

SUPREME COURT OF INDIA

Karipi Rasheed

Vs.

State of Andhra Pradesh

Crl.A.No.395 of 2009

(Lokeshwar Singh Pantia and B. Sudershan Reddy JJ.)

26.02.2009

JUDGMENT

Lokeshwar Singh Pantia, J.

1. Karipi Rasheed A-1 and Naazar Ahmed A-2 have filed this leave to appeal against the judgment and order dated 13.04.2006 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Revision Case No. 512 of 2004. By the impugned judgment, the learned Single Judge confirmed the conviction of A-1 and A-2 under Sections 384 and 506 of the *Indian Penal Code* (for short "IPC") passed by the learned IV Additional Sessions Judge, Warangal dated 22.03.2004 in Criminal Appeal No. 94 of 2002, sentencing them to suffer simple imprisonment for one year and to pay a fine of Rs. 1,000/- each under Section 384 IPC and to undergo simple imprisonment for six months and to pay a fine of Rs. 500/- each under Section 506 IPC.

2. The learned Chamber Judge vide order dated 23.11.2006 granted exemption from surrendering to Karipi Rasheed - A-1, whereas no such exemption has been granted to Nazaar Ahmed - A-2. Again, the learned Chamber Judge vide order dated 04.12.2007 granted two weeks time finally to A-2 directing him to file proof of surrender, failing which his special leave petition was ordered to stand dismissed without reference to the Court. A-2 has again failed to comply with the said order of the learned Chamber Judge, therefore, SLP in respect of A-2 shall stand dismissed in terms of the order dated 04.12.2007.

3. We grant leave to appeal to A-1 only.

“4.1 Briefly stated, the facts of the case are that Sharma Hariharan - complainant filed complaint against five accused namely, Karipi Rasheed Ahmed - A-1, Naazar Ahmed - A-2, Sukhdev Singh Sodhi - A-3, Sri Badulla - A-4 and K.H. Ahmed Khaza - A-5 under Sections 323, 342, 347, 352, 384, 390, 442, 464 and 506 of IPC. The learned Ist Additional Judicial First Class Magistrate, Warangal, has separated the trial of A-3 to A-5 as they were not found available for trial, therefore, declared absconders. Thereafter, A-1 and A-2 were charged and convicted for the above-said offences.

4.2 A-1 is the owner and proprietor of Shama Beedi Factory engaged in manufacturing Beedi and marketing the goods through A-3 - Proprietor of Sodhi Transport Company to different places. The complainant at the relevant time was Branch Manager of Warangal Branch of Sodhi Transport Company. He was in-charge of booking goods of the customers by issuing Lorry Receipts (LRs) on receipt of money towards transportation charges or asking the customers to make payment at the time of taking delivery of the goods at the respective destinations. It was the case of the complainant that in September 1992, A-1 approached and requested him to issue advance lorry transport receipts for Rs.25.00 lakhs as cost of goods for discounting the bills from the bank without presenting the goods for physical verification, but the complainant did not agree to such proposal. A-1 allegedly threatened the complainant to face dire consequences for not obliging him. A-1 approached the Central Crime Station, Warangal with a false complaint against the complainant. A-4, who was the CI of Police, Central Police Station, Warangal, in collusion with A-1 to A-3, took the complainant into custody and illegally confined him in the Police Station from 17.09.1992 to 12.10.1992. During the said period, the complainant was mentally and physically harassed for no rhyme or reason. It was alleged that A-4 at the instance of A-1 and A-2 trespassed into the house of the complainant and snatched gold rings, two bangles, gold chain costing about Rs. 25,000/- from the custody of his wife, on the pretext that the complainant has to reimburse the loss of the goods misplaced by him during transportation thereof. A-1 and A-2 at the instance of A-4 called the parents of the wife of the complainant and got forcibly, under threat and coercion one Special Power of Attorney (SPOA) and another Power of Attorney (POA) executed from the complainant in the name of his father-in-law for the purpose of executing a sale deed or mortgage deed of the property belonging to him situated at old Ooty and Palani in the State of Tamil Nadu. Thereafter, A-1 took over the possession of the property situated at Door No. 69/E1 and 69/E2 at old Ooty by means of agreement dated 09.10.1992 and house plot at Palani and then got the property transferred in his name through Shri Unni Nair, father-in-law of the complainant on the basis of the said POAs. The value of the properties was more than Rs. 25.00 Lakhs. The complainant was kept in confinement by all the accused till the completion of transactions. It was further alleged that the complainant or his wife during the period from 17.09.1992 to 12.10.1992 had never approached A-5 the Stamp Vendor for purchasing of stamps being used for executing SPOA and POA allegedly executed in favour of father-in-law of the complainant. The complainant was finally released from the police custody after the transactions were completed as per the desire of A1 and A-2. Thereafter, the complainant filed a complaint before the Superintendent of Police, Warangal and also got issued a legal notice to the accused persons. On this premise, the complaint came to be filed against all the five accused persons alleging the commission of the above-said offences.

