

**HON'BLE SMT JUSTICE ANIS**

**CRIMINAL REVISION CASE No.516 OF 2008**

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**ORDER:**

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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 09.05.2007, in S.C.No.19 of 2007 passed by the Assistant Sessions Judge, Chittoor at Punganur, whereunder and whereby the accused are acquitted for the offences punishable under Sections 447, 307 and 435 IPC.

2. The revision petitioner herein is the *de facto* complainant and respondent herein is the accused in S.C.No.19 of 2007 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the S.C. before the trial Court.

3. The brief facts of the case are that on 13.02.2006 at about 10:00 P.M. PW.1 went to his fields situated on south eastern side of Chandramakulapalle for watering the fields and slept on the cot in the thatched shed. On the intervening night of 13/14.2.2006 at about 2:00 A.M. while P.W.1 was sleeping in the thatched shed, in the meantime A.1 and A.2 with a common intention to kill him, trespassed into the shed of PW.1 armed with spear. A.1 stabbed PW.1 with a spear on his stomach and A.2 stabbed on the left thigh of PW.1 with another spear and caused severe bleeding injuries to him. Then PW.1 woke up from sleep and found A.1 and A.2 running towards the house of PWs 6, 3 and PW.4 then he made huge cry. Thereafter PWs 3, 4 and 6 rushed to the house of PW.1 and informed PW.2 father of PW.1 about the incident. According to the prosecution, as the accused set fire to the thatched hut and grass pendal, due to which double bullock cart and hut were burnt and PW.1 sustained damage to a tune of Rs.15,000/-. PW.2 came and shifted PW.1 to the Government hospital, Punganur for treatment. Thereafter, PW.1 was referred to SVRR hospital, Tirupati for better treatment. On the statement of PW.1, a case in Cr.No.21 of 2006 was registered on 14.2.2006 at 9:30 A.M. and investigated into. During the course of investigation, the Investigating Officer seized the

blood stained clothes under the cover of mahazar and also conducted the punchnama in the presence of mediators. On 08.03.2006 at about 9:30 A.M. the accused Nos. 1 and 2 were arrested and send them to Court for judicial remand. The Investigating Officer recorded the statements of witnesses and after receiving the wound certificate he filed the charge sheet into the Court against A.1 and A.2 for the offence under Sections 447, 307, 435 r/w 34 IPC.

4. The learned Assistant Sessions Judge, Punganur, Chittoor District, took cognizance of the case and framed a charge for the offence punishable under Sections 447, 307 and 435 IPC against the accused. During trial, to prove the case of prosecution, PWs.1 to 11 were examined and Exs.P1 to P17 and MOs 1 to 5 were got marked.

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

6. The trial Court, after considering the evidence of PWs 1 to 11 and the documentary evidence Exs.P.1 to P.17, held that the prosecution failed to prove that on the intervening night of 13/14.2.2006 at about 2:00 A.M. A.1 and A.2 with a common intention to kill PW.1 trespassed into the lands armed with spear and A.1 stabbed with spear on the stomach and A.2 stabbed on the left thigh and caused severe bleeding injuries to PW.1 and set fire to the thatched hut and grass pendal, due to which, PW.1 sustained loss to the double bullock cart worth Rs.15,000/- beyond all reasonable doubt and found that the accused Nos 1 and 2 are not guilty for the offence charged by the prosecution and acquitted the accused Nos.1 and 2 for the offence.

7. Aggrieved by the judgment of the Assistant Sessions Judge, Punganur, Chittoor District, the *de facto* complainant filed the present revision.

8. Learned counsel appearing for the revision petitioner/ *de facto* complainant argued that the Assistant Sessions Judge, Punganuru has not considered the relevant evidence in right perspective and failed to see the evidence of the injured witness and further the evidence of PW.1 is corroborated with the medical evidence in all material particulars and the prosecution, with the

evidence of PW.1 and the doctors PWs 5 and 11, proved the injuries. Thus, the prosecution proved that A.1 and A.2 are responsible for causing all injuries to PW.1 and the Assistant Sessions Court erred in acquitting the accused in a casual manner. Therefore, prayed the Court to convict the accused for the offences charged.

