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Court : Karnataka

Decided On : Jul-02-2008

Reported in : 2009CriLJ1224; ILR2008KAR5197

Judge : A.S. Pachhapure, J.

Acts : Probation of Offenders Act; [Indian Penal Code \(IPC\), 1860](#) - Sections 304, 354, 504, 506, 506B and 509; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313 and 401

Appeal No. : Criminal Revision Petition No. 133 of 2006

Appellant : Jayakanth

Respondent : State of Karnataka by J.P. Nagara Police Station, by Public Prosecutor

Advocate for Def. : Ramesh Kumar, HCGP

Advocate for Pet/Ap. : Rameshchandra and ;S.N. Basavaraju, Advs.

Judgement :

ORDER

A.S. Pachhapure, J.

1. The petitioner has challenged his conviction and sentence for the offence punishable under Section 354 IPC on a trial held by the Addl. C.M.M., Bangalore, and confirmed by the Fast Track Court, Bangalore, in CrI.A. No. 386/2005.

2. The facts relevant for the purpose of the petition are as under:

Shilpa Rani [P.W.3] is the resident of J.P. Nagar, Bangalore, and is the sister of Vinod Kumar [P.W.1]. The husband of Shilpa Rani was working in Tumkur and on 27.05.2001 at 5.30 p.m., she had gone to dental clinic along with her brother P.W. 1 and while they were returning, at J.P. Nagar turning point, it is alleged that the petitioner/accused blinked his eye and asked her to accompany him. She got angry and asked him whether he has no sense of humanity and showed her leg and chappal. The petitioner enraged, came near her suddenly, pulled her stole calling her as a beautiful lady. He also threatened her to kidnap and deface by pouring acid. He abused her in filthy language and when her brother P.W. 1 intervened, he ran away from the spot. It is thereafter, P.W.3 informed her parents and then approached the Police Station and submitted her complaint [Ex.P2], which came to be registered by P.W.4 in Crime No. 334/2001 for the offence under Sections 504, 509, 354, 506-B IPC and he sent the complaint [Ex.P2] and the F.I.R. [Ex.P3] to the Magistrate. P.W.4 visited the spot on the next day in the morning and in the presence of P.W.2 and another held the spot mahazar [Ex.P1] and recorded the statement of the witnesses. He arrested the accused and after completion of the investigation, filed the charge sheet.

3. During the trial, the prosecution led the evidence by examining P.Ws. 1 to 4 and got marked documents Exs.P1 to 3. The statement of the accused was recorded under Section 313 Cr.P.C. He has taken the defence of total denial and did not lead any evidence in his defence.

4. The Trial Court by the Judgment and Order dated 03.03.2005 convicted the petitioner for the offence punishable under Section 354 IPC and sentenced him to undergo simple imprisonment for a period of one year and to pay fine of Rs. 5,000-00, in default to pay the fine amount to undergo S.I. for 3 months. He was acquitted of the charges for the offence punishable under Sections 504, 506 and 509 IPC. Aggrieved by the conviction, he approached the Sessions Court in CrI. A.

No. 386/2005. The said appeal came to be dismissed on merits. Aggrieved by the conviction and confirmation, the petitioner has approached this Court by way of this revision petition.

5. I have heard the Learned Counsel for the petitioner and also the learned Government Pleader.

6. The point that arises for my consideration is;

Whether the Judgment and Order convicting the petitioner for the offence under Section 354 IPC and the sentence thereon is illegal and perverse

7. It is the contention of the Learned Counsel for the petitioner that he has been falsely implicated and that there is no evidence to base the conviction. He submits that there is a delay of 3 hours in lodging the complaint and the said delay has not been properly explained. It is his contention that the delay has been taken to disadvantage by the Investigating Agency to implicate the petitioner in the crime. It is his further contention that there are no independent witnesses examined by the prosecution to support the interested version of P.Ws.1 and 3. So also it is his contention that there are many discrepancies in the evidence and that the spot mahazar Ex.P1 has not been proved and in the circumstances, he submits that the conviction is illegal and perverse. Alternatively he submits that taking into consideration the age of the petitioner, the benefit of Probation of Offenders Act be extended, so that he could reform in future.

8. The learned Government Pleader submits that there are concurrent findings of fact by the courts below and that the petitioner has not made out any grounds to warrant the interference. It is also his contention that no woman goes to the Police Station with the allegation of outraging the modesty and to cause disrepute for herself and the fact that P.W.3 went to the Police Station is a strong circumstance and that there is no necessity for corroboration of such evidence.