4.3. During the trial of the case, the presence of A-3 to A-5 could not be procured by the trial Magistrate as they had absconded. The complainant has examined as many as four witnesses in support of his case. On the basis of the evidence on record, the

learned trial Magistrate found A-1 and A-2 guilty of the charges under Sections 344, 347, 384, 448 and 506 IPC and accordingly convicted them. In addition to the substantive sentences and fine imposed upon A-1 and A-2, the trial Magistrate also directed them to pay a sum of Rs. 50,000/- as compensation to the complainant.

4.4. On appeal, the learned IV Additional Sessions Judge, Warangal by judgment dated 22.03.2004 in Criminal Appeal No. 94 of 2002 modified the conviction and sentences of A-1 and A-2 as under: S.No Accused Offences Sentence imposed by Modified by under which trial court the appellate convicted court 1. A-1 & A-2 S. 344 IPC SI for three years and SI for one fine of Rs. 1000-00 year, while each ID SI for six sustaining the months. fine. 2. A-1 & A-2 S. 384 IPC SI for three years and SI for one fine of Rs. 1000-00 year, while each ID SI for six sustaining the months. fine. 3. A-1 & A-2 S. 448 IPC SI for one year and The fine of Rs. 500-00 petitioners are each ID SI for three acquitted months. under this charge.”

4. A-1 & A-2 S. 506 IPC SI for one year and SI for six fine of Rs. 500-00 months while each ID SI for three sustaining the months. fine.

“4.5. Being aggrieved thereby, A-1 and A-2 filed Criminal Revision Case No. 512 of 2004 before the High Court. The learned Single Judge of the High Court by judgment and order dated 13.04.2006 acquitted A-1 and A-2 under Section 344 IPC and confirmed their conviction and sentence under Sections 348 and 506 IPC.”

5. Now A-1 is in appeal before this Court by special leave, whereas the special leave petition of A-2 has been dismissed for non-compliance of the order of surrender passed by the learned Chamber Judge of this Court.

6. During the pendency of the appeal, the complainant entered into a compromise agreement with A-1 and A-2. The compromise agreement and affidavits in support thereof are placed on record of this appeal. In the said compromise agreement, the complainant stated he may be permitted to compound the offences with A-1 and A-2 in the interest of justice. The terms and conditions of the compromise agreement read as under:

"1. I respectfully pray this Hon'ble Court to consider this petition as a SPECIAL CASE. 2. I humbly submit that, I am having two daughters and my wife all the 3 are the dependants. Now it has been passed nearly 16 years after of the occurrence took place. Maximum period of my life was completed for attending of my case at Warangal, Ooty, Palani and Hyderabad (A.P).

3. I further respectfully submit that at the time of filing the case, my daughters were kids. Now they become major, I am in the position to look after their future like Education, Marriage etc., I had filed the criminal case as well as civil case against the Petitioners No. 1 and No. 2 to get back my properties so that it may be utilized for my daughters future life.

4. I respectfully submit that being the best enquiry and steps taken by all the Courts my properties were recovered. But only I have received the fruits but I cannot eat them because appeal is pending in both Civil as well as Criminal in Lower Court Level. If the failure party will proceed further appeal till before this Hon'ble Court it will take another 6 years to complete. Due to the appeal case pending, I could not get any remedy in time and I am not in a position to continue the studies or marriage of my daughters and their future will be in question.

5. Further I respectfully submit that, the Petitioners No. 1 and No. 2 are also suffered much by way of losing business, mental agony and the Petitioner No. 1 is also aged about 83 years and suffers with Hypertension, Sugar, B.P. Heart Attack etc., and further he will not live without taking insulin as per the advice of the doctor and that he is taking treatment for the last so many years in hospital and now also the doctor advised to take bed rest by taking continuous treatment, he got major Heart Operation at Hyderabad and Bombay.

