

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

CRIMINAL REVISION CASE No.714 OF 2008

% Dated: .07.2024

Choppari Sambaiah, S/o. Narsaiah,
Aged 30 years, Occ: R.M.P. Doctor,
R/o. Dammannapet (V), Wardhannapet (M),
Warangal District .. Petitioner

And

\$ The State of A.P. rep. by its,
Public Prosecutor, High Court of A.P.,
Hyderabad .. Respondent

! Counsel for petitioner : Mr. V.S.M.Pritham Kanumuri,
Learned Legal Aid Counsel

^ Counsel for respondent : Learned Additional Public Prosecutor

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? Cases referred

1. (1974) 3 SCC 85
2. (1977) 3 SCC 287
3. (2004) 7 SCC 257
4. (2013) 7 SCC 77
5. (2017) 13 SCC 449
6. (2017) 4 SCC 546
7. (2010) 12 SCC 532
8. (2012) 8 SCC 734
9. (2014) 7 SCC 323
10. (2015) 3 SCC 441
11. (2016) 1 SCC 463

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ORDER:

This Criminal Revision Case is filed against the conviction and sentence imposed by learned IV Additional Sessions Judge, Warangal, vide judgment, dated 16.10.2007, in Criminal Appeal No.20 of 2007 confirming the order of learned II Additional Assistant Sessions Judge, Warangal in S.C.No.137 of 2006, dated 21.07.2006, wherein the revision petitioner/accused was convicted for the offence under Section 354 of Indian Penal Code, 1860 (for short 'IPC') and sentenced to undergo imprisonment for a period of five (05) years and to pay fine of Rs.1,000/-.

2. Heard Shri V.S.M.Pritham Kanumuri, learned Legal Aid Counsel for revision petitioner/accused and learned Additional Public Prosecutor appearing for respondent-State.

3. Learned counsel for revision petitioner submitted that the Appellate Court erred in reaching the conclusion in convicting the revision petitioner/accused under Section 354 of IPC on the testimony of PW3. It is further submitted that there was a delay in lodging the complaint and that the evidence of the prosecution witnesses was at variance and not supportive to the case of prosecution. It is contended that no reasons are forthcoming for rejection of evidence of revision petitioner. It is further contended that evidence of PW3, an independent witness, cannot be relied, as PW3 statements are not corroborated and hence, evidence of PW3 is not enough to prove the guilt of the accused. It is also contended that accused, a Registered Medical Practitioner (RMP), had been treating the family members of the complainant and a false complaint was lodged against revision petitioner, when revision petitioner demanded amounts due, for the treatment rendered.

4. Learned counsel for revision petitioner contended that complaint was filed on the next day in the concerned Police Station and the incident took place on 31.10.2004 at about 03.00 p.m., and the delay in lodging the complaint was unexplained and the same cannot be ignored. It is further contended that a false complaint is lodged implicating the revision petitioner. It is submitted that the Appellate Court has not considered the delay and that there being no corroboration of prosecution witnesses, the reasons assigned by the Appellate Court are on improper appreciation of evidence, hence, the conviction and sentence imposed by the trial Court(s) is liable to be set aside.

5. Learned Additional Public Prosecutor submitted that the complaint was lodged within 24 hours of the occurrence and the same does not amount to delay as contended by any stretch. It is further submitted that as the complainant rejected the repeated requests of

the accused for marriage, when the complainant was alone in front of her house preparing notes for her intermediate course, the accused grabbed her hand with an intention to rape her and when the complainant made hue and cry, accused ran away. It is also submitted that the motive for the offence is evident.

6. It is submitted that PW3 is an independent witness, who corroborated the fact that accused held the hand of complainant and that when complainant raised a hue and cry, PW3 came to the rescue as he was passing by the house. It is further submitted that PW3 chased the accused, but the accused ran away. It is also submitted that trial Court(s) found that the accused failed to explain the reason(s) for his presence at the place of offence and in the absence of any evidence brought on record that the accused treated complainant and her family members and also that the

amounts were due to him was only a pretext and the said defence was not proved.