9. As regards the first contention, it is necessary to note that the incident took place in the evening at 5.30 p.m. and the complaint came to be filed by P.W.3 on the same day at 8.45 p.m. This fact is clear from the contents of the complaint

[Ex.P2], evidence of P.Ws.3 and 4. As could be seen from the complaint, on the date of the incident P.W.3 had gone to the dental clinic and the incident occurred at the time when she was returning to her residence along with her brother P.W. 1. So, after the incident she states that she went to her home, informed her parents and thereafter went to the Police Station.

10. This fact has been spoken to by P.W.3 in her evidence as well. So, the contents of the complaint have been corroborated by the evidence of P.W.3. Though P.W. 1 does not say about this fact in his evidence, there is nothing as such to say that his evidence is inconsistent with the evidence of P.W.3. In the cross-examination he states that after the incident, he went to the Police Station and basing this version of P.W. 1 it is contended by the learned Counsel for the petitioner that there is inconsistency in the evidence of P.Ws. 1 and 3, wherein P.W.3 states that first she went to her home and then to the Police Station and P.W. 1 states that after the incident he went to the Police station. But, P.W. 1 had made it clear in the cross-examination that he first went to the house and thereafter went to the Police Station. The inconsistency raised has been answered by further question of the petitioner's counsel and therefore, whatever inconsistency pleaded has been clarified by P.W. 1 in his further cross-examination. In the circumstances, I do not find that there is any inconsistency in the evidence of P.Ws. 1 and 3 and the contents of the complaint [Ex.P2].

11. Furthermore, the fact that the complaint has to be filed immediately may not be within the knowledge of the persons who are either the victims or the persons who are filing the complaint. There will be some anxiety to the victim and therefore they never go to the Police Station immediately. P.W.3 being a lady, aged about 24 years, it is quite natural for her to inform to her parents about the incident first and then go to the Police Station along with members of her family. This would be the natural conduct on the part of the victim, wherein there are allegations as regards outraging her modesty. In the circumstances, I do not think that there is any such delay in lodging the complaint and even though there is a delay of an hour or so, it cannot be said that it is deliberate.

12. The learned Counsel for the petitioner as regards the interested version of P.Ws. 1 and 3 states that the evidence has not been corroborated by the evidence of any independent witnesses. The investigation reveals that C.W.3 was a person, who witnessed the incident and he is not a relative of either P.W. 1 or P.W.3. He was examined by the Investigating Agency and his statement was recorded. During the trial, the summons was issued to C.W.3 at the first instance and later as he could not appear, non-bailable warrant was also issued. The reports reveal that the non-bailable warrant was not executed solely because the address was not known and the witness was not available, thereby it cannot be said that there is any fault on the part of the Investigating Agency and though it has recorded the statement of an independent witness, he was not examined solely because the warrant was not executed and it was not possible for the Trial Court to secure the presence of the witnesses for recording the evidence.

13. Further more, it is not the law that every incident has to be proved by the evidence of independent witness. If the evidence of a person interested is truthful and is acceptable, there is no bar in accepting such evidence. But, herein the case, as regards outraging the modesty of a woman, it is the grievance of P.W.3 that while she was returning from dental clinic, near the cross in J.P. Nagar, the accused blinked his eyes at her and when she told him that he has no sense of humanity and showed her chappal, he dragged the stole and insulted her in the public and also threatened her stating that he will disfigure her face by throwing acid. When P.W. 1 intervened, he ran away from the spot. No woman would desire to express such incidents before anybody and that is a natural conduct of a woman. The judicial notice of the fact could be taken in case if a victim of such an offence is to approach the Police Station unless they are strong, generally they do not approach the Police. The fact that P.W.3 went to the Police Station along with her brother P.W. 1 after informing her parents itself is a sufficient circumstance to show that despite the possibility of dis-reputation and remark, she went to the Police Station and lodged the complaint. This conduct of P.W.3 cannot be considered as unfair or improper. It is an action taken by her to teach a lesson, who do such unlawful activities against woman. In the circumstances, the mere fact that there is evidence of only P.W.3 and her brother P.W. 1 is itself not a ground to say that it is an interested version and the scrutiny of the evidence

reveals no discrepancy, I do not think that the Courts below were wrong in accepting the evidence of these two witnesses.

14. As the incident took place for a few minutes and it is thereafter that P.W.3 went to the Police Station after informing her parents, the witness who were present at the time of the incident may not be available during investigation. Though the Investigation Officer examined C.W.3, he was not secured as the warrant was not executed.

