

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.379 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 calendar and judgment dated 08.11.2006, passed by the Sessions Judge, Guntur, in Sessions Case No.503 of 2005.

2. The revision petitioner herein is the *de facto* complainant, whereas respondent No.1 is the complainant/State and respondent Nos.2 to 5 are A.1 to A.4 in Sessions Case No.503 of 2005 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Sessions Case before the trial Court.

3. The brief facts of the case are that A.1 is working in a chicken stall near Market Centre, Chilakaluripet. A.2 to A.4 are his associates. On 13.04.2005 at about 8:00 p.m, one Annapureddy Umamaheswararao (hereinafter referred to as 'the deceased') along with his friends PWs.4, 5 and five others went to A.1, unnecessarily picked up a quarrel with him and fisted on his mouth, for which there was small injury occurred to A.1 and blood oozed from the injury. Then, A.1 tried to run away. But, the deceased and others caught A.1 and caused bleeding injury to him by hitting with a napa stone on his head. A.1 immediately went to a private hospital, got first aid and went home. Thereafter at about 10:30 p.m, A.3 & A.4 went to the house of A.1 and inquired him about the happening. By then, A.2 was already present with A.1. Then, all the accused A.1 to A.4 decided to do away with the deceased. According to their plan, they went to the house of deceased in the early hours of 14.04.2004 at about 04:00 a.m, A.3 and A.4 remained outside the house of deceased and were guarding at that time, A.1 & A.2 entered into the house and entered the room, where the deceased was sleeping with PW.2, woke him up, sprinkled chilly powder in his eyes and stabbed him indiscriminately, due to which he died on the spot. PW.2 due to fear pushed A.1 & A.2 rushed out of the room, where A.3 & A.4 caught and bet him with hands. PW.2 escaped from the clutches of the accused and went to the house of the sister of PW.1, where PW.1 was staying on that night

to attend on her ailing sister, and informed her about the attack on the deceased. Then, PW.1 ran towards her house and in the meanwhile, she saw A.1 to A.4 fleeing away. Thereafter, PW.1 went to the police station and gave a report and the same was registered as a case in Cr.No.97 of 2005 for the offence punishable under Section 302 read with 34 I.P.C. The Investigating Officer, after registering the case, took up investigation, apprehended the accused, recovered the weapons of offence and after completing the investigation, filed charge sheet into the Court.

4. On appearance of the accused, the Judicial Magistrate of First Class, Chilakaluripet, took cognizance of the case and as the case is exclusively triable by the Court of Session, he committed the case to the Sessions Judge, Guntur.

5. On appearance of the accused, the learned Sessions Judge, Guntur, framed a charge for the offence punishable under Section 302 I.P.C against A.1 & A.2 and another charge for the offence punishable under Section 302 read with 34 I.P.C against A.3 & A.4. During trial, to prove the case of prosecution, PWs.1 to 9 were examined, Exs.P1 to P15 and MOs.1 to 4 were got marked.

6. After closure of the prosecution evidence, accused were examined under Section 313 Cr.P.C putting the incriminatory material deposed against them. The Accused denied the incriminatory material and reported no oral or documentary evidence on their behalf. After hearing arguments and after perusing the record, the learned Sessions Judge, Guntur, held that MO.3 is not the weapon used for committing the offence and the evidence of PW.1 that she saw the accused running away from the house is unnatural; that not informing about the incident to the inmates of the house, where she slept is also unnatural; that prosecution failed to prove that PW.2 was regularly sleeping in the house of PW.1; and that prosecution not proved the guilt of the accused beyond reasonable doubt and acquitted the accused from the respective charge.

7. Aggrieved by the judgment passed by the trial Court, the State has not preferred the revision, but the sister of the deceased/*de facto* complainant preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/*de facto*

complainant argued that PW.2 is the eye witness to the incident and he saw the accused stabbing the deceased with knives and he also saw that they sprinkled chilly powder in the eyes of the deceased before attack; that the defence counsel during trial before the trial Court has not given any suggestion that PW.2 was not in the house of the deceased on that day and also about not sprinkling chilly powder by the accused on the deceased; that the trial Court has not believed the evidence of PW.1, who saw the accused running away from the scene of offence after attacking the deceased and the trial Court also not believed the evidence of PW.2 as an eye witness and the trial Court has not properly appreciated the evidence, therefore prayed the Court to set aside the judgment dated 08.11.2006 passed in S.C.No.503 of 2005 and to convict respondent Nos.2 to 5/A.1 to A.4 by allowing the revision case.

