

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

CRIMINAL REVISION CASE No.851 of 2007

ORDER :

This Revision case is directed against the judgment dated 10.04.2007 in S.C.No.237 of 2005 on the file of VI Additional Sessions Judge, (FTC), East Godavari District at Rajahmundry. By and under the Judgment the learned Sessions Judge, acquitted Respondent Nos.1 to 4/Accused Nos.1 to 4 on the charges punishable under Section 302 r/w. Section 34 I.P.C. Aggrieved by the said acquittal order the defacto-complainant-P.W.1 being the mother of the deceased, preferred the present revision.

2. The contention of the revision petitioner is that in the ghastly incident that took place in the early hours of 28.10.2004 at about 2.00 a.m., her son and daughter were killed by A.1 to A.4. A3 and A.4 are the own brothers of P.W.1, whereas A.1 and A.2 are the sons of A.3. The issue in between P.W.1 and the accused is in respect of the house property which P.W.1 got from her mother. After having inherited the property from her mother, P.W.1, gifted the entire property to her three daughters and it was not to the liking of A.3 and A.4, who were demanding a share in the property of their mother. A panchayat was held in this regard, but the matter was not settled. In the mid night when P.W.1, her son and daughter (who shall hereinafter be referred as D.1 and D.2), were in the house and discussing about the property, A.1 and A.2 on being instigated by their father A.3, came there and beat both the deceased with a Mancham Patti on head and caused injuries. The injured were taken to the hospital, via, police station, Korukonda and after giving first aid at Government hospital, Rajahmundry, for better treatment they were referred to the Government hospital at Kakinada. But on the same day at about 9.30 p.m., D.1 succumbed to the injuries and on the next day D.2 succumbed to the injuries. The evidence that is relied upon by the prosecution comprises of the mother, the other sister, brother of the deceased. In order to prove its case, the prosecution examined PWs.1 to 13 and got marked Exs.P.1 to P.23 and also marked M.Os.1 to 7.

3. The accused having denied the accusations, and also the evidence on record, examined DWs.1 to 3 on their behalf and also got marked Exs.D.1 to D.7 which are the relevant portions of Section 161 Cr.P.C.,

statements of the prosecution witnesses.

4. The learned Sessions Judge, after having perused the oral and documentary evidence on record and having heard the submissions of the counsels, found that the evidence of P.W.1 is not reliable and trustworthy, and in so far as P.Ws.2 and 8 are concerned, the learned Sessions Judge, found them to be the witnesses, who could have been planted by the prosecution and by referring to the other evidence on record, since the independent witnesses who are examined as PWs.3 to 7 have turned hostile, found the respondent Nos.1 to 4/A.1 to A.4 not guilty of the charges.

5. The learned counsel for the revision petitioner has taken me to the entire judgment, followed by oral and documentary evidence on record. As already noticed, the material evidence is that of PWs.1, 2 and 8. Even though PWs.2 and 8 are not eye witnesses, but still according to the prosecution they came to the scene of occurrence and came to know about the attack on the deceased brother and sister in the hands of their uncles A.3 and A.4 and cousins A.1 and A.2.

6. When the incident is said to have taken place on 28.10.2004 at about 2.00 a.m., mid night within three hours i.e., by 5.30 a.m., a complaint in the police station was lodged by P.W.1. In the complaint Ex.P.1, it is mentioned that all the accused persons beat the deceased and caused injuries. No specific overtacts are attributed in the complaint which was lodged at the earliest point of time.

7. Coming to the evidence of P.W.1, she deposed that on the instigation of A.3, A.1 and A.2 interfered in the discussion, which was going on in the family of P.W.1 and her two deceased children and beat them. It is deposed by P.W.1 that A.1 and A.2 beat her deceased son with Mancham Patti and when her deceased daughter interfered, she was also beaten by the accused. Thereafter the accused escaped from the scene. The evidence of P.W.1 is found to be inconsistent with the complaint which was lodged at the earliest point of time and the learned Sessions Judge, has minutely considered the inconsistencies and refused to believe the evidence of P.W.1.

8. With regard to the evidence of P.W.2, he claims to have come to the scene of offence, on being informed by his deceased sister D.2. The evidence of P.W.2 is difficult to be believed for more than one reason. According to the prosecution, the accused have attacked both the deceased

simultaneously and as P.W.1 stated, the incident of assault has taken place for just two or three minutes. Contrary to that it is claimed by P.W.2 that in the midnight when he was in his house which was away from the house of P.W.1, his deceased sister Surya Kumari came to him and informed that the accused persons have beat their brother D.1 and thereafter she returned back to the house of P.W.1. Immediately P.W.2 is said to have followed his sister and by the time he reached, he found both the brother and sister i.e., D.1 and D.2 lying with injuries. If P.W.2's evidence is to be believed, the evidence of P.W.1 has to be disbelieved, when she says that the incident has lasted for just two or three minutes.

