

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.1053 of 2008

ORDER:

The Criminal Revision Case is filed against the Judgment dated 10.07.2008 in Criminal Appeal No.67 of 2004 on the file of the II Additional Sessions Judge, Kadapa at Proddatur, by and under which the conviction and sentence imposed against the petitioners/A1 & A3 by the learned Assistant Sessions Judge, Proddatur in SC.No.191/2000, dated 19.07.2004, was confirmed and sentence was reduced from 5 years rigorous imprisonment to 4 years rigorous imprisonment each for the offence punishable under sections 452 and 307 IPC. A2 died during the pendency of the trial.

2. Heard the learned counsel appearing for the petitioners/A1 & A3 and the learned Additional Public Prosecutor, representing the State.

3. The case of the prosecution in brief is that there was existing rivalry between the family of PW 1 and the accused. PW 1 is the *de facto* complainant and PW 2 is her husband. A1 and A3 are husband and wife. Three years prior to the incident, there arose an altercation between A1 and PW 2, in which PW 2 caused injury to A3, for which a criminal case was filed against PW 2. Bearing in mind the existing rivalry, on 11.01.2000 at about 7 pm while PW 1 was alone in the house, A1 to A3 with a common intention, entered into the house of PW 1, poured kerosene on PW 1, and while A3 caught hold of PW 1, A2 threw a lighted match stick on her, due to which, PW 1 sustained burn injuries and she was shifted to Government Hospital. PW 5-S.I of Police recorded the statement of PW 1 and registered a case against the accused and after completion of investigation, filed charge sheet.

4. Before the trial Court, the accused were examined and

charges under section 326, 452 and 307 IPC were framed against the accused, for which they pleaded not guilty.

5. During the course of trial, the prosecution examined PWs 1 to 5 and marked Exs.P1 to P6. The accused denied the evidence on record. During course of trial, the case against A2 was abated as he died.

6. On appreciation of oral and documentary evidence, the trial Court while observing that the offence under Section 307 IPC is more grievous offence than the offence under Section 326, found A.1 & A.3 guilty of the offences under Section 452 and 307 IPC, convicted and sentenced them to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.100/-, in default to suffer simple imprisonment for a period of one week for each of the offence.

7. Challenging the conviction and sentence passed by the trial Court, the petitioners/A.1 & A3 preferred appeal CrI.A.67/2004 before the II Additional Sessions Judge, Kadapa at Proddatur. The learned Sessions Judge dismissed appeal confirming the conviction recorded by the trial Court, however, sentence of imprisonment alone is reduced from five years to four years for each offence. Aggrieved by the same the petitioners/A.1 & A3 filed the present criminal revision case.

8. Now the point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioners/A1 & A3 is legal and sustainable.

Point:

9. The admitted case is that the injured victim in this case PW 1 is the wife of PW 2 and A1 and A2 (since died) are the brothers of PW 2. A3 is the wife of A1. In between the brothers, there were certain disputes. In the past, PW 2 is alleged to have caused injuries to A3 by biting her lips, due to which a criminal case was launched and PW 2 was even convicted. There are longstanding disputes in between the

brothers and therefore, the case of the prosecution is that keeping in view the grudge that PW 2 has assaulted A3, on the date of incident i.e. on 11.01.2000 A1 to A3 taking advantage of the loneliness of PW 1, trespassed into the house carrying kerosene with them and when PW 1 was lying on mat watching TV, the accused alleged to have poured kerosene on her while A3 caught hold PW 1, the deceased A2 lit fire and when PW 1 started shouting, A1 to A3 ran away from there. The further case of the prosecution is that PW 1 herself put off the flames, boarded an auto, went to the Government Hospital and got herself admitted. On the basis of the hospital intimation, the jurisdictional Magistrate went to the hospital and recorded dying declaration and thereafter, PW 5-the investigating Officer also went there and recorded the statement of PW 1 on the basis of which, a crime was registered. Ex.P1 is the statement recorded by PW 5-the investigating officer, whereas Ex.P2 is the statement of the victim recorded by the jurisdictional Magistrate. PW 1 is said to have been sustained about 35 to 40 per cent burns. After registering the complaint, PW 5-the investigating officer is said to have visited the house and conducted scene of offence panchanama and recorded the statements of PW 2 & PW 3 and after completion of investigation, filed charge sheet.

10. The contention of the accused is that in view of the existing rivalry between the brothers and the pendency of the criminal case in between them, wherein PW 2 was an accused, his wife PW 1 has falsely implicated the accused. Their version is that unable to withstand the humiliation of her husband PW 2, being convicted on the complaint of A3, the victim PW 1 attempted to commit suicide and in view of the hostilities, made the accusations against the accused.

11. In view of the above admitted position, the evidence of the victim PW 1 which can no doubt be made the basis for determining the

guilt or otherwise of the accused, but the same needs to be corroborated on material aspects so as to disbelieve the defence of the accused that they were falsely implicated.

