

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.1413 of 2007

Between:

Avula Rajaiah and 4 others

..... PETITIONERS

AND

The State of A.P.rep.by its

Public Prosecutor

.....RESPONDENT

The Court made the following:

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.1413 of 2007

ORDER:

This Criminal Revision Case is directed against the judgment dated 15.10.2007 in

Crl.A.No.145/2006 on the file of the I Additional Sessions Judge, Karimnagar.

2. Heard the learned counsel appearing for the revision petitioners/A1 to A5 and the learned Additional Public Prosecutor, representing the State.

3. The facts in brief are that the prosecution witnesses, viz., PWs 1 to 4 are the members of one family. They are also related to the accused. In between them, there is enmity due to local village politics. It is alleged that on 23.12.2003 at about 11 p.m. when PW 2 and one Motham Chinnamallu were standing nearby village chowrastha, the accused abused them in filthy language and subsequently when PWs 1, 2 and 4 were in the house, A1 to A5 formed into unlawful assembly, criminally trespassed into the house of PW 1, armed with sticks and beat PW 1 and PW 4 with sticks and caused simple injuries, and when PW 2 intervened, the accused also beat her with hands and hence the accused were charged for the offence punishable under Sections 148, 452, 324 and 326 r/w. Sec.149 IPC.

4. The accused denied the accusations. During course of trial, PWs 1 to 7 were examined and Exs.P1 to P4 were marked on behalf of the prosecution. The accused denied the evidence on record. No defence was produced on behalf of accused.

5. After considering the oral and documentary evidence on record, by judgment dated 13.10.2006, the trial Court found the petitioners/A1 to A5 guilty of the offence punishable under Sections 147, 452, 323 r/w.Sec.149 IPC and accordingly convicted and sentenced each one of them for each count to undergo rigorous imprisonment for 6 (six) months and to pay a fine of Rs.1,000/- each for the offence punishable under Section 323 IPC, in default, to suffer rigorous imprisonment for 1 (one) month each.

6 .Aggrieved by the conviction and sentence recorded by the trial Court, the petitioners/A1 to A5 preferred appeal in Crl.A.145/2006. By judgment dated 15.10.2007, the appellate Court dismissed the appeal while confirming the conviction and sentence passed by the trial court against the accused. Aggrieved by the same, the present revision is filed by the petitioners/A1 to A5.

7 .The learned counsel appearing for the petitioners/accused submits that the evidence of the prosecution witnesses has been consistently inconsistent and the fact of prosecution evidence being inconsistent has been made note of by the learned trial Court in its judgment, and however, since the injuries were found on the

person and since it was not established by the medical evidence about nature of the injuries, the learned trial Court has convicted the petitioners/accused for the offences alleged. The learned counsel further submits that even though there are several houses surrounding the house where the incident took place, the prosecution has neither chosen to list any of the independent witnesses nor examined any independent witness except the discrepant and interested prosecution witnesses PWs 1 to 4. The learned counsel further submits that absolutely there is no evidence on record to hold that the petitioners/accused are guilty of the offence alleged. The learned counsel further submits that the present case is nothing but a counterblast to the incident which took place one hour prior to the present incident, wherein, PW 4 herein and Moutham Chennamallu have been charge sheeted and they were convicted by the learned trial Court, however, in appeal, they were acquitted. Therefore, the learned counsel for the petitioners/accused submits that the conviction and sentence recorded by the Courts below against the petitioners/accused cannot be sustained.

8 On the other hand, the learned Additional Public Prosecutor submits that the Courts below properly appreciated the oral and documentary evidence on record and have correctly concluded that the petitioners/accused are guilty of the offence alleged and hence their conviction cannot be questioned, and the revision is liable to be dismissed.

9 . Now the point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioners/A1 to A5 is legal and sustainable.

Point:

10. This is a simple case of assault wherein it is alleged that due to local political disputes and in view of the hostility, the petitioners/A1 to A5 trespassed into the house of PW 1 and beat PWs 1 and 4 with sticks and when PW 2 intervened, she was also assaulted. The evidence of PWs 1, 2 and 4 is corroborated with the medical evidence on record. There is no independent evidence corroborating with the evidence of PWs 1, 2 and 4. Even though the prosecution witnesses were cross examined at length, nothing was elicited contrary to disbelieve their evidence. Non-examination of independent witnesses is not a ground for disbelieving the evidence of the prosecution witnesses. Existence of hostility is double edged weapon and it

can be taken either way. When possibility of the prosecution witnesses falsely implicating the accused is there, at the same time, the fact of incident, as spoken and as taken place cannot be ruled out. Therefore, in such cases what is required is that the evidence of the injured witnesses, even though partisan or interested, needs to be corroborated at least by the medical evidence on record, and their evidence should inspire the confidence of the Court. Inconsistency and variations of trivial nature need to be ignored. The omissions/contradictions pointed out by the learned counsel for the petitioners/accused are trivial in nature, which do not go to the root of the cause. Both the Courts below have considered the case in proper perspective and found the revision petitioners/accused guilty of the offence alleged.

11. Upon perusing the oral and documentary evidence on record, I do not find any grounds to take a different view other than the view taken by both the Courts below. I find no infirmity or illegality warranting interference with the said findings.

12. With regard to quantum of sentence, the learned counsel appearing for the revision petitioners/accused submits that the incident in question was a trivial in nature, and as a matter of fact, retaliatory to the incident which took place one hour prior to the present incident. The learned counsel further submits that the petitioners/accused are all poor and illiterate villagers doing agriculture, the relationship between the petitioners/accused and the prosecution witnesses is cordial, and hence prays the court to take a lenient view.

13. Since the incident took place more than 12 years back, I feel that sustaining the sentence imposed against the petitioners/accused at this stage may further aggravate the cordial relationship, which exists as of now in the village. Considering the submissions of the learned counsel appearing for the revision petitioners/accused, and the facts and circumstances of the case, this Criminal Revision Case is dismissed, confirming the conviction recorded by both the Courts below against the revision petitioners/accused for the offence alleged, but the sentence of 6 (six) months imprisonment is modified and reduced to the period of remand already undergone by the petitioners/accused, and the fine amount of Rs.1,000/- imposed by the Courts below against each accused for the offence under section 323 IPC is enhanced to Rs.2,000/- (Rupees two thousand only) each, in default, to suffer simple imprisonment for one month each. The trial Court shall take steps, in accordance with law.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 17.06.2015

Dsr