6. Considering all these facts, both the Petitioners No. 1 and No. 2 and myself have agreed to enter compromise to compound the offences as per the terms of the affidavit filed before this Hon'ble Court.

7. I respectfully submit that, I have no grievance with Petitioners No. 1 and No. 2, since all of the disputes were amicably settled by Petitioners No. 1 and No. 2 with me."

7. We may at the outset note that the offences under Sections 384 and 506 Part-II IPC are not compoundable under Section 320 of the Code of Criminal Procedure, 1973. Therefore, the prayer of compounding the offences made by the complainant and A-1 in their joint application supported by their affidavits cannot be legally accepted by us.

8. We have heard Mr. Uday U. Lalit, Senior Advocate for A-1 and Mr. R. Sundaravardhan, Senior Advocate for respondent - State, and with their assistance we have gone through the judgment of the learned IV Additional Sessions Judge as confirmed by the High Court and also the evidence led by the prosecution. Mr. Uday U. Lalit, learned Senior Advocate contended that the courts below have recorded their findings against the appellant on conjectures and surmises, on the basis of misreading of the evidence led on record by the complainant. The complainant has failed to prove the ingredients constituting the offences under Sections 384 and 506 Part-II of IPC and, therefore, the impugned judgment of the High Court does not stand judicial scrutiny. He next contended that the complainant has not established on record that A-1 had any intention to put the complainant under any threat, fear or injury or in any manner dishonestly induced him to deliver the ownership and possession of the property or valuable security to A-1. He also contended that the trial court, appellate court and the High Court all have erred in placing reliance on the highly interested and discrepant testimony of witnesses who have given one sided version, whereas the version of A-1 has not been properly appreciated and considered. It was lastly contended that the

complainant has not explained the delay of about three years in lodging the FIR against the accused persons.

9. As against that, Mr. R. Sundaravardhan, Senior Advocate appearing on behalf of State, has canvassed for the correctness of the view taken by trial judge, as also by the appellate court which was confirmed by the High Court.

10. In order to appreciate the aforesaid rival contentions of the learned counsel for the parties, on our examination of the judgment given by the trial court, as also by the appellate court and confirmed by the High Court, we find that all the courts have properly and rightly appreciated the entire evidence on record and there is no infirmity or perversity in the findings recorded by the courts below to interfere with the well-thought and well-reasoned judgments. The evidence led by the complainant has satisfactorily and convincingly proved the charges levelled against A-1 and A-2 beyond reasonable doubt. The three courts have concurrently held both the accused guilty of the crime and we do not find any good reason to differ with the view taken by the courts below. Thus, the conviction of A-1 under Sections 384 and 506 Part- II IPC cannot be found faulty on any ground. Now, the only question that survives for our consideration is in regard to the quantum of sentence.

11. A-1 is now about 83 years old. He is suffering from hypertension, sugar, high blood pressure, heart attack etc. He is said to be regularly taking insulin and the doctor has advised him to take complete bed rest and continue to take proper medical treatment without fail. The compromise agreement reveals that A-1 has undergone heart operations at Hyderabad and Bombay. A-1 has returned the property, the subject-matter of the dispute to the complainant and has also paid the amount of compensation of Rs. 50,000/- in terms of the order of the High Court. On consideration of the contents of the above-said compromise agreement and in the peculiar facts and circumstances of the case, we are of the opinion that instead of sentencing A-1 to undergo the substantive sentence of imprisonment as imposed upon him by the High Court, the interest of justice would be sub-served if the amount of fine of Rs. 1,000/- imposed upon A-1 under Section 384 IPC is enhanced to Rs. 3,000/- and the amount of fine of Rs. 500/- is enhanced to Rs. 2,000/- for offence under Section 506 IPC. Thus, the judgment and order of the High Court would stand modified to that extent.

12. For the aforesaid reasons, the appeal of A-1 is partly allowed and he is directed to deposit the enhanced amount of fine of Rs. 3,500/- (Rupees three thousand and five hundred only) before the trial court within four weeks from today. In default of payment of fine amount within the stipulated period, A-1 shall suffer the substantive sentences of imprisonment imposed upon him by the High Court for committing offences under Sections 384 and 506 IPC