9. On the other hand, the learned counsel appearing for the accused/respondent argued that except the evidence of PWs 1 and 2 the other independent witnesses PWs 3, 4 and 6 turned hostile and did not support the prosecution case and also argued that even assuming without admitting that PW.1 received the grievous injuries, it is highly impossible for him to inform PWs 1 to 4 and 6 about the incident. It is also argued that the alleged offence has taken place during night time and the prosecution has not established that there was a light for PW.1 to see accused Nos.1 and 2. As such, the prosecution failed to prove that the accused are the persons who attacked PW.1 on that night. It is also argued that the prosecution has not proved about the previous enmity between the family of PW.1 and A.1 and A.2. There are discrepancies in the evidence of PWs 1 and 2. According to PW.1, PWs 3, 4 and 6 informed the incident to PW.2. PW.2 stated that somebody informed him through phone and that person was also not examined. It is also to be seen that the auto driver who informed about the incident is not examined. Further the prosecution failed to prove that PWs 1 and 2 were having lands as alleged by the prosecution and the Investigating Officer has not collected any evidence to that effect and family members of PW.1 were not examined to prove that PW.1 received injuries on that day. The evidence of PWs 1 and 2 is contradictory to the evidence of other witnesses regarding the manner of the incident and prosecution failed to prove the guilt of the accused beyond all reasonable doubt. Therefore the learned Assistant Sessions Judge rightly appreciated the evidence on record and acquitted the accused from the charges and the same needs no interference.

10. It is also argued that nothing in Section 401 Cr.P.C. provides for conversion of finding of acquittal into one of conviction. Therefore, the plea of the petitioner that the accused are entitled for conviction cannot be sustained. The learned counsel finally prayed the Court to dismiss the revision.

11. Now, the point for determination is --

Whether the judgment passed by the Court below in S.C.No.19 of 2007 dated 9.05.2007 is liable to be set aside?

**12. POINT:**

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.

13. A perusal of the evidence produced by the prosecution shows that PW.1 is the injured and PW.2 is his father. PW.1 in his evidence stated that on the date of incident ie., on the intervening night of 13/14.2.2006 at about 2:00 A.M. while he was sleeping in a thatched shed situated in the fields, A.1 and A.2 trespassed into the shed and attacked him with spears and caused simple and grievous injuries to PW.1 and both the accused ran away from the house and set fire to the thatched hut and grass pendal and double bullock cart causing damage to the value of Rs.15,000/-. PWs 3, 4 and 6 are the eye-witnesses to the incident who have seen the accused while running from the scene of offence but these witnesses have not supported the prosecution case and they turned hostile.

14. Coming to the evidence of PW.3 he stated that on coming to know about the attack he immediately rushed to the place and took PW.1 to Government hospital, Punganur for treatment. Thereafter PW.1 was referred to SVRR hospital, Tirupati for better treatment. There is no evidence produced by the prosecution to show that in the thatched shed there was a light and PW.1 has

seen the accused attacking him. This aspect is not proved by the prosecution. Therefore, the alleged attack was held at about 2:00 A.M. Therefore, a person cannot see who attacked PW.1 on that day. PW.1 cannot see the person in the mid night. PWs 3, 4 and 6 not supported the prosecution case to prove that they have seen the accused running from scene of offence, therefore prosecution miserably failed to prove that A.1 and A.2 attacked PW.1 on the intervening night of 13/14.2.2002. The evidence of remaining witnesses produced by the prosecution is of no use and their evidence is to show that they were present at the time of conducting the scene of offence by the Investigating Officer and seized of the material objects MOs 1 to 5. PWs.7 and 8 are mediators who were present when panchnama conducted also not supported the prosecution case. Therefore seizure of MOs 4 and 5 by the police also not proved. The doctor evidence shows that PW.1 received grievous injuries on the date of alleged incident. The evidence of Investigating Officer shows that he has not collected any evidence to show that there is a previous enmity between the family of the accused and PW.1. Further, there is no evidence to show that PWs 1 and 2 were owning the land at the scene of offence. Under these circumstances, the trial Court rightly apprehended the evidence and found that the prosecution was not able to prove the guilt of the accused beyond all reasonable doubt. Section 401 Cr.P.C. says that the order of the acquittal cannot be converted into conviction. In these circumstances, the petitioner has not made out any case to allow the revision and the judgment of the Assistant Sessions Judge needs no interference and revision case is liable to be dismissed.

15. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

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**ANIS, J**

Date:26.03.2015

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