

THE HONOURABLE SRI JUSTICE P. DURGA PRASAD

CRIMINAL APPEAL No.1391 OF 2004

JUDGMENT:

This appeal is at the instance of the State directed against the order of acquittal of the accused passed by the Assistant Sessions Judge, Khammam, in S.C.No.301 of 2001 on 19-05-2003.

The accused therein was prosecuted for the offence under Section 354 IPC alleging that on 02-06-2001 when PW-1 was sleeping in front of her house at the midnight at 24 hours the accused found the victim alone on the cot, tried to remove her sari and thereby outraged her modesty. The victim woke up and found the accused sitting on cot and she raised hue and cry. The accused fled away from the scene of offence and went to his house and closed doors. On hearing cries of PW-1, PWs.2, 3 and others came there and gone to the house of the accused and made him opened the doors. The persons gathered there admonished the accused. On the next day on 03-06-2001 at 11.00 hours PW-1 lodged a complaint with the police. The police after completion of investigation filed charge sheet against the accused.

The learned Assistant Sessions Judge has framed the charge for the offence under Section 354 of the IPC and the accused pleaded not guilty for the said charge.

PWs.1 to 5 were examined and Exs.P-1 to P-4 were

marked on behalf of the prosecution. No evidence was adduced on behalf of the accused.

Taking into consideration of said oral and documentary evidence the lower Court has found that the prosecution has failed to establish the charge under Section 354 of the IPC against the accused and thereby acquitted him.

Aggrieved by the said acquittal the State has preferred the present appeal.

The Additional Public Prosecutor has pleaded that the evidence of PW-1 who is the victim clearly establishes the commission of the offence is the accused and the same was supported by the evidence of PW-2 and thus, the prosecution could able to establish the charge under Section 354 of the IPC against the accused.

The counsel appearing for the respondent has pleaded that PW-2 is not an eye-witness to the incident and he is the son of the victim and PW-3 said to be the independent witness who came to the spot after the incident has turned hostile to the prosecution and there was a previous enmity between the accused family and the victim's family and due to which a false case is foisted against the accused.

According to the prosecution, PW-1 was sleeping in front of her house on 02-06-2001 and in the mid-night about 12 o' clock the accused came there and sat on her cot and tried to remove her sari, thereby tried to outrage her modesty.

PW-1 the victim has stated that on 02-06-2001 at 12.00 mid-night while she was sleeping in front of her house, on a cot and her eldest son who is mentally un-sound and her two sons were sleeping by the side of her cot. At that time accused came there and raised her sari. Then she woke up and raised cries as 'Donga Donga' and then her son PW-2 tried to caught hold of the accused but the accused escaped and ran away into his house. On hearing her hue and cry 50 people of the locality gathered there and enquired her; she informed the same to them and the neighbours gone to the house of the accused and made him to open the doors and the people gathered there, admonished the accused. On the same night she along with her caste people went to Police Station and gave a report under Ex.P-1.

In the complaint Ex.P-1 she has not mentioned about her two sons were sleeping on a single cot by the side of her cot and on her raising cries PW-2 tried to caught hold the accused and she also did not mention that on hearing her cries 50 people gathered there and they have gone to the house of the accused and got the doors opened and admonished him but she only stated in her complaint that on 02-06-2001 while she was sleeping in front of her house, at midnight one person came and raised her sari. Immediately she woke up and found the said person sitting on her cot and she identified him as accused and raised 'Donga Donga'. Then he ran away in to his house and closed doors and requested to take action against the accused.

Even though all the details of the incident are not required to

be mentioned in the F.I.R., the names of the persons who were present at the time of the incident who tried to caught hold the accused should have been mentioned in the complaint.

More over, in her cross-examination she admitted that the a panchayat was held in the presence of Vaddepati Narayana with regard to raising of wall. The said Narayana was directed them and the accused to raise a wall with a width about 2 feet and one feet both of us and one feet by the accused.

She also stated that the accused is age of her eldest son. More over, PW-3 who is said to have came to the spot on hearing cries of PW-1 has not supported case of the prosecution. With regard to PW-2 as already observed above his presence was not spoken by PW-1 in her complaint

Ex.P-1. Therefore, the presence of PW-2 was brought into existence subsequent to lodging of complaint in support of her case. Therefore, it is not safe to rely upon the evidence of PW-2.

More over, the Investigating Officer has also stated that PW-1 did not state that PW-2 was sleeping by the side of cot and witnessed the incident and about the chasing the accused and he did not examine any neighbours of PW-1 and PW-1 did not state to him and PWs.2 and 3 came to the place of incident after incident. Therefore, the version of PW-1 that PW-2 was sleeping by the side of her cot on a different cot and he tried to caught hold of accused on her raising hue and cry would not be established.

More over, there was previous dispute between the accused

and the victim PW-1. Therefore, in the circumstances, it is not safe to rely upon the evidence of PW-1 without any corroboration.

Thus, the lower Court has rightly held that the prosecution has filed to establish the charge for the offence under Section 354 of the IPC and the said findings recorded by the learned Assistant Sessions Judge does not warrant any interference in this appeal.

In the result, the appeal is dismissed.

P. DURGA PRASAD, J

September 30, 2011
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