

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

CRL.R.C.No.286 of 2008

JUDGMENT:

This Criminal Revision Case is preferred by the defacto complainant-P.W.1 against the judgment dated 17.11.2005 passed in Sessions Case No.38 of 2005 on the file of the learned Assistant Sessions Judge, Parvathipuram, acquitting respondents 1 and 2 herein of the offences under Sections 323, 326 and 307 I.P.C.

Brief facts of the case are as under:

There are civil disputes between revision petitioner-defacto complainant and respondents 1 and 2/accused. On 27.10.2004 evening when P.W.1 went to Lord Trinadha Swami Temple for performing pooja, A-1 asked her to purchase an entry ticket to have darshan and when she expressed her inability to purchase ticket, A-1 insulted her and that P.W.1 informed the same to her husband (P.W.5). On the same day at about 9.00 P.M. P.W.1 and P.W.5 noticed A-1 at the kirana shop of Raghunadha Panigrahi and that P.W.5 asked A-1 about his high handed behaviour against P.W.1 and then A-1 grew wild and stabbed him with a knife and when P.W.1 tried to rescue P.W.5, A-1 stabbed P.W.1 on her chest and on her lower left side of abdomen and thereafter A-2 came there and dragged P.W.1 by catching her tuft of hair and beat her with hands and on seeing the said incident, P.W.5 fled away from the scene of offence due to fear. Thereafter, P.W.1 went to Police Station and lodged a complaint with the police, upon which a case in Crime No.59 of 2004 was registered under Sections 307, 323 read with Section 34 I.P.C., investigated into and after completion of investigation, the Sub Inspector of Police filed charge sheet against the accused for the offences under Sections 307, 326, 323 read with Section 34 I.P.C.

The trial Court framed charges under Sections 307 and 326 I.P.C. against A-1; 323, 307 and 326 read with Section 34 I.P.C. against A-2, read over and explained to the accused in Telugu, for which they pleaded not guilty and claimed to be tried. During the course of trial, the prosecution has examined P.Ws.1 to 10 and got marked Exs.P1 to P15 and M.O.1 to prove the guilt of the accused.

After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. to explain the incriminating circumstances appearing against them in the evidence of prosecution witnesses. The accused denied the same and stated that they had no defence evidence.

On a perusal of the entire evidence, both oral and documentary, the trial Court, held that the prosecution miserably failed to prove the charges framed against the accused and accordingly acquitted them. Aggrieved by the same, the revision petitioner-P.W.1 preferred this criminal revision.

Learned Counsel for the revision petitioner-P.W.1 submitted that even though the evidence of P.Ws.1 and 5 is consistent and is corroborated by the medical evidence, the learned trial Judge has not appreciated the said evidence in proper perspective and has erroneously found respondents-accused not guilty of the charges levelled against them and, therefore, he prays to set aside the impugned judgment and convict respondents-accused.

On the other hand, the learned Counsel appearing for respondents 1 and 2/accused submitted that there is absolutely no evidence to connect the accused with the commission of the offence; that the evidence of P.Ws.1 and 5 is not corroborated by the evidence of any independent evidence; trial Court rightly found that the accused not guilty of the charges leveled against them and accordingly acquitted them and that the impugned judgment needs no interference by this Court.

Now the points for determination are whether the prosecution is able to bring home the guilt of respondents 1 and 2-accused for the charges levelled against them beyond all reasonable doubt and whether the judgment recording the acquittal of the respondents-accused passed by the trial Court needs interference or not?

From the facts it is clear that the revision petitioner-P.W.1 is the wife of P.W.5. P.W.2, who is the alleged independent witness to the incident, did not support the case of the prosecution. P.Ws.3 and 4, who are the circumstantial witnesses, also did not support the case of the prosecution and they were declared hostile. The entire case rests upon the evidence of P.W.1 and P.W.5.

According to the evidence of P.W.1, prior to the incident i.e., on the day of Gowripunnami, she along with her blind son went to Lord Trinadha Swami Temple and when A-1 asked ticket for performing pooja, she informed him

that her blind son has lost the ticket and then A-1 insisted her to produce the ticket and when P.W.1 questioned his authority, A-1 pushed her by putting his hands on her chest and also threatened her with dire consequences. However, the said facts do not find place in Ex.P11-F.I.R.

P.W.1 further stated in her evidence that she informed her husband (P.W.5) about the incident that took place at temple and thereafter six persons including A-1 and A-2 came to her house. She further stated that A-1 and A-2 beat her at the shop of Raghunadha Panigrahi; A-1 stabbed her on her left side of chest and also on her left and right side abdomen. However, the said fact was not mentioned by P.W.1 either in her report or in her Section 161 Cr.P.C. statement.

So far as the injuries received by P.W.1, it is the evidence of P.W.1. that A-1 stabbed on her left chest, and also on her left and right side abdomen. However, P.W.7-doctor, who treated P.W.1, found one stab injury and a lacerated injury over the left chest below color bone. Therefore, the evidence of P.W.1 is not corroborated by the medical evidence.

Further, the evidence of P.Ws.1 and 5, who are wife and husband, is not corroborated with each other. P.W.5 admitted in his evidence that he ran away from the scene of offence immediately after P.W.1 received injuries as the accused chased him. But, as per the admission of P.W.1, before receipt of injuries the other persons chased her husband (P.W.5). From this admission, it is clear that the presence of P.W.5 at the time of incident is also doubtful. Further, it is an admitted fact that A-1 filed a case being Sessions Case No.54 of 2005 against P.Ws.1 and 5, wherein the accused also received injuries. However, the prosecution has failed to explain the injuries on the person of A-1. There are number of material contradictions and omissions in the evidence of P.Ws.1 and 5 and, therefore, their evidence cannot be relied on.

After giving cogent and convincing reasons, the trial Court rightly held that the prosecution failed to establish that the accused is responsible for commission of offence and accordingly acquitted the accused of the charges levelled against them. Therefore, the order of acquittal needs no interference, as there are no compelling or substantial reasons to interfere with the same. The revision fails and is liable to be dismissed.

In the result, the Criminal Revision Case is dismissed confirming the judgment of the trial Court.

04-09-2015
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