

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.151 OF 2007

JUDGMENT:

This criminal appeal is preferred by the State by invoking provision under Section 378 (3) & (1) of the Code of Criminal Procedure being aggrieved by the judgment, dated 06.07.2005, rendered in S.C. No.39 of 2003, by the Assistant Sessions Judge, Tanuku, whereby and whereunder the learned Judge found the respondent - accused not guilty of the offences under Sections 354 and 324 IPC and accordingly, acquitted him of the said offences.

The brief facts of the case are that the on 16.03.2003 at 6.00 p.m., the accused pounce upon the de facto complainant - victim in front of her house at Goreeladibba of Penugonda. He caught hold of her tuft, made her to fall on the ground and indiscriminately fisted and kicked her, dragged her forcibly, as her husband looked seriously towards his concubine and also in connection with previous enmity. During that incident, the accused torn the blouse of the de facto complainant and caused injuries to her. Basing on the report lodged by the de facto complainant, a case in Crime No.39 of 2003 for the offence under Sections 324 and 323 IPC was registered. Accused was arrested on 18.03.2003 and was sent to judicial custody. After completion of investigation, the police filed charge sheet.

The case was taken on file for the offences under Sections 324 and 323 IPC and on appearance of the accused, the said charges were read over and explained to him, for which he pleaded not guilty and claimed to be tried.

To prove its case, the prosecution examined PWs.1 to 8 and marked Exs.P.1 to P.5 besides MO.1. No oral or documentary evidence was adduced on behalf of the accused.

After evaluating the oral and documentary evidence adduced by the prosecution witnesses, the trial Court found the respondent - accused not guilty of the offences under Sections 354 and 324 IPC and accordingly acquitted him. Aggrieved by the same, State preferred the present appeal.

Heard the learned Public Prosecutor and the learned counsel for the respondent and perused the material available on record.

While acquitting the appellant-accused, the trial Court observed that there is no corroborative evidence to support the evidence of the victim - PW.1, with regard to the offence under Section 354 IPC and the evidence of the independent witness i.e. PW.3 was not corroborated the evidence of the victim. Even if the entire allegations are taken as true, the offence under Section 354 IPC will not attract since the incident arose out of a quarrel when the accused questioned the victim as to why her husband looked seriously towards his concubine. To attract the offence under Section 354 IPC there should be assault or use of criminal force on a woman, and such assault or use of criminal force must have been made with an intention to outrage her modesty or with knowledge that her modesty was in likely to be outraged. As rightly observed by the trial Court, in the present case, there is no independent witness to support the version of the victim to prove the offence under Section 354 IPC against the accused.

As far as the offence under Section 324 IPC, it is observed by the trial Court that in the complaint and also in the statement before the police, PW.1 stated that the accused caught her tuft, pushed her down, torn her blouse, pulled her saree, kicked with legs on her abdomen, beat on her neck with hands and insulted her and that she received minor injuries on her right hand and on the neck. But, in her chief examination, PW.1 stated that the accused kicked on her abdomen, beat on her ears and that she received bleeding injuries. P.W-6 - Doctor, who treated PW.1, found a contusion on the right fore arm and a contusion over the back of the neck of PW.1. These two injuries were not stated by PW.1 in her chief examination. Therefore, the evidence of PW.1 was not supported by the medical evidence. By observing as above, the learned Sessions Judge came to the conclusion that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt and accordingly, acquitted the accused.

In a case of acquittal, if the trial Court considered two views and basing on one of the views, which is in favour of the accused, acquits the accused, normally this Court will not interfere with the judgment of the trial Court unless and otherwise, the evidence adduced by the prosecution clinchingly points towards the guilt of the accused. Hence, as rightly pointed out by the learned trial Judge, the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt and this Court is of the view that the trial Court has rightly acquitted the accused disbelieving the case of the prosecution. This Court is not inclined to interfere with the judgment of the trial Court and hence, the appeal is liable to be dismissed.

Accordingly, the Criminal Appeal is dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed.

September 26, 2016.  
KTL

RAJA ELANGO, J

