

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.2131 OF 2015

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. assailing the judgment dated 19-06-2015 passed in Criminal Appeal No.61 of 2014 on the file of the Court of the Principal Sessions Judge at Khammam, wherein and whereby the order of acquittal passed by the learned Assistant Sessions Judge, Khammam, in S.C.No.123 of 2013, dated 25.02.2014, was confirmed.

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

The second respondent (hereinafter referred to as 'the accused'), at the time of the alleged incident, was working under the control of the husband of the petitioner. On 16.12.2011, the petitioner accompanied the accused to Hyderabad believing his words that he will show the kept mistress of her husband. On 17.12.2011, the petitioner and the accused visited three or four streets in Hyderabad to trace out the kept mistress of the husband of the petitioner, but of no avail. On 18.12.2011, the petitioner and the accused got down the train at Khazipet. Both of them have boarded the bus at Warangal and got down at Dommalgudem cross-roads in Khammam. It is the further case of the prosecution that the accused forcibly administered pesticide poison to the petitioner. The accused also consumed the pesticide poison on the same day. The petitioner was admitted in Sri Raksha Hospital, Khammam, on 18.12.2011 at about 11.15 P.M. and discharged on 30.12.2011. On 13.01.2012, the petitioner filed a complaint before the Judicial Magistrate of First Class, Special Mobile Court, Khammam against the accused, who in turn referred the matter to police for investigation under Section 156(3) Cr.P.C. After completion of investigation,

police laid charge sheet against the accused for the offences punishable under Sections 307, 506 and 294 (b) IPC.

3. The learned Judicial Magistrate of I Class, Special Mobile Court, Khammam, had taken the case on file under Sections 307, 506 and 294 (b) IPC and numbered it as P.R.C. No.16 of 2012. After supplying copies of all documents to the accused under section 207 Cr.P.C, the learned Magistrate committed the case to the Sessions Division, Khammam, under Section 209 Cr.P.C. as the offence punishable under Section 307 IPC is exclusively triable by a Court of Session. The learned District and Sessions Judge has taken the case on file and numbered it as S.C.No.123 of 20137 and made over the same to the Assistant Sessions Judge, Khammam for disposal in accordance with law.

4. The learned Assistant Sessions Judge, Khammam, after hearing the version of the prosecution as well as the defence, framed charges under Section 307, 506 and 294 (b) IPC against the accused. When the above charges were read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

5. Before the trial court, to bring home the guilt of the accused for the above offences, on behalf of the prosecution P.Ws.1 to 8 were examined and Exs.P.1 to P.6 were marked. No oral evidence was adduced on behalf of the accused, but Exs.D1 and D2 were marked on his behalf.

6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses, which he denied.

7. After having a thoughtful consideration to the oral and documentary evidence available on record, the learned Assistant Sessions Judge, Khammam, arrived at a conclusion that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt for the offences punishable under Sections 307, 506 and 294 (b) IPC and accordingly, acquitted him.

8. Aggrieved by the said judgment, the petitioner herein, who is the de facto complainant, filed Criminal Appeal No.61 of 2014. The 1st appellate Court, after re-appraisal of both oral and documentary evidence, found the accused not guilty and accordingly, dismissed the appeal confirming the judgment of the trial Court. Hence, this Criminal Revision Case by the de facto complainant.

9. The contention of the learned counsel for the petitioner (de facto complainant) is three fold viz., (1) the Courts below discarded the testimony of P.W.1 on flimsy grounds, (2) the finding of the Courts below that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt is not sustainable either in law or on facts and (3) the findings recorded by the Courts below are perverse. Therefore, it is a fit case to allow the revision.

10. Heard the learned Additional Public Prosecutor representing the State.

11. Now the point for determination in the Criminal Revision Case is:

“Whether the concurrent findings recorded by the Courts below are perverse and not sustainable in law?”

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

In **K. Chinnaswamy Reddy v. State of A.P.**¹, the Hon'ble Apex Court held thus:

"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 thus:

"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

¹ AIR 1962 SC 1788

² (1973) 4 SCC 10

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**³.