9. On the other hand, the learned counsel appearing for respondent Nos.2 to 5/A.1 to A.4 argued that the prosecution failed to establish the scene of offence and the Investigating Officer has not seized the chilly powder from the scene of offence; that the doctor-PW.7, who examined the deceased, has not stated about the presence of chilly powder in the eyes of the deceased; that PW.2's presence at the scene of offence is doubtful and that he was sleeping in the house of the deceased on the date of incident is also not proved; that PW.1 was sleeping in the house of her sister cannot be believed and prosecution failed to explain the delay of twelve hours for reaching the First Information Report to the learned Magistrate; that prosecution failed to prove that at the time of incident there were lights and that the evidence of PW.2 cannot be believed that he is a close friend of the elder brother of the deceased; that PW.1 witnessing the accused when they were coming out of the house of deceased is unnatural and the doctor has stated that the injury on the deceased is not possible with MO.3, therefore MO.3 is a planted material object by the prosecution; and that after considering all these aspects, the trial Court rightly acquitted respondent Nos.2 to 5/A.1 to A.4 from the respective charge and the findings of the trial Court needs no interference and prayed the Court to dismiss the revision case.

10. **P O I N T:** 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.

11. Ordinarily, the High Court under Section 401 Cr.P.C does not interfere with the order of acquittal passed by the trial Court by exercising the revisional powers, unless there has been manifest error of law or procedure. In **Vimal Singh v. Khumam Singh and another**, it is held at para 9 as follows:

“9. Coming to the ambit of power of High Court Under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgment of acquittal passed by the trial court unless there has been manifest error of law or procedure. 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 illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case 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 have been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial. Infact, Sub-section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction. In view of the limitation on the revisional power of the High Court, the High Court in the present case committed manifest illegality in convicting the appellants Under Section 304 Part -1 and sentencing him to seven years' rigorous imprisonment after setting aside the order of acquittal.”

and in **Hydru v. State of Kerala**, it is held at para 3 as follows:

“3. From a bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from the one recorded by the appellate court. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can therefore only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate court in appeal against acquittal to interfere with the same much less in revision where

the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions Court whereby the appellant was acquitted. Therefore, we are of the view that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional powers, as such the same is liable to be interfered with by this Court.”

12. A perusal of the evidence shows that on 13.04.2005 at about 8:00 p.m, A.1 was present in the Market Centre at Chilakaluripet; that at that time, the deceased along with PWs.3, 4 and others went to A.1, picked up a quarrel, fisted at his mouth and caused bleeding injury on the lips of A.1; and that when A.1 tried to escape, the deceased and his friends chased, caught hold, hit him with a napa stone and caused bleeding injury on his head. So as per the prosecution, the motive for committing murder of A.1 was of previous dispute that occurred on 13.04.2005. On the date of incident i.e., on 14.04.2005 at about early hours, PW.2 slept in the house of deceased as per the request of PW.1 and on 4:00 a.m, A.1 & A.2 entered into the house of PW.1 and came to the place where deceased and PW.2 were sleeping. They were holding knives. A.1 woke up the deceased, sprinkled chilly powder on his face and stabbed him with a knife twice on his chest portion. Then A.2 stabbed the deceased with a knife on his stomach portion indiscriminately. Due to fear, PW.2 ran out from the room and saw A.3 & A.4 present outside the room. A.3 & A.4 caught hold PW.2 and assaulted by beating him with hands and legs. Then, PW.2 pushed them and ran to the house of the elder sister of PW.1. After going there, PW.2 informed the incident to PW.1 and immediately, PW.1 came to her house and saw the accused running from the scene of offence. Then, PW.1 entered the room and saw the dead body of the deceased and thereafter, she gave a complaint-Ex.P1 to the police. PW.9 received the complaint at about 6:00 a.m on 14.04.2005, registered it as a case in Cr.No.97 of 2005 of Chilakaluripet Police Station for the offence punishable under Section 302 read with 34 I.P.C and issued First Information Report. Ex.P15 is the original Express First Information Report. Later, the investigation was conducted by PW.8-Inspector of Police, Chilakaluripet and immediately he rushed to the scene of offence, observed the scene of offence in the presence of mediators, drafted Ex.P2-observation report, conducted inquest on the dead body of the deceased in the presence of mediators, recorded the statements of witnesses and prepared the inquest report-Ex.P4. Then, he sent the dead body of the deceased for post-mortem examination and received the post-mortem report-Ex.P8, wherein PW.7

