

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.918 of 2008

ORDER:

1 This Criminal Revision Case is filed under Section 397 and 401 Cr.P.C. assailing the judgment dated 19.6.2008 passed in Criminal Appeal No.82 of 2006 on the file of the Court of the V Addl. Sessions Judge, West Godavari at Eluru, wherein and whereby the conviction and sentence imposed on the petitioner by the learned Assistant Sessions Judge, Tadepalligudem in S.C.No.360 of 2005, dated 25.04.2006, was confirmed.

2 The factual matrix that led to the filing of the present Criminal Revision Case is as follows:

3 On 25.12.2004 the petitioner has taken the cycle of P.W.2 and pledged the same with P.W.7. In that connection some altercation took place between the petitioner and P.W.2. In order to pacify the matter, P.W.1 intervened. However, the petitioner grew wild and inflicted grievous injuries with a knife on the right eye, shoulder and face of P.W.1. In that process, P.W.2 also sustained injuries in the hands of the petitioner. Hence the police filed charge sheet against the petitioner for the offence punishable under section 307 of IPC.

4 The learned Judicial Magistrate of I Class, Tadepalligudem had taken the case on file under Section 307 of IPC and numbered it as P.R.C.No.31 of 2007. After supplying copies of all documents to the petitioner under section 207 Cr.P.C, the learned Magistrate committed the case to the District & Sessions Division, Eluru under Section 209 Cr.P.C. The learned District Judge has taken the case on file under Section 307 of IPC and numbered it as S.C.No.360 of 2007 and made over the same to the Assistant Sessions Judge, Tadepalligudem. The learned Assistant Sessions Judge, Tadepalligudem heard the version of the prosecution as well as the defence and framed charge under Section 307 IPC against the petitioner. The petitioner denied the charge and claimed to be tried.

5 To bring home the guilt of the petitioner for the offence punishable under section 307 IPC, on behalf of the prosecution P.Ws.1 to 13 were examined and Exs.P.1 to P.8 and M.O.1 were marked. On behalf of the defence, D.W.1 was examined.

6 After having a thoughtful consideration to the oral and documentary evidence available on record, the learned Assistant Sessions Judge, Tadepalligudem arrived at a conclusion that the petitioner was found guilty for the offence punishable under Section 326 IPC, but not under Section 307 IPC and accordingly convicted and sentenced him to suffer rigorous imprisonment for a period of three years and also to pay a fine of Rs.25,000/- in default, to suffer simple imprisonment for a period of six months. Feeling aggrieved by the said conviction and sentence imposed by the trial Court, the petitioner preferred Criminal Appeal No.82 of 2006 on the file of the Court of the V Addl. Sessions Judge, West Godavari at Eluru. The learned Additional Sessions Judge, after re-appreciating the oral and documentary evidence, came to the conclusion that the petitioner committed the offence punishable under Section 326 IPC and confirmed the conviction and sentence imposed by the trial Court. Hence the present Criminal Revision Case.

7 The contention of the learned counsel for the petitioner is three fold. 1) Had the Courts below considered the evidence of D.W.1 in right perspective, the findings recorded by them would be otherwise, 2) The petitioner is entitled to benefit of doubt since the prosecution failed to prove the exact scene of offence, and 3) Both the Courts below failed to appreciate that the right eyeball of P.W.1 was removed not because of the alleged act committed by the petitioner in inflicting knife injury on him.

8 *Per contra*, the learned Additional Public Prosecutor submitted that the testimony of the prosecution witnesses is cogent and convincing in all material aspects and the same was considered by the Courts below in right perspective while arriving at a conclusion that the guilt of the petitioner is proved for the offence punishable under Section 326 IPC but

not under Section 307 IPC. He further submitted that the prosecution established the motive for the offence by examining P.Ws.2 and 7. He further submitted that while exercising the revisional jurisdiction, High Court cannot lightly interfere with the concurrent findings recorded by the courts below.

9 Now the point for determination in the Criminal Revision Case is **“Whether the concurrent finding of fact recorded by the Courts below is perverse and not sustainable in law?”**

POINT:

10 In order to appreciate the rival contentions, I feel it apposite to refer the case law on this aspect.

K. Chinnaswamy Reddy v. State of A.P.^[1],

7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.

In **Amar Chand Agarwalla Vs. Shanti Bose and Anr., etc.** ^[2] at para No.20 the Hon'ble apex Court held as follows:

“Even assuming that the High Court was exercising jurisdiction under Section 439, in our opinion, the present was not a case for interference by the High Court. The jurisdiction of the High Court is to be exercised normally under Section 439, Criminal Procedure Code, only in exceptional cases, when there is a glaring defect in the procedure or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice. The High Court has not found any of these circumstances to exist in the case before us for quashing the charge and the further proceedings.”

The same principle was reiterated in **State of Haryana Vs. Rajmal and Another** ^[3].

11 As per the principle enunciated in the cases cited supra, it has not been open for the High Court to interfere with the concurrent findings of the courts below specially by re-appreciating the evidence in its revisional jurisdiction.