13. 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.

14. Let me consider whether there is any legal flaw in the findings recorded by the courts below.

15. P.W.1 is the victim, P.Ws.2 to 4 are the relatives of P.W.1, P.W.5 is the doctor who treated the petitioner, P.W.7 is the husband of the petitioner and P.W.8 is the Investigating officer. Even as per the prosecution version, P.Ws.2 to 4 and 6 and 7 are not eye witnesses to the incident. P.W.1 and the accused are the competent persons to narrate the incident that occurred on 18-12-2011 at about 11.15 P.M. As per the testimony of P.W.1, the accused forcibly administered pesticide poison to her; thereafter, she became unconscious. As seen from the testimony of P.W.5, P.W.1 took treatment in their hospital from 18-12-2011 to 30-12-2011. Exs.P4 and P5 support the version of the prosecution that P.W.1 had taken treatment in Sri Raksha hospital, Khammam. In order to prove the guilt of the accused, the prosecution has to establish that the accused forcibly administered pesticide poison to the petitioner.

16. The fact remains, the petitioner and the accused moved together from 16.12.2011 to 18.12.2011. The version of the prosecution is due to fear of the husband of the petitioner, the accused forcibly administered pesticide poison to the petitioner. Thereafter, he consumed the same. As seen

³ (2011) 14 SCC 326

from the testimony of P.W.1, as police refused to register case, she filed a complaint before the Court on 13.01.2012. It is not elicited in the cross-examination of P.W.8 that the police refused to register a case basing on her complaint. When there is a delay in lodging the complaint, the possibility of taking this type of pleas cannot be ruled out completely. Till 13.01.2012, P.W.1 did not make any attempt to lodge a complaint against the accused. If really the accused administered pesticides poison to petitioner, nothing prevented her to intimate the same to the doctor at least at the time of her discharge from the hospital. Absolutely, there is no evidence on record to show that P.W.1 approached the concerned police to register the complaint. After discharge from the hospital, there is a gap of nearly 25 days in lodging the complaint. Mere delay in lodging the complaint by itself is not a valid ground to disbelieve the version of the prosecution. However, it is the duty of the prosecution to assign reasons, much less, cogent and valid reasons for delay in lodging the complaint. Absolutely, there is no material on record explaining the reasons for delay in lodging the complaint. When there is a delay in lodging the complaint, the possibility of implicating the accused after thought for the reasons best known to the family members of the petitioner, cannot be ruled out completely.

17. As seen from the testimony of prosecution witnesses, P.W.1 and the accused were shifted to the hospital in the same auto. Due to serious condition of the accused, he was shifted to Gandhi Hospital, Hyderabad, for better treatment. For one reason or the other, these material facts were not mentioned in the complaint. This aspect also creates a doubt in the mind of the Court that the prosecution has not approached the Court with clean hands. Taking into consideration the facts and circumstances of the case, the

possibility of administering pesticide poison by the accused to the petitioner is somewhat unbelievable. As rightly found by the trial Court, P.W.1 has given different version; therefore, her testimony is not trustworthy. The 1st appellate Court, after reappraising the testimony of P.W.1, without being influenced by the findings of the trial court, arrived at a conclusion that it is not safe to place reliance on the testimony of P.W.1. The Courts below have appreciated the testimony of P.W.1 in the light of the provisions of the Indian Evidence Act, 1872 and arrived at a conclusion that her testimony is no way helpful to the case of the prosecution. I am fully agreeing with the findings of the Courts below.

18. It is a settled principle of law that this Court cannot lightly interfere with the concurrent findings recorded by the Courts below unless they are perverse. The findings can be branded as perverse, if the same are based upon no material or based upon the material, which is not legally admissible. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the petitioner that the findings recorded by the Courts below are perverse.

19. 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.

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

T.SUNIL CHOWDARY, J

DATED: 22.11.2016.

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