
(2004) 04 AP CK 0122

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 19 of 2002

Harijana Gadi Lingappa alias Gadigadu

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 324, 354

Citation : (2004) 1 ALD(Cri) 924 : (2004) 2 ALT(Cri) 421 : (2004) 2 APLJ 285 : (2004) CriLJ 4050

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : K. Srinivasa Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—This Criminal Revision Case is directed against the judgment dated 8-1-2002 passed in Criminal Appeal No. 227 of 1999 on the file of I Additional District and Sessions Judge, Kurnool, by which the learned Additional District and Sessions Judge confirmed the conviction of accused Harijana Gadi Lingappa alias Gadigadu for the offence u/s 354 IPC while modifying the conviction and sentence of the accused for the offence u/s 324 IPC to 323 IPC passed in S. C. No. 490 of 1996 on the file of Assistant Sessions Judge, Adoni.

2. The petitioner herein is the sole accused in S. C. No. 490 of 1996 on the file of Assistant Sessions Judge, Adoni. He was put on trial before the Assistant Sessions Judge, Adoni, for the offences punishable u/s 354 and 324 IPC. The accusation made against the accused/petitioner is that on 8-6-1996 about 10 a.m. at Gangamma Beedu Vanka, Kaminahal Village, assaulted P. W. 1 and used criminal force on her by holding her hand and forced her for sexual intercourse and thereby he outraged her modesty. The further accusation made against him is that he voluntarily caused hurt to PW 1 by giving a blow with a stone on

forehead.

3. The case of the prosecution in brief is : P.W. 1 Harijana Eramma is daughter of P.W. 2 Harijana Narsappa. P.W. 3 Harijana Eramma is daughter of paternal aunt of P.W. 1. On 8-6-96 at about 8 a.m. P.W. 1 and P.W. 3 went to Gangamma Beedu Vanka to collect fire wood. While they were collecting fire wood about 10 a.m. the accused went there and caught hold of the hand of P.W. 1 and pulled her. When P.W. 1 resisted, the accused grew wild, pushed her and tore her jacket and thereafter picked up a stone and beat her on forehead. P.W. 3, who was near by, witnessed the incident and raised cries and thereafter she ran to the village to bring father of P.W. 1. P.W. 1 also returned home and found that her father (P.W. 2) left for Bellary on some work. P.W. 2 returned home on that night and learnt the incident from P.Ws. 1 and 3. On the morning of the next day P.W. 1 to 3 went to Halaharvi Police Station where P.W. 1 presented oral report, which came to be reduced into writing by P.W. 6. P.W. 6 S. Ramachandra Reddy, SI of Police, Halaharvi P. S. received Ex. P. 1 report, registered a case in Cr. No. 37 of 1996 and issued Ex. P. 14 FIR. He examined P.Ws. 1 to 3 and recorded their statements and seized MO. 1 jacket from the person of P.W. 1 under the cover of panchanama. He sent P.W. 1 since she had an injury on her person to Government Hospital, Aluru for treatment. P.W. 4 Dr. V. Rama Devi, Civil Assistant Surgeon medically examined P.W. 1 and found a contusion over middle of her forehead measuring 3" x 2" and issued Ex. P. 2 wound certificate opining that the injury is simple in nature and it would be caused by a blunt object. P.W. 6 inspected the scene of offence and prepared rough sketch of the scene, which is exhibited as Ex. P. 5. He arrested the accused on 17-7-96 at 8 a.m. and sent him for remand. After completing investigation he laid the charge sheet against the accused in the Court of JMFC, Alur. The learned Magistrate took the charge sheet on file as P.R.C. No. 22 of 1996 and committed the case to the Court of Session as the offence u/s 354 IPC is exclusively triable by the Court of Session. On committal the learned Sessions Judge took the case on file as S.C. No. 490 of 1996 and made over the same to Assistant Sessions Judge, Adoni for disposal according to law. On hearing the prosecution and the accused the learned Assistant Sessions Judge framed charges under Sections 354 and 324 IPC, read over and explained the same to the accused. The accused pleaded not guilty and claimed to be tried. To bring home the guilt of the accused for the offences with which he stood charged, the prosecution examined P.Ws. 1 to 6 and marked Exs. P. 1 to P 5 and MO. 1 The defence of the accused was that a case was foisted against him due to group rivalry in the village. The learned Assistant Sessions Judge, on appreciation of the evidence brought on record, found the accused guilty for the offences under Sections 354 and 324 IPC and convicted him accordingly and sentenced him to suffer RI for four years and pay a fine of Rs. 500/- in default to suffer SI for two months for the offence u/s 354 IPC and RI for two years and fine of Rs. 500/- in default to suffer SI for two months for the offence u/s 324 IPC. Assailing the judgment of conviction and sentence, the accused filed Cri. A. No. 227 of 1999 on the file of 1st Additional District and

Sessions Judge, Kurnool. The learned 1st Additional District and Sessions Judge by judgment dated 8-1-2002 confirmed the conviction of the petitioner/accused for the offence u/s 354 IPC while modifying the conviction of the accused for the offence u/s 354 IPC to the offence u/s 323 IPC. Hence, this Criminal Revision Case by the accused/petitioner.