gave opinion that the injuries would be caused by weapon like MO.4 and deceased died due to multiple bleeding injuries causing haemorrhage shock. Thereafter, PW.8 apprehended A.1 & A.2 and sent them for judicial remand. The Investigating Officer-PW.8 while arresting the accused found some injuries on A.1 & A.2 and after recording the statement of A.1, registered Cr.No.97 of 2005 and thereafter, A.1 & A.2 were sent to hospital on 17.04.2005. Ex.P9 is the copy of First Information report in Cr.No.97 of 2005. A.1 & A.2 were discharged from the hospital and basing on the confession given by A.1 & A.2 in the presence of mediators, weapons used for commission of the offence were recovered. Ex.P5 is the admissible portion of mediatorsnama and Exs.P6 & P7 are the mediatorsnamas for the recovery of MOs.3 & 4. The material objects were sent to Forensic Science Laboratory for examination. Basing on the covering letter addressed and letter of advice under Exs.P12 & P13, after examination by Forensic Science laboratory, a report was received under Ex.P14 and after completing the investigation, filed the charge sheet into the Court.

13. PW.2 is the only eye witness to the incident. According to him, at the time of incident, he was sleeping along with the deceased. He saw A.1 & A.2 sprinkling the chilly powder in the eyes of the deceased and stabbing him twice on his chest. The trial Court categorically stated that if really A.1 sprinkled the chilly powder in the eyes of the deceased, chilly powder must be lying on the bed sheet and also on the face of the deceased. Nowhere, investigation shows the presence of chilly powder on the person of deceased. PW.7-the doctor who conducted post-mortem has not stated about the presence of chilly powder on the deceased. Ex.P8 post-mortem certificate is also silent on this aspect. PW.2 is the only witness to the prosecution. He stated that he saw A.1 & A.2 committing the offence. Admittedly, the date of offence is 14.04.2005 at about 4:00 a.m. There is no evidence produced by the prosecution to show that there is light inside the room or any light was falling from any source of light and in that light PW.2 saw the incident. Prosecution has not produced any material to show that there were streetlights in the street, which were spreading light into the house of the deceased and also into the room, where the deceased was sleeping. Therefore, PW.2 seeing the deceased while accused attacking cannot be believed. In view of the previous disputes, he must have named the accused

as the persons who attacked the deceased on 14.04.2005. The other important witness is PW.1. She is the mother of the deceased. On the date of incident, she went to sleep in the house of her sister, who is not feeling well. Immediately, after knowing the incident from PW.2, she came to her house and saw the dead body of his son. PW.1 stated that while she was coming to her house, she saw A.1 to A.4 running from the scene of offence. The evidence of PW.1 with regard to this aspect cannot be believed as no person will wait so that he can be watched by the witnesses after committing the offence. Therefore, the trial Court rightly held that such circumstance appears to be unnatural.

14. As per the evidence of PW.8-Investigating Officer, MOs.3 & 4 were recovered as per the confession given by A.1 & A.2. PW.7 is the doctor, who conducted post-mortem examination on the dead body of the deceased. In her evidence, she stated that injuries on the deceased may be caused with a weapon like MO.4, but not caused with weapon like MO.3. Therefore, the trial Court rightly held that MO.3 was not one of the weapon used by the accused for committing the offence. The trial Court after considering the evidence on record rightly held that the prosecution failed to prove the charge under Section 302 against A.1 & A.2 and Section 302 read with 34 I.P.C against A.3 & A.4 and that they are entitled for benefit of doubt and thereby, acquitted them from the respective charge and therefore, the said finding needs no interference and the criminal revision is liable to be dismissed.

15. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 08.11.2006, passed by the Sessions Judge, Guntur, in Sessions Case No.503 of 2005.

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

ANIS, J

Date: 16.04.2015

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