12 Let me consider whether there is any legal flaw in the findings recorded by the courts below. As put forth by the prosecution, the unfortunate incident had taken place on 25.12.2004 at Avapadu village of West Godavari District. As seen from the testimony of P.W.2, the petitioner has taken his cycle and pledged the same with P.W.7 on receiving Rs.200/-. P.W.7 in unequivocal terms stated that the petitioner has pledged the cycle of P.W.2 with him and he handed over the cycle to P.W.2 after receiving Rs.200/- from him. Pledging of cycle by the petitioner with P.W.7 is the root cause for the unfortunate incident. The defence version is that the petitioner and P.W.2 belong to two different groups, therefore, he was falsely implicated to wreck vengeance against him. The oral testimony of the prosecution witnesses clearly reveals the inter se relationship between the parties. The motive plays a vital role if the entire case is based in circumstantial evidence. The role of motive is minimal if the case is based on direct evidence. The testimony of D.W.1 is no way helpful to establish that P.W.1 foisted a false case against the petitioner.

13 As seen from the testimony of P.W.2, when he questioned the authority of the petitioner to pledge his cycle, the petitioner revolted against him. On seeing the altercation, P.W.1 interfered to pacify the matter. As per the testimony of P.W.1, the petitioner inflicted knife injuries on his right eye, shoulder and other parts of the body. As per the testimony of P.W.2, the petitioner inflicted knife injuries on the shoulder and other parts of P.W.1.

14 As seen from the testimony of P.W.10, police prepared scene of offence panchanama – Ex.P.3. His testimony further reveals that the police seized the knife – M.O.1 in pursuance of the information given by the petitioner under seizure panchanama – Ex.P.4. The testimony of P.W.5 clinchingly establishes that the knife seized from the petitioner belongs to him.

15 As seen from the testimony of P.W.11, he examined P.Ws.1 and 2 on 25.12.2004 and issued wound certificates Exs.P.6 and P.5 respectively. A perusal of Ex.P.6 clearly reveals that P.W.1 sustained as many as four injuries out of which three injuries are grievous in nature. The oral testimony of P.W.11 coupled with Ex.P.5 clearly reveals that the injury sustained by P.W.2 is simple in nature. As seen from the testimony of P.W.12 he conducted operation and removed the right eyeball of P.W.1. In the cross-examination of P.W.12, nothing is elicited to establish that removal of eyeball of P.W.1 has nothing to do with the injuries sustained by him on 25.12.2004. By examining P.Ws.11 and 12 and marking Exs.P.6 and P.5, the prosecution clinchingly established the injuries sustained by P.Ws.1 and 2 in the hands of the petitioner on 25.12.2004.

16 No doubt, P.Ws.3, 5 and 6 are not eyewitnesses to the incident. However, they supported the version of the prosecution in all material aspects. Even if the testimony of P.Ws.3, 5 and 6 is ignored, still, the prosecution could establish the guilt of the petitioner beyond all reasonable doubt. Therefore, the contention of the learned counsel for

the petitioner that the prosecution failed to prove the scene of offence is not sustainable in view of the oral testimony of P.Ws.10 and 13 coupled with Exs.P.3 and P.8.

17 It is not in dispute that the Court shall not lightly discard the testimony of injured witnesses. In the instant case, P.Ws.1 and 2 are the injured witnesses. The very purpose of cross-examination is to test the veracity of the testimony of the witnesses. In the cross examination of these two witnesses nothing is elicited to shake their testimony so far as the manner of incident and the nature of injuries sustained by them. The testimony of P.Ws.1 and 2 is coherent, cogent and convincing in all material aspects and is fully supported by the oral testimony of P.Ws.11 and 12 and Exs.P.6 and P.5. The Courts below have considered the oral and documentary evidence in touch stone with the provisions of the Indian Evidence Act. If the findings recorded by the Courts below are based on evidence which is not legally admissible or based on without any evidence, certainly, this Court can upset the said findings. In the instant case, the findings recorded by the Courts below are fully supported by oral and documentary evidence, more so, legally admissible evidence. There is no legal flaw in the findings recorded by both the Courts below necessitating interference of this Court or to upset the findings recorded by them.

18 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that this is not a fit case to interfere with the findings recorded by the Courts below.

19 The learned counsel for the petitioner submitted that the sentence imposed by the Courts below may be reduced taking into consideration the age of the petitioner and other attending circumstances of the case.

20 It is a settled principle of law that the sentence imposed shall commensurate with the gravity of the offence. In the instant case, the de-facto complainant lost his right eye. He sustained grievous injuries on his

face and shoulder. The maximum punishment prescribed for the offence punishable under Section 326 of IPC is imprisonment for life. In fact, both the Courts below, while taking lenient view, sentenced the petitioner to undergo rigorous imprisonment for three years. Viewed from any angle, it is not a fit case to show commiseration on the petitioner by reducing the sentence imposed by both the Courts below.

21 In the result, the Criminal Revision Case is dismissed. The bail granted to the petitioner by order dated 27.06.2008 of this Court shall stand cancelled and the petitioner is directed to undergo the remaining period of sentence, if any. The trial Court is directed to take steps in this regard. The remand period of the petitioner, if any, shall be given set off under section 428 of Cr.P.C. As a sequel to the dismissal of this Criminal Revision Case, miscellaneous petitions, pending in this Criminal Revision Case, if any, shall stand dismissed.

T. SUNIL CHOWDARY, J

Date: 23rd February, 2016

Kvsn

[\[1\]](#) AIR 1962 SC 1788

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

[\[3\]](#) (2011) 14 SCC 326