

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.971 of 2008

ORDER:

1 This Criminal Revision Case, under Sections 397 and 401 Cr.P.C, is filed, challenging the judgment dated 01.03.2008 passed in Criminal Appeal No.63 of 2007 by the learned I Additional District and Sessions Judge, Ananthapur wherein and whereby the conviction and sentence imposed on the revision petitioners, who are accused Nos.2, 5 and 6, to pay a fine of Rs.1,000/- each for the offence punishable under Section 323 of IPC by the learned Assistant Sessions Judge, Gooty in S.C.No.329 of 2006, vide judgment dated 17.05.2007 was confirmed.

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

3 on 17.06.2004 P.Ws.1 to 3 were travelling from Hyderabad to Bangalore in II Tier A.C Coach in Bangalore Express. Accused No.1 along with his wife and child was also travelling in the same coach. When the accused No.1 was repeatedly beating his child, P.W.1 advised him not to beat the child for which A.1 grew wild. At about 4.30 AM on 18.06.2004 when the train reached Hindupur railway station, A.1 to A.6 got down the train and being armed with knives beat P.W.1 and snatched away a gold chain of P.W.1. Basing on the complaint of P.W.1, the Station House Officer, City Railway Police Station, Bangalore registered a case and forwarded the same to Hindupur Railway Police Station on the point of jurisdiction. The Station House Officer, Hindupur Railway Police Station registered a case in Cr.No.36 of 2004 under Section 394 of IPC. After completion of

investigation, the investigating officer has laid charge sheet against the accused Nos.1 to 6 for the offences punishable under Sections 147, 148, 324, 326, 506 and 394 r/w Section 149 of IPC and Section 25 (1) (b) of Arms Act and Section 145 (1) (b) of Railway Act. The learned Judicial First Class Magistrate, Gooty (FAC) Special Judicial First Class Magistrate (Railways), Guntakal has taken the case on file for the above offences and committed the same to the District and Sessions Division, Ananthapur as the offence under Section 394 of IPC is exclusively triable by the Court of Sessions. The learned Assistant Sessions Judge, Gooty, after the case being made over to him, framed charges against the accused Nos.1 to 6 under Section 326 read with Section 34 of IPC, under Section 27 (1) of Arms Act and Section 145 (1) (b) of Railways Act, read over and explained to them in vernacular language (Telugu) for which they pleaded not guilty and claimed to be tried.

4 To bring home the guilt of the accused Nos.1 to 6, on behalf of the prosecution P.Ws.1 to 10 were examined and Exs.P.1 to P.13 and M.Os.1 to 3 were marked. On behalf of the defence, no oral or documentary evidence was adduced.

5 After having a thoughtful consideration to the oral, documentary evidence and other material available on record, the learned Assistant Sessions Judge, Gooty arrived at a conclusion that the accused Nos.1 to 6 are found not guilty of the offences punishable under Sections 326 read with Section 34 of IPC, under Section 27 (1) of Arms Act and Section 145 (1) (b) of Railways Act, however, found the petitioners

herein who are Accused Nos.2, 5 and 6 guilty of the offence punishable under Section 323 of IPC convicted and sentenced them to pay a fine of Rs.1,000/- each, in default to suffer simple imprisonment for two months, by judgment dated 17.05.2007. Aggrieved by the said conviction and sentence, the petitioners preferred Criminal Appeal No.63 of 2007 on the file of the I Additional District and Sessions Judge, Anantapur, and the same was dismissed. Hence the present Criminal Revision Case.

6 The learned counsel for the petitioner submitted that the photos of the revision petitioners were shown to P.Ws.1 to 3 prior to the test identification parade. He further submitted that the Courts below failed to consider the discrepancy in the testimony of PWs.1 to 3, who are eyewitnesses to the incident. He further submitted that the Courts below convicted and sentenced the revision petitioners on surmises and conjectures.

7 *Per contra*, the learned Assistant Public Prosecutor submitted that the Courts below have rightly considered the oral and documentary evidence available on record and arrived at a conclusion that the revision petitioners, who are accused Nos.2, 5 and 6, have committed the offence punishable under Section 323 of IPC. She further submitted that there are no grounds, much less, valid grounds to interfere with the judgments of the Courts below.

8 As seen from the testimony of P.Ws.1 to 3 on 17.06.2004 accused No.1 along with his wife and child was travelling in Bangalore Express from Hyderabad to Hindupur. As per the testimony of P.W.1,

A.1 to A.6 beat him indiscriminately. As seen from the testimony of P.Ws.2 and 3, A.1 to A.6 beat P.W.1 indiscriminately and got down the train. If the testimony of P.Ws.1 to 3 is taken into consideration, A.1 to A.6 beat P.W.1.