4. Learned counsel for the accused/petitioner submits that P.Ws. 1 and 3 are interested witnesses and therefore no implicit reliance can be placed on their testimony. He further submits that there is a delay in presenting the report and that Ex. P. 1 report pressed into service after due deliberations. It is nextly submitted by him that P.W. 1 is sister by courtesy to the petitioner and therefore it is highly improbable that the petitioner caught hold of P.W. 1 by hand with an intent to outrage her modesty.

5. Learned Additional Public Prosecutor submits that P.W. 1 is the victim and she has no axe to grind against the accused/ petitioner and that her testimony is fully corroborated by the evidence of P.W. 3. She further submits that delay in presenting Ex. P. 1 report has been properly explained by P.W. 1 and 2 and therefore the delay is not fatal. It is lastly submitted that the evidence of P.Ws. 1 and 3 is cogent and convincing and their testimony has been rightly appreciated by the trial Court and the first appellate Court and that both the Courts gave a categorical finding that the accused/petitioner outraged the modesty of P.W. 1 and the same is not liable to be interfered by this Court in exercise of revisional powers.

6. It is settled law that when a conviction is recorded by the trial Judge and upheld by the first appellate Court, re-appreciation of the evidence cannot be done unless there is miscarriage of justice. It is held in *State of Kerala Vs. Putthumana Illath Jathavedan Namboodiri*, that (para 5)

"The High Court in its revisional jurisdiction, can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. Therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

P.W. 1 is the victim. P.W. 2 is her father and P.W. 3 is daughter of her paternal aunt. P.W. 1 testifies that on the date of the incident she along with P.W. 2 went to Gangamma Beedu Venka for collecting firewood and that at about 10 a.m. the accused came there and caught her by hand and forced her for sexual intercourse. She further testifies that when she pushed him away, he grew wild, scolded her in filthy language and beat her with a stone on the forehead and

thereby she sustained bleeding injuries. P.W. 3 corroborates the testimony of P.W. 1 in all material particulars. The fact that P.W. 1 sustained injuries is corroborated by the medical evidence. P.W. 4 Dr. Rama Devi, Civil Assistant Surgeon medically examined P.W. 1 on 9-6-96 at 8 p.m. and issued Ex. P. 2 wound certificate opining that the injuries sustained by her are simple in nature.

7. A serious criticism has been levelled by the learned counsel for the petitioner on delay in presenting Ex. P. 1 report before the Station House Officer, Halaharvi Police Station. P.W. 1 has given satisfactory explanation for delay in presenting the report. It is stated by her that by the time she returned home, her father-P.W. 2 left for Bellary. P.W. 2 returned from Bellary on the night of the incident and on the morning of the next day he took P.W. 1 to the police station where P.W. 1 presented oral report and the police seized MO.1 torn jacket of her under the cover of panchanama. The evidence of P.W. 1 is crystal clear that the accused caught hold of her by hand and pulled her and when P.W. 1 resisted he grew wild, tore her jacket, beat her with a stone on the forehead and thereby she sustained bleeding injury.

8. A charge u/s 354 IPC is one, which is very easy to make, and is very difficult to rebut. A careful approach has to be adopted by the Court while dealing with a case alleging outrage of modesty. The essential ingredients of the offence u/s 354 IPC are as under :

- 1) That person assaulted must be a woman;
- 2) That the accused must have used criminal force on her; and
- 3) That the criminal force must have been used on the woman intending thereby to outrage her modesty.

The Supreme Court in Vidyadharan Vs. State of Kerala, held that in order to constitute the offence u/s 354 IPC mere knowledge that the modesty of a woman likely to be outraged is sufficient without deliberate intention of having such outrage alone for its object. Knowledge and intention are essential things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the offence is alleged to have been communicated. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight.

9. The evidence of P.W. 1 is cogent and consistent that the accused/ petitioner caught hold of her by hand and pulled her for sexual intercourse and when she resisted he grew wild, tore her jacket, beat her with a stone on her forehead and thereby she sustained injuries. All the essential ingredients of the offence u/s 354 IPC have been made out by the prosecution. The trial Court and the appellate Court considered the evidence brought on record in right perspective and found the accused/petitioner guilty for the offence u/s 354 IPC. I do not see any ground to interfere with the conviction and sentence of the accused/

petitioner for the offences under Sections 354 and 323 IPC.

10. In the result, this Criminal Revision Case fails and the same is dismissed.