

K. Lakshmana Rao

Vs

Public Prosecutor, State of Andhra Pradesh and Another

Criminal Appeal No. 50 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

30.01.1979

JUDGMENT

FAZAL ALI, J. –

1. In this appeal by special leave the appellant has been convicted by the trial Magistrate under Section 354 IPC and sentenced to a fine of Rs. 100. On an appeal to the Sessions Judge the appellant was acquitted. The State thereafter filed an appeal before the High Court against the order of the acquittal passed by the Sessions Judge. The High Court in appeal reversed the judgment of the Sessions Judge and set aside the order of acquittal and convicted the appellant under Section 354 IPC and sentenced him to a fine of Rs. 100 and hence this appeal by special leave.

2. Mr. Kohli in support of the appeal has raised a short point before us. He has submitted that the entire prosecution case appears to be a complete afterthought and cooked up after the police came into the picture. He has drawn our attention to the first information report which was lodged by the informant which may be extracted to show the nature of allegations made by the informant against the appellant :

I, the petitioner working as Health Visitor at D.M. and H.O. office, Nalgonda, for the last 5 years. In our office there is one L.D.C. named Muralidhar Rao. Recently I got transfer order to Huzurnagar. I requested to D.M. and H.O. to stop my transfer order for some time as my younger brother's studies are not disturbed. My request was granted by the D.M. & H.O.

On the very day i.e. on December 30, 1971 at about 8.30 p.m. the said Muralidhar Rao accompanied by one L.I.C. Officer, named Lakshmana Rao came to my residence by the jeep. Muralidhar Rao entered my room and asked me to come in the jeep to the house of L.I.C. Officer Lakshmana Rao, as they want to talk for the cause of my transfer order. I said that I would come next day morning. But Muralidhar Rao asked me to follow them immediately, otherwise they will go to D.M. & H.O. and see that my transfer orders are complied with. Doing nothing I followed them with my younger brother Radhya Krishna, in their jeep. The No. of the jeep is A.D.X. 6904. They took me to the house of Lakshmana Rao. Muralidhar Rao asked me to enter in the room for discussion above cited. My brother was not allowed inside the room. When I entered in the room Lakshmana Rao kept the doors closed and not bolted. Then Muralidhar Rao grew wild and caught hold of my hand, and asked me that I am making propaganda against him, that he is the cause for my transfer, I said that his allegation is not correct. Again he said "I know you are blaming me, I shall

take the vengeance". I requested him to leave me, but he misbehaved with me and challenged that he would spoil me. He caught hold of me with his two hands and forced me. I started crying. Listening to my alarm my brother entered in the room by pushing the doors. On seeing my brother Muralidhar Rao left me. By the acts of Muralidhar Rao, I came to understand that if my brother was not present there, he would have harmed me by doing some wrongful act against my body. Lakshmana Rao is found to have supported the wrong acts of Muralidhar Rao.

Muralidhar Rao challenged me while myself and my brother were coming out of the house that he would see that who will protect me, and that he will take the vengeance against me.

3. Analysing this complaint it would appear that the main allegations made by the informant-Saraswati Devi were as follows :

4. That accused 1 and 2 came to her house on December 30, 1971 and on the pretext of getting her transfer orders cancelled accused 1 took her to the house of accused 2 in a jeep. When they reached the house of accused 2 the informant was taken into the room of the house but the brother was asked to remain outside. The room in which the informant was taken, however, was neither locked nor bolted from inside. Thereafter, accused 1 Muralidhar Rao grew wild and caught hold of the hand of the informant and said that as she had been making propaganda against him, he would wreak vengeance. She, however, requested accused 1 to spare her but he misbehaved and said that he would spoil her. She then goes on to state that while these talks were going on, her brother who had accompanied her to the house of the appellant, entered into the room and on seeing him, accused 1 Muralidhar Rao left her. No allegation at all was made so far as the appellant Lakshmana Rao was concerned excepting a bare statement that he was found to have supported the wrong acts of Muralidhar Rao. Considering the statements given by the informant at its fact value it is extremely doubtful if any offence under Section 354 was made out against accused 1 much less against the appellant. When the case came up before the trial Court, a completely new case was made out by the informant and all sorts of allegations were made in her evidence when Saraswati Devi was examined by the Court. The integral part of the complaint was given a complete go-by and certain overt acts which were neither mentioned nor indicated in the first information report were brought out for the first time in the evidence. In the evidence, the complainant for the first time mentioned the facts that the first accused kissed her and the second accused caught hold of her and both of them tried to put her on the cot, tried to undress her and also attempted to unbutton her blouse. She further stated that she kicked the first accused and gave a tooth-bite to the second accused. None of these facts had been mentioned in the first information report which was lodged at the police station which constituted her first statement. Furthermore, it appears that even though the appellant had made indecent advances towards the informant and had gone to the extent of attempting to rape her but they failed to take the precaution of bolting the doors from inside knowing full well that her brother was sitting outside the room. These allegations being an afterthought appear to us to be inherently improbable. The High Court seems to have brushed aside the conviction and sentence passed by the Sessions Judge on the ground that as the complainant was a woman, she might have felt shy to make allegation against accused involving her honour. This reason does not appeal to us. Indeed, if the complainant was so much concerned with her honour, she would have rested content by making a complaint to her superior officers instead of taking the matter to the Court. It, however, appears that the complainant was a fully mature and educated lady and had filed a written report previously prepared with due deliberation before the police. If she had decided to take the matter to the Court by moving the criminal machinery of law, she had to give the facts necessary to constitute

offences lodged against the accused, otherwise she took the risk of the case failing in the court if improvements and orientations were made after the FIR was lodged, which may throw serious doubt on the truth of the prosecution story. At any rate, having considered the judgment of the Sessions Judge and of the High Court and the evidence of the complainant we are satisfied that the view taken by the Sessions Judge was, undoubtedly, one which could be taken on the evidence and even if the High Court may not have agreed with that view and was prepared to take another view, that however was not ground to reverse the judgment of the acquittal passed by the learned Sessions Judge, as has been held by this Court in several cases. Taking an overall picture of the fundamental aspects of the prosecution case, we are unable to uphold the judgment of the High Court. The result is that the appeal is allowed. The judgment of the High Court is set aside and the appellant is acquitted of the charges framed against him.

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