7. Heard learned counsels, perused the record and considered the rival submissions.

8. PW1 is complainant-victim, the alleged incident occurred on 31.10.2004 at around 03.00 p.m., when complainant was sitting in front of her house preparing notes for her intermediate course. The accused/revision petitioner abused the complainant as she was not obliging the request of the accused for marriage and dragged her. At the time of occurrence of the incident, the complainant's mother and maternal grandmother went for agricultural work in the fields. The fact that PW3 (an independent witness) came to the rescue of the complainant and the accused ran away from the place of offence is established. The ingredients for an offence under Section 354 of the IPC are proved. Evidence of PW1 to PW3 is corroborating

and PW3 has supported the version of PW1. The plea of delay in lodging the complaint cannot be sustained as the complaint is made within 24 hours of the occurrence. The trial Court(s), on the evidence and the material available on record, rightly concluded that accused is guilty of offence and awarded the sentence to undergo imprisonment for a period of five (05) years and to pay fine of Rs.1,000/-.

9. Section 354 of IPC (at the time of offence) is as follows:

“354. Assault or criminal force to woman with intent to outrage her modesty.—

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

In its application to the State of Andhra Pradesh, for Section 354 of the Indian Penal Code, 1860, the following section shall be substituted, namely –

“354. Assault or criminal force to woman with intent to outrage her modesty.—

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and shall also be liable to fine.

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, may impose a sentence of imprisonment of either description for a term which may be less than five years, but which shall not be less than two years – Vide A.P. Act 6 of 1991, Sec.2 (w.e.f. 1.4.1991).”

10. It is pertinent to note that in the affidavit filed for condonation of delay of 92 days in preferring the criminal revision, the revision petitioner’s wife stated that her husband was taken into custody and lodged in jail immediately after conviction. She further stated that she is poor and illiterate and did not know the legal procedure to be followed for preferring the revision. On a perusal of the affidavit, it is observed that revision petitioner’s wife has put her thumb impression coupled with the fact that Legal Aid Counsel has represented the revision petitioner

indicates that his family did not have the means to engage a counsel to defend the case.

11. The Hon'ble Apex Court, while dealing with the measure of punishment, quantum of sentence, the manner of its commission and the proportionality to the gravity of offence, in various decisions, held as below.

12. In ***B.G. Goswami vs. Delhi Administration***¹, the Hon'ble Apex Court, while dealing with the quantum of sentence, held as follows:

“Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations, which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act, which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole.

¹ (1974) 3 SCC 85

Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after 7 years of the annoy and harassment of these proceedings when he is also going to lose his job and to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs- 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same.”

13. The Apex Court, while explaining reformatory and rehabilitary aspects in sentencing, in ***Mohd. Giasuddin vs. State of A.P.***², held as follows:

“...Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to ante-social behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology is in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern

² (1977) 3 SCC 287

community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an ‘in terrorem’ outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries.”

14. The Hon’ble Apex Court, while dealing with the principle of “proper sentence”, in ***Deo Narain Mandal vs. State of UP***³, held as follows:

“...Sentence should not be either excessively harsh or ridiculously low. While determining the quantum of sentence, the court should bear in mind the principle of proportionately. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of accused should be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically.”

15. In ***Shyam Narain vs. State (NCT of Delhi)***⁴, the Apex Court emphasizing on proportional sentencing by affirming the doctrine of proportionality, held as follows:

³ (2004) 7 SCC 257

⁴ (2013) 7 SCC 77

“...Sentencing for any offence has a social goal. Sentence is to be imposed with regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realize that the crime committed by him has not only created a dent in the life of the victim but also a concavity in the social fabric. The purpose of just punishment is that the society may not suffer again by such crime. The principle of proportionality between the crime committed and the penalty imposed are to be kept in mind. The impact on the society as a whole has to be seen. Similar view has been expressed in *Sumer Singh v. Surajbhan Singh*, (2014) 7 SCC 323, *State of Punjab v. Bawa Singh*, (2015) 3 SCC 441, and *Raj Bala v. State of Haryana*, (2016) 1 SCC 463.”