15. The learned Counsel further contended that the evidence of P.Ws.1 and 3 does not prove all the ingredients of the offence under Section 354 IPC. The perusal of the provision reveal that there must be either criminal force or assault on any woman, intending to outrage the modesty and in case if this much of evidence is available, the offence under Section 354 IPC stands proved. By looking to the incident as stated by P.Ws. 1 and 3 in their evidence and also in the allegations in the complaint, she states that the petitioner/accused blinked his eyes at her and when she told him that he has no sense of humanity and showed her leg and chappal [footwear], the accused suddenly dragged her stole and abused in filthy language and threatened to kidnap her and also disfigure her face by throwing acid.

16. As regards these contents in the complaint, in the evidence, P.W.3 states substantially all these words and the fact that the stole was dragged and ultimately the accused threatened her to kidnap and to disfigure her face by throwing acid. In my considered opinion, it is the criminal force used by the accused in outraging the modesty, particularly when a woman was proceeding on the road and the accused blinked the eyes at her and dragged her stole, considering the reputation of the woman, I feel that it is an act of outraging the modesty. So, there was criminal force used to outrage the modesty of P.W.3 by blinking eyes at her and this much of the evidence has been taken into consideration by both the Courts below and ultimately conviction is awarded for the offence under Section 354 IPC.

17. Furthermore, the petitioner was unknown to the victim earlier to the incident and therefore there are no reasons for the victim to falsely implicate the petitioner. Therefore, I am of the opinion that the contention raised by the learned Counsel

for the petitioner cannot be accepted to overcome the findings of the Courts below.

18. It is well established principle of law that the powers of revision vested with this Court under Section 401 CrP.C. are limited. This Court cannot re-appreciate the evidence and unless the petitioner establishes that there is an error apparent on the face of the record or there is such illegality or perversity in the Order of the Courts below, the findings cannot be disturbed. In the circumstances, I am of the opinion that the absence of independent witness has no bearing over the evidence of P.Ws. 1 and 3 and their evidence is sufficient to prove the ingredients of the offence, so far as Ex.P1 and the evidence of P.W.2 is concerned, though the contents of Ex.P1 are not acceptable, as there is no incriminating circumstance in Ex.P1, the non-proof of Ex.P1 does not affect the case of the prosecution. So, taking into consideration all these circumstances, I am of the opinion that the Courts below were right in awarding the conviction for the offence under Section 354 IPC.

19. The learned Counsel for the petitioner further submitted to extend the benefit of the Probation of Offenders Act. On this aspect of the matter, he placed reliance on the decision of the Apex Court reported in : 2005 CriLJ3443 [Kanwar Pals. Gill v. State (Admn. U.T. Chandigarh) Thro. Secy., and Anr.]. It was a bottom slapping case by the accused and taking into consideration the appeal of the victim wherein the accused was granted probation, the Apex Court held that the appeal of the victim is for enhancement of the sentence, the incident occurred long back and the accused has completed the period of probation without violating the term of bond and therefore, instead of resorting to any other punishment at that stage, the order of probation was confirmed.

20. The facts in the said case differ from the facts on hand. This incident occurred in the open street in the presence of the public, wherein the accused blinked his eyes at the victim and dragged her stole and thereafter she was threatened of kidnap. Considering the facts and circumstances of this case, I do not think that the principles laid-down by the Apex Court would be applicable. The learned Counsel also relied upon the decision of the Apex Court reported in 1999 Supreme Court Cases (Cri) 1046 [State of Karnataka v. Muddappa], wherein for the offence

under Section 304 II IPC, the benefit of Probation of Offenders Act was extended. He also referred to the decision of the Orissa High Court, reported in 2008 Cri.L.J. 456 (Ori) [Gouranga Charan Sethy and Anr. v. State of Orissa]. The facts in the decision of the Hon'ble High Court of Orissa are not available as it is a note on cases reported and the perusal of the note reveals that due to the involvement, the service of the official who was the accused in that case were terminated and taking such fact into consideration the benefit was extended. Considering the facts in the decision referred to above, the facts are not alike. Considering the nature of the offence and the security of the woman in the street, I feel that it is not a fit case, wherein the benefit of Probation of Offenders Act can be granted.

21. Alternatively the learned Counsel submits that the accused is married and has minor children and in case if he is sent to jail, the family members will suffer. This happens in majority of the cases, but anyhow, considering the age of the petitioner, I am of the opinion that the Sentence awarded by the Tribunal is on the higher side and it is just and proper to reduce the sentence by confirming the conviction. Hence, I answer the above point in partly affirmative and partly negative and proceed to pass the following:

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