9. According to P.W.2 the incident is in two folds. Firstly the accused beat D.1 and in the meantime D.2 rushed to another brother who was residing separately and informed him, and thereafter she returned home and thereafter, she was attacked by the accused. It is for this reason which is validly stated by the learned Sessions Judge, that P.W.2 was said to be a planted witness and his evidence was not believed.

10. The other material witness is P.W.8. She is the sister of D.1 and D.2. Admittedly, she is not an eye witness. Her evidence is only to the effect that on the next morning when she went to the hospital on being informed about the attack on her brother and sister, she found her deceased brother in a semi-conscious state and when enquired, it is the D.1 who informed that it is the accused who caused the injuries. This claim of P.W.8 cannot be believed for the reason that immediately after the incident, the injured were taken to the police station and from there, they were taken to Government hospital, Rajahmundry.

11. D.W.3 the medical officer has examined the injured and rendered first aid. According to D.W.3 at the time when she has examined the injured/deceased, they were in semi-conscious state and they were not in a position to speak. When that be the case, the claim of P.W.8 that she was told by one of her deceased brother that the accused persons attacked him cannot be believed. That apart the person who immediately came in contact with the deceased was the medical officer and if the injured persons were capable of speaking anything, they would have informed the medical officer as to the source of their sustaining injuries. On the other hand, D.W.3 categorically asserts that she could not ascertain the information from the injured persons as to how they sustained the injuries.

12. With regard to the Panchayat, the Surpanch was examined as D.W.1. His evidence shows that about 10 or 15 days prior to the incident, a panchayat was convened. P.W.1 claims that it is she who approached the panchayat elders to settle the dispute between her and her brothers, but according to D.W.1 it is the A.3 and A.4 who approached them for settling the dispute, since the house which belongs to their mother was gifted by their sister P.W.1, to her three daughters only. As a matter of fact, A.3 was staying in a portion of the house which was the bone of contention in between her brothers and sisters. P.W.1 in her cross-examination admits that it was A.3 who raised the dispute before the panchayat, but not by her, which is contrary to her evidence in chief-examination. P.W.1 has also claimed that her other son Yesubabu came to her house and was enquiring about the dispute raised before the Panchayat, and when she was informing him, on hearing their conversation, A.3 came out from his house and instigated A.1 and A.2 to beat D.1. Then A.1 and A.2 beat the D.1 with Mancham Patti and when D.2 intervened she was also beaten by them.

13. The specific defence of the accused is that admittedly P.W.1 got the house from her mother. But she claims to have purchased it and thereafter executed a gift deed only in favour of three daughters, bequeathing the entire house property, even though she had five sons, which was not to the liking of other sons of P.W.1. Therefore, it is specifically suggested to P.W.1 that in between her siblings, there used to quarrels in the matter of distribution of property. The brothers were having grievance against their sisters for the reason that the entire house property was given away to them, without leaving anything for either of the five sons and therefore, it is specifically put to P.W.1 that even on the mid night of the incident, the two children namely D.1 and D.2 who were staying with P.W.1 quarrelled among themselves and beat each other and sustained injuries. Taking advantage of the injuries, it is suggested that P.W.1 has falsely implicated her brothers and their children with the sole object, that A.3 who was in occupation of the house in dispute was not vacating the house, inspite of there being repeated demands and requests and even though the matter was placed before the elders. This suggestion though denied, cannot be said to be out of context.

14. The learned Sessions Judge, has discussed the evidence of all the material witnesses minutely and for valid and cogent reasons disbelieved

them. This being a revision against the acquittal, the scope of appreciation of evidence is limited to the extent as to whether the appreciation of evidence as made by the learned Sessions Judge, is so perverse, and the view that has been taken by the learned Sessions Judge, needs interference. The Trial Judge had an added advantage of observing the demeanour of the witnesses.

15. It is also well settled that it is if two views are possible and the Sessions Judge, has taken view in favour of the accused, that cannot be interfered with unless there exists grounds for holding that the appreciation of evidence of the material witnesses, by the trial Court is so grossly improper and suffers from material irregularities, warranting interference by the Revisional Court.

16. In that view of the matter, the conclusions arrived at by the Trial Court, cannot be said to be based on improper appreciation of evidence on record and findings, warranting any interference by this Court. The learned trial Judge, has given cogent and valid reasons for disbelieving the evidence of material witnesses and accordingly acquitted the accused. Hence, I do not find any merits in this Revision and the same is liable to be dismissed.

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

M.S.K.JAISWAL,J

9th September, 2015.
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