16. In ***Kokaiyabai Yadav vs. State of Chhattisgarh***⁵, the Apex Court held as follows:

“...Reforming criminals who understand their wrongdoing, are able to comprehend their acts, have grown and nurtured into citizens with a desire to live a fruitful life in the outside world, have the capacity of humanising the world.”

17. In ***Ravada Sasikala vs. State of A.P.***⁶, the Hon’ble Apex Court referring to its earlier judgments in ***Jammel vs. State of UP***⁷, ***Guru Basavraj vs. State of***

⁵ (2017) 13 SCC 449

⁶ (2017) 4 SCC 546

⁷ (2010) 12 SCC 532

***Karnataka⁸, Sumer Singh vs. Surajbhan Singh⁹,
State of Punjab vs. Bawa Singh¹⁰ and Raja Bala vs.
State of Haryana¹¹***, held as follows:

“...has reiterated that, in operating the sentencing system, law should adopt corrective machinery or deterrence based on factual matrix. Facts and given circumstances in each case, nature of crime, manner in which it was planned and committed, motive for commission of crime, conduct of accused, nature of weapons used and all other attending circumstances are relevant facts which would enter into area of consideration. Further, undue sympathy in sentencing would do more harm to justice dispensations and would undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to nature of offence and manner of its commission. The Supreme Court further said that courts must not only keep in view the right of victim of crime but also society at large. While considering imposition of appropriate punishment, the impact of crime on the society as a whole and rule of law needs to be balanced.”

18. Revision petitioner has undergone a part of the sentence of imprisonment imposed, he is married and has a family and his wife is an illiterate. Revision petitioner is aged 48 years. This Court by order, dated 02.05.2008, in CrI.R.C.M.P.No.985 of 2008 in

⁸ (2012) 8 SCC 734

⁹ (2014) 7 SCC 323

¹⁰ (2015) 3 SCC 441

¹¹ (2016) 1 SCC 463

CrI.R.C.No.714 of 2008 granted interim suspension of sentence of imprisonment alone by imposing certain conditions. To send the revision petitioner back to prison after 16 years to undergo the remaining period of sentence of imprisonment would be inappropriate as it would render the family to undue hardship and there would be no bread winner of the family.

19. Having given a thoughtful consideration and in the facts and circumstances of the present case, this Court is of the considered opinion that the accused/revision petitioner be given a chance to reform himself and be allowed to give his better contribution to the Society.

20. The criminal justice jurisprudence adopted in the country is reformatory and corrective, but not retributive. There needs to be a balance between reform and punishment, undue harshness or undue sympathy in sentencing would do more harm. Keeping

in view the decisions of the Hon'ble Apex Court (supra) and having regard to the manner of commission of offence by the revision petitioner, the nature of offence and the doctrine of proportionality of sentence to the gravity of offence committed by the revision petitioner, this Court is of the considered opinion that ends of justice would be met, if the sentence of imprisonment awarded by the trial Court(s) be modified and reduced to a period of two (02) years. Consequently, the sentence of imprisonment is modified and reduced to a period of two (02) years from that of five (05) years as imposed by the trial Court(s). The accused/revision petitioner is entitled to the benefit under Section 428 of Cr.P.C., namely the period of remand undergone by the accused during the period of investigation, enquiry and trial and so also the period of sentence of imprisonment undergone by the accused/revision petitioner in pursuance of the sentence of imprisonment imposed by the trial Court(s), the

sentence of imprisonment undergone shall be set off. This Court does not find any merit to interfere in respect of sentence of fine imposed by the trial Court(s).

21. Accordingly, the Criminal Revision Case is partly allowed.

Miscellaneous applications pending, if any, in this Criminal Revision Case, shall stand closed.

ANIL KUMAR JUKANTI, J

Date: 31.07.2024

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