

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.478 OF 2008

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the calendar and judgment dated 07.12.2007, passed by the Judicial Magistrate of First Class, Palamaner, in C.C.No.213 of 2006.

2. The revision petitioner herein is the *de facto* complainant, whereas respondent Nos.1 to 4 are A.1 to A.4 and respondent No.5 is the complainant/State in C.C.No.213 of 2006 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The brief facts of the case are that on 07.05.2006 at about 07:30 p.m one Chinnappaiah-son of A.2, was linking the electrical wire to the electrical pole. Then, the complainant objected the linking and advised not to link the wire to electric pole, as it is dangerous to his family members and to take permanent connection through the electricity authorities, for which A.4 abused the *de facto* complainant in filthy language and continued the illegal connection from the electrical pole. Later, on 07.05.2006 at about 09:30 p.m, after returning from Dasarlapalli fair, the accused picked up a quarrel with the complainant, who was sleeping along with his family in front of his house and abused him in filthy language. Meanwhile, A.2 to A.4 caught hold the *de facto* complainant. A.1 beat the

de facto complainant with billhook on his head and caused bleeding injury. A.3 beat the *de facto* complainant with stick on his leg. The remaining accused kicked the *de facto* complainant with legs and bet him with hands. Therefore, the *de facto* complainant lodged a complaint before the police and the same was registered as a case in Cr.No.28 of 2006 for the offences punishable under Sections 326 & 324 read with 34 I.P.C. During the course of investigation, the Investigating Officer examined the witnesses and seized the material objects under the cover of mahazar in the presence of mediators. The Medical Officer, Government Hospital, Palamaner, treated the injured and issued wound certificate opining that the injuries are grievous and simple in nature.

Thereafter, on 29.05.2006 A.1 to A.4 surrendered before the Court and enlarged on bail.

4. The learned Judicial First Class Magistrate, Palamaner, took cognizance of the case for the offences punishable under Sections 326 & 324 read with 34 I.P.C and thereafter, on appearance of the accused, framed charges against them for the said offences. During trial, on behalf of the *de facto* complainant, PWs.1 to 9 were examined and Exs.P1 to P10 & MOs.1 to 4 were got marked.

5. After closure of the prosecution evidence, accused were examined under Section 313 Cr.P.C putting the incriminatory material deposed against them. The Accused denied the incriminatory material and reported no oral or documentary evidence on their behalf.

6. After hearing arguments and after perusing the record, the learned Judicial Magistrate of First Class, Palamaner, held that the evidence of PWs.1 to 8 is interested evidence, which is not supported by any independent evidence; that the evidence of the witnesses is not believable; and that the prosecution failed to prove the guilt of the accused beyond reasonable doubt and thereby, acquitted the accused from the charges.

7. Aggrieved by the judgment passed by the trial Court, the *de facto* complainant preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/*de facto* complainant argued that the trial Court failed to appreciate the evidence on record and held that the testimony of the injured is not sufficient to convict the accused against the settled judgment of the Hon'ble Supreme Court of India in ***State of Punjab v. Karnail Singh***; that the trial Court failed to scrutinize the evidence of PWs.1 to 3 properly and acquitted the accused merely on the ground that PWs.2 to 4 are related to PW.1; that the trial Court failed to consider the injuries received by PW.1 in the hands of A.1 to A.4 and also not considered the wound certificate issued by the doctor; that the finding of the trial Court that the evidence of PWs.2 & 3 not supported the evidence of PW.1 regarding the overt acts attributed by PW.1 is not believable and relied upon the case laws reported in ***State of Madhya Pradesh v. Mansingh and others***, wherein it is held at para 9 as follows:

“9. The evidence of injured witnesses have greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report. That does not wash away the effect of evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode credibility of otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to evidence of the injured witnesses are clearly inconsequential. Though, it is fairly conceded by learned counsel for the accused that though mere non-mention of the assailants' names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him it is a doubtful circumstance and forms a vital link to determine whether prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render prosecution version brittle.”

and **Chittar Lal v. State of Rajasthan**, wherein it is held at para 7 as follows:

“.....The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section [134](#) of the Indian Evidence Act, 1872 (in short 'Evidence Act'). Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent cases where the testimony of a single witness only could be available, in number of crimes offender would have gone unpunishable. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable. There is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact.....”

The learned counsel also argued that the evidence of PWs.1 to 3 is consistent regarding the manner of attack; that PW.1 is an injured witness, who received bleeding injuries and in view of his evidence, the trial Court ought to have convicted the accused for the offences charged and finally prayed the Court to allow the revision and remand the matter to the trial Court

9. On the other hand, the learned counsel appearing for respondent Nos.1 to 4/A.1 to A.4 argued that the revision is not maintainable; that the State has not filed the revision against the judgment of the trial Court; that the trial Court after considering the evidence on record rightly acquitted the accused from the charges; and that the finding of the trial Court needs no interference and prayed the Court to dismiss the revision case.

10. Now, the point for determination is:

Whether the revision petitioner herein is entitled to set aside the judgment dated 07.12.2007 passed by the trial Court in C.C.No.213 of 2006, as prayed for or not?

11. **P O I N T:** Before going into the merits of the case it is to be noted that the revisional jurisdiction of the High Court, while examining an order of acquittal is extremely narrow. It ought to be exercised only in cases where the trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Further, the interference with the order of acquittal passed by the trial Court is limited only to exceptional cases, when it is found that the order under revision suffers from glaring irregularity or has caused miscarriage of justice or when it is found that the trial Court has no jurisdiction to try the case or where the trial Court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked.