9 It is not in dispute that there is no acquaintance between P.Ws.1 to 3 and accused Nos.1 to 6 prior to the incident. As per the recitals of Ex.P.1-First Information Report, unknown persons beat P.W.1. P.W.8 conducted test identification parade to identify A.1 to A.6 by P.Ws.1 to 3.

10 I have carefully perused the testimony of P.W.8. There is no whisper in the testimony of P.W.8 that P.Ws.1 to 3 told him that they can identify the accused persons. P.W.8 in unequivocal terms deposed that P.Ws.1 to 3 did not disclose the physical features of the suspects. As per the testimony of P.W.8, P.Ws.1 to 3 identified A.1 to A.6 in the test identification parade.

11 The learned defence counsel put a suggestion to the investigating officer that the police have shown the photos of A.1 to A.6 to P.Ws.1 to 3 prior to the conducting of the test identification parade. P.Ws.1 to 3 are government officials. Moreover, the test identification parade was conducted nearly two months after the alleged incident. In such circumstances the possibility of showing the photos of A.1 to A.6 to the prosecution witnesses even before conducting of the test identification parade cannot be ruled out completely. I have carefully scanned the testimony of P.Ws.1 to 3 in order to ascertain how they identified the accused at the time of the

alleged incident. P.Ws.1 to 3 deposed that they have identified A.1 to A.3 in the illumination of the compartment lighting. The alleged incident occurred at 4.00 AM. It is a known fact that in any reservation compartment, more particularly in A.C compartment, the possibility of switching on the lights is doubtful at wee hours. In such circumstances, even assuming, but not conceding, there were one or two lights glowing, it may not be sufficient for P.Ws.1 to 3 to identify the accused in that dim lighting. The story put forth by the prosecution that P.Ws.1 to 3 have identified A.1 to A.6 in the train is far from truth, highly unbelievable and improbable.

12 As per the testimony of P.W.1, A.6 beat him on his right eye. Even as per the wound certificate Exs.P.11 and P.12, P.W.1 did not sustain injury on his right eye. As per the testimony of P.W.3, who, in unequivocal terms deposed, that he cannot say who beat P.W.1. It is a settled principle of law that the Court cannot brush away the testimony of prosecution witnesses basing on some minor contradictions and omissions. In the instant case, P.Ws.1 to 3 are the eyewitnesses to the alleged incident. There is no consistency in the testimony of P.Ws.1 to 3 with regard to which accused beat P.W.1. A perusal of the record reveals that a case was registered against P.W.1 on the complaint lodged by the wife of the accused No.1 for the offence punishable under Section 354 of IPC. Both the Courts below have not considered the aspect of identification of the accused by P.Ws.1 to 3 in right perspective. The Courts below gave a finding that P.Ws.1 to 3 might have identified the accused under the illumination of the train light. The Courts below have not given a specific finding

that P.Ws.1 to 3 have identified the accused under proper lighting. When they have not seen the accused under proper lighting, the possibility of identifying the accused two months after the incident in the test identification parade is also unbelievable.

13 Originally, the First Information Report was registered under Section 394 and charge sheet was also filed under Section 394 of IPC, whereas the Assistant Sessions Court framed charge under Section 326 read with Section 34 of IPC, under Section 27 (1) of Arms Act and Section 145 (1) (b) of Railways Act. The manner in which the charges were framed also creates any amount of doubt in the mind of the Court. The trial Court acquitted all the accused for the offence punishable under 326 read with Section 34 of IPC, under Section 27 (1) of Arms Act and Section 145 (1) (b) of Railways Act. It is needless to say that the prosecution has to prove the guilt of the accused beyond all reasonable doubt. Whereas, the Courts below gave a finding that P.Ws.1 to 3 might have identified the accused under the lighting of the coach, which is not legally sustainable. The other prosecution witnesses i.e. P.Ws.4, 5 and 9 did not support the case of the prosecution. The version put forth by the prosecution witnesses creates any amount of doubt.

14 Having regard to the facts and circumstances of the case, I am of the considered view that the conviction and sentence imposed by the trial Court, as confirmed by the appellate Court, is not sustainable either on facts or in law. Viewed from any angle, I am of the view that the prosecution failed to bring home the guilt of the petitioners who

are accused Nos.2, 5 and 6 for the offence punishable under Section 323 of IPC and they are entitled to acquittal for the said offence.

15 For the foregoing discussion, this Criminal Revision Case is allowed and the petitioners herein who are accused Nos.2, 5 and 6 are found not guilty of the offence punishable under Section 323 of IPC and accordingly they are acquitted of the said offence. The bail bonds, if any, executed by the accused shall stand cancelled. The fine amount, if any, paid by the petitioners shall be refunded to the petitioners.

Date: 18th November, 2016
Kysn

T. SUNIL CHOWDARY, J