12. PW 2 is the husband of the victim PW 1. Admittedly, he was not present when the incident took place. He claims to have known about the incident only through his wife PW 1. The other neighbouring resident was examined as PW 3 and she also denied having seen any incident. She was declared as hostile by the prosecution. PW 4 is the Medical Officer. Therefore, except the evidence of PW 1, there is no independent corroboration to what she deposed. It shall be seen as to whether the evidence of PW 1 is cogent, convincing, consistent and inspiring the confidence of the Court so as to accept the same for sustaining the conviction of the petitioners/A1 and A3.

13. Before going into that aspect, it shall be seen as to whether the incident has really taken place at the place claim to have been. According to PW 1, A1 to A3 were carrying kerosene oil, measuring 6 liters, they poured it on her from head to toe. It is also admitted that substantial quantity of kerosene oil fell on the mat, floor and also on the accused. Thereafter, A3 is said to have lit fire, resulting in PW 1 sustaining burn injuries, which incident took place at 7 p.m. and the complaint was registered at about 10 p.m on 11.01.2000. According to PW 5-the investigating officer, immediately he proceeded to the hospital and recorded the statement of PW 1 and also proceeded to the scene and inspected the same. He also claims to have drawn up a rough sketch of the scene which however is admittedly not produced. The saree of PW 1 and the mat are also said to have been partially burnt. Significantly, PW 5-the investigating officer has not produced any such incriminating objects. Further more, when PW 5-the investigating officer claims to have visited the scene of offence on the very same night, he claims to have not even noticed any material objects or even stains of kerosene at the scene of offence. When 6

liters of kerosene was poured on PW 1, mat and on floor and set fire, there will be some stains which manifestly show that there was something which was set fire there. Admittedly, nothing of that sort is noticed by PW 5-the investigating officer who visited the scene of offence immediately.

14. Even according to PW 1, she was alone in the house, after having set fire, herself put off the flames, boarded an auto and went to the hospital. Her husband PW 2 was out of house and he came 3 or 4 days after the incident. Therefore, in the absence of any incriminating signs of fire that has been taken place, it is doubtful whether PW 1 has come with true version. One more aspect is that according to PW 1 her house is surrounded by compound wall erected with stone slabs, whereas according to PW 5-the investigating Officer, there is no compound wall to the house of PW 1. This creates a doubt as to whether PW 5-the investigating officer actually visited the scene of offence as claimed by him or not. Non-filing of the sketch of scene of offence gives credence to this aspect.

15. Now adverting to the evidence of PW 1, the star witness of the prosecution, it is noticed that the same do not inspire the confidence of the court as being truthful for different reasons. According to PW 1, the incident took place at about 7 p.m. by that time, her husband PW 2 was not there in the house. Immediately after the incident she herself took an auto and went to the Government hospital at Proddutur. On the way to the hospital itself there is jurisdictional police station, but no effort was made to lodge complaint. According to PW 1, she was accompanied by 3 or 4 neighbouring residents while she went to the hospital. Neither of them tried to inform the police about the alleged heinous act of the accused in setting fire to PW 1. None of those residents are examined. Even the Auto driver who is said to be local resident and known to PW 1 has not been examined.

16. According to PW 1, she alone went to the hospital, at that time her husband was not with her. However, the medical certificate Ex.P4 and medical evidence of PW 4 shows that it is her husband PW 2 who took her and admitted her in the hospital. The evidence of PW 2 is altogether on different lines. According to him, he returned to the house only 4 or 5 days after the incident and came to know about the incident through

PW 1. PW 1 admits about the existence of rivalry in between the brothers. It is also in her evidence that her house consists of two portions and in one portion consisting of two rooms she was living and in another portion of 2 rooms another couple with a child were living. The time of incident was 7 p.m. None of them were examined. By the date of incident, PW 1 has a daughter. She is conspicuously silent about her presence or absence in the house at the time of incident. In her evidence, PW 1 stated that the accused brought 6 liters of kerosene in a Can, but whereas in the previous statement, she stated that the accused brought some kerosene in a mug. As against the evidence of PW 2, the claim of PW 4 is that her husband also accompanied to the hospital. When PW 2 claims that he came to the house 4 or 5 days after the incident, PW 5-the investigating officer stated that he recorded the statement of PW 2 on the same night of the incident.

17. Even though the suggestion that out of frustration due to act of the accused in lodging complaint against PW 2, PW 1 attempted to commit suicide is denied by her, but if the totality of the circumstances and the evidence of PW 1, PW 2 coupled with PW 5 is perused, there seems to be some substance in the suggestion. The solitary testimony of PW 1 cannot in the circumstances be made the basis for holding that it is the accused who committed the offence. Both the Courts below have not appreciated this aspect properly and erroneously

convicted the accused. Therefore, the said conviction is liable to be set aside.

18. For the reasons stated above, the Criminal Revision Case is allowed. Consequently, the judgment of the appellate Court dated 10.07.2008 in CrI.A.No.67 of 2004 as well as the judgment of the trial Court dated 19.07.2004 in S.C.No.191 of 2000 are set aside and the petitioners/A1 & A3 are acquitted of the offence for which they found guilty and convicted. The bail bonds of the petitioners/A1 & A3 shall stand cancelled. The fine amount, if any paid, shall be refunded to the petitioners/A1 & A3.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date:19.01.2016

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