Further, Section 401 (3) Cr.P.C reads thus:

401. High Court's powers of revision.-

.....

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

12. A perusal of the evidence produced by the prosecution shows that PW.1 is the complainant, who gave a complaint to the police under Ex.P1 stating that two days prior to 07.05.2006, accused were hanging a hook with aluminium wire to the electric pole situated outside his house, and thereby pilfering the electricity to their house; that PW.1 objected for the said act, for which A.4 abused him; that on 07.05.2006 in between 6:30 and 7:30 p.m, son of A.2 again tried to hook the aluminium wire to the electricity pole, to which PW.1 objected; that when PW.1 along with his family were sleeping in front of the house, at about 9:00 or 9:30 p.m A.1 to A.4 came to their house and started abusing them; that on hearing the words, PW.1 stood up and at that time, A.2 to A.4 caught hold of PW.1 and A1 attacked PW.1 with billhook on the head resulting bleeding injury; that the accused also hacked PW.1 on the left side of the forehead and also on the right hand; that A.3 beat PW.1 on his both legs; that A.2 and A.4 also beat PW.1 with their legs all over the body; that when PW.1 raised hue and cry, PWs.5 & 6 reached the scene of offence and rescued PW.1 from the accused; and that thereafter, PW.1 along with his family members went to police station and lodged the complaint. In the cross-examination, PW.1

admitted that there is no electricity connection to the house of the accused; and that he does not know whether the Electricity Department has filed any case against the accused for pilfering of electricity or not. PWs.2 & 3 are the wife and mother of PW.1. They stated in their evidence about the alleged attack by A.1 to A.4 on PW.1. PW.2 in the cross-examination admitted that she has no knowledge about the seizure of MOs.3 & 4 and she did not handedover the same to the police. PW.3 also in the cross-examination stated that she has no knowledge whether the accused also went to the police station and gave complaint or not. The evidence of PW.4 is hearsay evidence. He was not present when the incident took place. PW.1 informed him about the attack made by A.1 to A.4 on him. PWs.5 to 7 are the eye witnesses to the incident. They had not supported the case of prosecution. The evidence of PW.8 shows that he signed Ex.P5 Mahazarnama dated 08.05.2006. In the cross-examination, he admitted that accused were not present at the time of seizure of MOs.3 & 4 by the police and that he had not observed whether police signed on the mahazar or not. PW.9 is the Investigating Officer, who received Ex.P1 complaint, examined the witnesses and after receiving the wound certificate, filed the charge sheet into the Court. It is the well settled principle of law that the evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

13. The learned counsel appearing for the revision petitioner argued that the trial Court has not considered the evidence of PWs.1 to 3 on the ground that their evidence appear to be interested one and not supported by the independent witnesses. There is no dispute that if the testimony of PWs.1 to 3 is found to be reliable, there is no legal impediment to convict the accused on such proving. It is also a settled principle of law that it is the quality but not the quantity of evidence, which is necessary for proving or disproving the fact. In the present case, PWs.1 to 3 are closely related with each other. At the time of incident, PWs.5 to 7 were present. They did not support the case of prosecution. None of the witnesses had given evidence in favour of the prosecution. It is the case of prosecution that on 07.05.2006 at about 9:00 or 9:30 p.m, accused tried to pilfer the current from the electricity pole situated near the house of PW.1. As per the evidence of PW.1, there is no electricity

service connection to the house of the respondents/accused. Therefore, it cannot be believed that accused tried to pilfer the electricity from the pole situated near the house of PW.1. MO.4 is the Bamboo stick and MO.3 is the billhook. PW.2 stated that she does not know when police seized MOs.3 & 4 and she did not handed over the same to the police. A perusal of the evidence shows that the Investigating Officer has not taken steps to seize the electricity wire from the possession of the accused to show that on 07.05.2006, the accused tried to pilfer the electricity. It is also an admitted fact that no criminal case was filed by the Electricity Department against the accused for pilfering the electricity from the electric pole.

14. The learned counsel for the respondent Nos.1 to 4/A.1 to A.4 argued that they filed a complaint against PW.1 and police without investigating the said complaint took cognizance of the complaint filed by PW.1. In this regard, PW.9 Investigating Officer admitted that though he prepared a substantial report, he did not serve the copy to the accused. Further, in this case though prosecution filed Ex.P9 wound certificate. The doctor, who treated PW.1 and issued wound certificate, was not examined by the prosecution to prove the injuries.

15. Further, PW.8 in his evidence, categorically admitted in the cross-examination that MOs.3 & 4 are lying near the electric pole, nobody brought them there and accused were not present when police seized MOs.3 & 4 in his presence and he does not know who is the real owner of MOs.3 & 4. Therefore, basing on the evidence produced by the prosecution, the trial Court rightly acquitted the accused by holding that PWs.1 to 3 out of their evidence deposed interestingly and their evidence is not supported by any other independent evidence. Therefore, the revision petitioner has not made out any grounds to interfere with the finding of the trial Court and hence the criminal revision is liable to be dismissed.

16. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 07.12.2007, passed by the Judicial Magistrate of First Class, Palamaner, in C.C.No.213 of 2006.

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

ANIS, J

Date: 15.04.2015

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