatch of FIR to the Court. As such, the said observation of the trial Court is also considered as improper.

18. Though PWs.5 and 6 – the panch witnesses of crime details form turned hostile, PW.7 the Head Constable stated in his evidence that he visited the scene of offence on the following day morning and drafted the crime detail form. He admitted that the house of Guguloth Bujji was shown in Ex.P.5 map. But no doubt was expressed by the defence and no cross examination was made on PW.1 if there was any doubt as to whether PW.1 was also called as Guguloth Bujji or not. If

PWs.1 and 3 were questioned with regard to the same they would have explained or answered about it, whether PW.1 was also called as Bujji or not. When PW.1 stated that the incident took place at her house, there is no reason to suspect her evidence that the occurrence of the incident at the house of PW.1 was doubtful by the trial Court.

19. The inconsistencies observed by the trial court were also not on material facts. PW.3 stated that he slept in the shed (paaka) in front of the house of PW.1 in his chief examination and in his cross examination stated that he slept in front of the house of PW.1 in the court yard during the night time. This court does not find any inconsistency in the said evidence.

20. The observation of the trial Court that there was inconsistency in the evidence of PWs.1 to 4 with regard to PWs.3 and LW.3 Tirupathi rushing to the house of PW.1 is also not proper as it was not on a material fact. Who rushed to the house of PW.1 first is not a material fact to prove the alleged offences under Sections 448, 354 and 506 IPC. PW.1 not stating about her brother and brother-in-law rushing to the house on her hue and cries is not a material omission. When the victim stated in clear terms that the accused slept beside her and placed his hand and leg on her and tore her upper garment and outraged her modesty and the evidence of the other independent witnesses like PWs.2 and 4 also supported her evidence that they found the accused fleeing away from the house of PW.1 and PW.4 stated that she observed the blouse of PW.1 torn, the trial Court

disbelieving their evidence and acquitting the accused pointing inconsistencies on some irrelevant facts is highly improper. The trial court failed to observe that PW.1 was a young widow, a tribal woman having two minor children, living in a hut and eking her livelihood by doing labour work. The trial court pointed out that not bolting the door of the house from inside does not appeal to reason, but failed to observe that she was living in a hut where there might not be strong doors and bolts to the house.

21. The observation of the trial court that non-examination of the children was fatal to the prosecution case also does not appeal to reason. Children cannot be called to the court and cited as witnesses unless it is very much essential and there were no other witnesses to prove the said facts. When there were adult witnesses available, the victim herself as well as the neighbours and the other persons who can speak about the incident, the non-examination of children to prove the incident is considered as not fatal. The trial Court had not given any cogent reasons for not believing the evidence of the victim PW.1 and that of the other witnesses PWs.2 to 4.

22. The accused tried to take a weak defence that some incident took place at the pan shop in the day time due to which a false case was foisted by PW.1, but failed to examine any witnesses to prove the said defence. The prosecution witnesses had not supported the defence version on the same.

23. Thus, it is considered that the trial Court committed an error in not considering the evidence of prosecution witnesses in correct perspective though the evidence of PWs.1 to 4, 7 and 8 were corroborating with each other, acquitted the accused on some minor inconsistencies which were not fatal to the prosecution case at all. The evidence of all the witnesses is cogent, reliable and trustworthy. Nothing was elicited in the cross-examination of PWs.1 to 4 to disbelieve their evidence. As such, it is considered fit to set aside the acquittal of the accused for the offences under Sections 448, 354 and 506 IPC.

24. As the evidence of PW.1 is corroborated by the evidence of the other witnesses PWs.2 to 4 and 7 and 8, to prove the alleged offences under Sections 448, 354 and 506 IPC against the respondent-accused, it is considered fit to convict the respondent-accused for the said offences and sentence him for the said offences.

25. In the result, the Criminal Appeal is allowed setting aside the judgment dated 26.07.2012 passed in SC No.405 of 2011 by the Principal Assistant Sessions Judge, Warangal, acquitting the respondent-accused for the offences under Sections 448, 354 and 506 IPC. The respondent-accused is found guilty of the said offences and is accordingly convicted and sentenced to undergo rigorous imprisonment for a term of one year for the offence under Section 448 IPC, to undergo rigorous imprisonment for a term of two years and to pay a fine of Rs.2,000/- in default, to undergo simple imprisonment

for a period of three months for the offence under Section 354 IPC and also to undergo rigorous imprisonment for a term of one year for the offence under Section 506 IPC. All the sentences shall run concurrently.

26. The respondent-accused shall surrender before the Court concerned within fifteen (15) days from the date of receipt of a copy of this judgment, to serve the sentences inflicted against him under this judgment and in the event he fails to do so, the Court concerned shall initiate steps in accordance with law to apprehend and incarcerate him for the sentence imposed against him. The period of custody at the time of arrest of the respondent-accused in this case shall be given set off.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

February 04, 2022
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