

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1047 of 2008

ORDER:

_____ This criminal revision case is filed by the petitioners/A2 to A5 challenging the judgment dated 27.11.2007 delivered in Criminal Appeal No.107 of 2006 on the file of the court of II Additional Sessions Judge, Mahabubnagar wherein and whereby the conviction and sentence imposed against the petitioners/A2 to A5 in C.C. No.288 of 2005 on the file of the court of Judicial Magistrate of First Class (Prohibition and Excise), Mahabubnagar was confirmed.

2. To avoid confusion, the parties will hereinafter be referred as they are arrayed before the trial court.

3. The factual matrix leading to filing of the criminal revision case is as follows: On 03.4.2005 at about 1.30 PM, A1 to A8 trespassed into the lodge of the *de facto* complainant (P.W.1) and attacked him and his brother (P.W.2). The petitioners/A2 to A5 beat P.W.2 with sticks.

4. After completion of investigation, the Investigating Officer laid charge sheet against A1 to A8 for the offence under Section 324 read with 34 IPC.

5. In order to prove the guilt of the accused, the prosecution examined P.Ws.1 to 9 and marked Exs.P1 to P8 and M.Os.1 to 3. On behalf of the accused, D.W.1 was examined.

6. The trial court, after having thoughtful consideration to the oral and documentary evidence available on record, arrived at a conclusion that A2 to A5 committed the offence punishable under Section 324 read with 34 IPC, convicted and sentenced them to pay a fine of Rs.5,000/- each and in default of payment of fine, A2 to A5 shall undergo simple imprisonment for three months each. Out of the total fine amount of Rs.20,000/-, the trial court awarded Rs.5,000/- to the

injured – P.W.2 towards compensation. A1 and A6 to A8 were found not guilty of the offence under Section 324 read with 34 IPC and accordingly they were acquitted. Feeling aggrieved by the conviction and sentence, A2 to A5 preferred CrI.A.No.107 of 2006 on the file of the court of II Additional Sessions Judge, Mahabubnagar. The learned Sessions Judge, on re-appraising the oral and documentary evidence, arrived at a conclusion that the appellants/A2 to A5 are guilty of the offence under Section 324 read with 34 IPC and confirmed the conviction and sentence imposed by the trial court. Hence, A2 to A5 filed the present criminal revision case.

7. The contention of learned counsel for the petitioners/A2 to A5 is two fold:

(1) the conviction and sentence imposed against the petitioners/A2 to A5 is not legally sustainable; and

(2) the trial court committed grave error while imposing fine of Rs.5,000/- each.

Per contra, the learned Public Prosecutor submitted that the courts below appreciated the oral and documentary evidence in right perspective and imposed fine of Rs.5,000/- each against petitioners/A2 to A5 and there are no reasons to interfere with the same.

8. A perusal of the record reveals that P.W.1 is the *de facto* complainant and eye witness whereas P.W.2 is the injured witness. The testimony of P.W.1 is supported by P.W.2. For one reason or the other, P.Ws.3 to 5 did not support the case of the prosecution. The testimony of P.Ws.1 and 2 is coherent, cogent, convincing and consistent with each other. There are no omissions or contradictions in the testimony of P.Ws.1 and 2 so as to disbelieve the version put-forth by the prosecution. It is a settled principle of law that the court shall not lightly discard the oral testimony of the injured witness. As per the

testimony of P.W.6—the Medical Officer, P.W.2 sustained six injuries on various parts of the body. The oral testimony of P.W.6 coupled with Ex.P5—medical certificate, clinchingly established the nature of injuries sustained by P.W.2 in the hands of A2 to A5. The courts below considered the oral testimony of P.Ws.1, 2 and 6 and the recitals of Ex.P5—medical certificate and concurrently held that A2 to A5 are found guilty of the offence under Section 324 read with 34 IPC and accordingly sentenced them.

9. Here, it is pertinent to refer to the decision of the apex court in *State of A.P. v. Pituhuk Sreeinvanasa Rao*^[1], wherein it was held that the exercise of the revisional jurisdiction of the High Court in upsetting the concurrent finding of the facts cannot be accepted when it was without any reference to the evidence on record or to the finding entered by the trial court and the appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.

10. It has been also held by the apex Court in *Amar Chand Agarwalla v. Shanti Bose*^[2], that the revisional jurisdiction of the High Court under Section 439 CrPC, 1898, is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice.

11. As per the principle enunciated in the cases cited supra, this court, while exercising revisional jurisdiction, cannot lightly interfere with the concurrent findings of fact recorded by the courts below.

12. A perusal of the record reveals that taking into consideration the civil disputes between the parties, the trial court imposed fine only in stead of sentencing A2 to A5 to undergo imprisonment. The appellate court rightly appreciated the same. The court has to take into

consideration the nature and gravity of the offence, while imposing sentence against the accused. Both the courts have taken lenient view while sentencing A2 to A5. This court is unable to accede to the contention of learned counsel for petitioners that the sentence imposed against A2 to A5 is unreasonable or on higher side. Viewed from factual or legal aspects, there is no illegality or irregularity in the conviction and sentence passed by the courts below.

13. In the result, the criminal revision case is dismissed. Miscellaneous petitions if any pending in the criminal revision case shall stand closed.

T.SUNIL CHOWDARY, J

February 15, 2016.

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[\[1\]](#) (2000) 9 SCC 537

[\[2\]](#) (1973) 4 SCC 10