

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.287 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 judgment dated 16-11-2006, passed by the Judicial Magistrate of First Class, Madakasira in C.C.No.33 of 2002 whereunder and whereby the accused was acquitted for the offence punishable under Sections 147, 148, 326, 324 r/w.149 of the Indian Penal Code (for short, 'I.P.C')

2. The revision petitioner herein is one of the injured persons, whereas respondent No.1 is the State and respondents 2 to 8 are the accused in C.C.No.33 of 2002 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 02-05-2002 some vadde children entered into the fields of Kuruba Narayanappa and plucked sunflowers, for which PW.4 went to the house of A-1 and warned him. On the same day at about 8.30 pm, A-1 in an intoxicated state of mind came to the house of PW.4 and abused her in filthy language and when PWs 1 to 4 intervened, all the accused formed into a group and caused injuries to them. PW.1 gave complaint to the police and the same was registered as case in Cr.No.34 of 2002 under Sections 147, 148, 326, 324 r/w 149 IPC. The injured were sent to the Doctor who treated them and issued wound certificates. PW.8 after recording the statements of the witnesses and after receiving the wound certificates filed charge sheet into the Court.

4. The learned Judicial Magistrate of First Class took cognizance

of the case and framed charges for the offence punishable under Sections 147, 148, 326, 324 r/w 149 of I.P.C against the accused. During trial, on behalf of the prosecution, PWs.1 to 8 were examined and Exs.P1to P8 were got marked.

5. After closure of the prosecution evidence, accused were examined under Section 313 Cr.P.C putting the incriminatory material deposited against them. The Accused denied the incriminatory material and reported no oral evidence. Exs.D-1 and D-2 are marked on their behalf.

6. The trial Court after considering the oral and documentary evidence, acquitted the accused as the prosecution failed to prove the case.

7. Aggrieved by the acquittal order, one of the injured/PW.3 filed the present revision.

8. The learned counsel appearing for the revision petitioner/accused argued that the trial Court erred in holding that few injuries on the witnesses were not explained and not obtained the signature of PW.1 in column No.4 of First Information Report (F.I.R) is not required and not fatal to the prosecution. It is also argued the trial Court also not considered the X-ray reports taken by the Doctor and not convicted the accused for causing simple injuries and non-seizure of material objects and non-filing of rough sketch of scene of offence is not a ground to acquit the accused. Further, the trial Court also opined that genesis of the incident was not proved is not correct, as all the injured witnesses clearly stated that the accused committed the offence and finally prayed the Court to allow the Revision petition.

9. On the other hand, learned counsel for the respondents 2 to 8 argued that the trial Court after considering the evidence on record rightly acquitted the accused from the charges on

the ground that the prosecution failed to record the statements of the independent witnesses and also argued that there were quarrels between two groups and case and counter cases were there. As such, the Investigating Officer ought to have seized the material objects and blood stained cloths to prove that

PWs 1 to 5 received injuries in the hands of the accused. It is also argued by the defence counsel that the injuries as per the wound certificates and the oral evidence of the witnesses are quite contrary to each other and when the witnesses have spoken that they received injuries on one part, whereas the wound certificate contain injuries on some other part which shows clearly that the prosecution witnesses are speaking false. Therefore, the trial Court rightly acquitted the accused as the prosecution failed to prove the case beyond reasonable doubt.

10. Now, the point for determination is --

Whether the prosecution could bring home the guilt of the accused for the charges levelled against the accused?

11. **POINT:** A perusal of the oral and documentary evidence, it is evident that PWs 1 to 5 are the injured persons stated in their evidence that when the accused were abusing PW.4 and they obstructed the accused. At that time A-2 beat PW.1 with a stick on the right side of the back, when PW.2 went to rescue PW.1 he was beaten by A-6 on his right shoulder, A-1 beat on right hand thumb finger and when he fell down on the ground, A-1, A-3 and A-7 beat PW.2 with sticks and caused injuries. PW.2 also stated that right hand of PW.4 was fractured and also stated that A-6 beat the other witnesses with the stick on their heads and all the accused obstructed them from proceeding to the police station to prefer the complaint. PW.3 and PW.4 also stated about the attack made by A-6 and A-7 on them and causing injuries. According to the prosecution, it is proved that on the date of incident, there was free fight between

two groups and at that time 20 to 30 villagers witnessed the incident. The Investigating Officer recorded the statements of PWs 1 to 6 only who are related to each other. Likewise, the ocular evidence is not corroborating with the medical evidence and the witnesses in their evidence have cited injuries on one part and whereas the wound certificate contain injuries on some other area. Further, it is an admitted fact that the witnesses have inimical to each other and the trial Court rightly observed that the Investigating Officer has not examined the independent witnesses and also not placed the real aggressors before the Court. Further, it is the case of the prosecution that there were differences between kuruba community and vadde community. In those circumstances, the Investigating Officer should have taken care to examine the independent witnesses to speak truth. The evidence of Pws 1 to 6 did not prove the ingredients of the charges levelled against the accused and as rightly stated by the trial Court, the genesis of occurrence is not proved in order to fix the criminal liability against the accused beyond reasonable doubt. In these circumstances, the findings of the trial Court needs no interference.

12. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 16-11-2006, passed by the Judicial Magistrate of First Class, Madakasira in C.C.No.33 of 2002.

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

ANIS, J

06-02-2015

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