

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

CRL.R.C.No.44 of 2008

JUDGMENT:

This Criminal Revision Case is preferred by the *de facto complainant*-P.W.1 questioning the judgment dated 27.09.2007 passed in CrI.A.No.89 of 2007, whereby the learned II-Additional Metropolitan Sessions Judge, Hyderabad, while setting aside the judgment of conviction and sentence passed by the trial Court in C.C.No.182 of 2004, acquitted respondents 1 to 5/A1 to A5 herein of the offences under Sections 147, 448, 323 read with Section 149 I.P.C.

The trial Court, on appraisal of entire evidence both oral and documentary in C.C.No.182 of 2004, convicted and sentenced the respondents-A1 to A5 to pay a fine of Rs.500/- each, in default, to suffer simple imprisonment for a period of one month for each of the offences under Sections 147 and 448 I.P.C. and also convicted and sentenced A2 to A5 to undergo simple imprisonment for a period of three months for the offence under Section 323 read with Section 149 I.P.C. Aggrieved by the same, the respondents-A1 to A5 preferred CrI.A.No.89 of 2007 and the learned II-Additional Metropolitan Sessions Judge, Hyderabad, while allowing the said appeal, set aside the conviction and sentence passed by the trial Court. Questioning the same, the *de facto complainant*-P.W.1 preferred this revision.

Learned Counsel for the revision petitioner-P.W.1 submitted that even though the evidence of P.Ws.1 to 4 is consistent and corroborated by the evidence of P.W.5-doctor, the learned appellate Court has not appreciated the evidence in proper perspective and has erroneously found respondents-accused not

guilty of the charges levelled against them and, therefore, he prays to set aside the impugned judgment and convict respondents-A1 to A5.

On the other hand, the learned Counsel for respondents/accused submitted that there is absolutely no evidence to connect the accused with the commission of the offence; that the evidence of P.W.1 is not corroborated by the medical evidence; that there is abnormal delay of three days in lodging the complaint; that the appellate Court rightly found the accused not guilty of the charges leveled against them and accordingly acquitted them and that the impugned judgment needs no interference by this Court.

Now the points for determination are whether the prosecution is able to bring home the guilt of respondents-A1 to A5 for the charges levelled against them beyond all reasonable doubt and whether the judgment recording acquittal of the respondents-accused by the appellate Court needs interference or not?

The case of the prosecution is that on 10.09.2002 at about 7.30 P.M. A1 to A5 formed themselves into an unlawful assembly, criminally trespassed into the residential quarter of P.W.1 bearing No.D-133, Malakpet colony, assaulted him indiscriminately with iron rods, hands, legs and caused injuries. The prosecution, in order to prove the guilt of the accused, examined P.Ws.1 to 6 and got marked Exs.P1 to P9. P.W.1 is the de facto complainant and injured. P.W.2 is the wife of P.W.1. P.Ws.3 and 4 are direct eyewitnesses to the incident. P.W.5 is the doctor who treated P.W.1. P.W.6 is the Investigating Officer.

According to the evidence of P.W.1, on the date of incident the accused 1 to 5 along with others broke open the main door, trespassed into the house and beat him with hands and legs,

picked up an iron rod from the front yard of the house, pulled him out of his house and beat on his left eye-brow causing bleeding injury and that A-1 caught hold of his testicals and squeezed. However, P.W.2, who is the wife of P.W.1, stated that A-1 beat P.W.1 with an iron rod on his left eye-brow. The evidence of P.W.1 is not corroborated with the evidence of P.W.2. Further, it is elicited in the cross-examination of P.W.6-Investigating Officer that he did not find any broken main doors, but there is only a bent to the main lock. P.W.6 did not choose to prepare any crime scene observation panchanama or rough sketch of the scene of offence.

P.Ws.3 and 4 are the alleged eyewitnesses to the incident. The evidence of P.W.3 is that on the date of incident he found a galata at the house of P.W.1 and in that galata P.W.1 was beaten by A-1 to A-5 causing bleeding injuries on his left eye-brow and left elbow. P.W.3 was not examined by the police. The evidence of P.W.4 is that on the date of incident A1 to A5 beat P.W.1 in his house causing bleeding injuries on the left eyebrow and that A1 squeezed the testicles of P.W.1. P.W.4 in his cross-examination stated that his statement was recorded at the police station on 10.09.2003. However, it is the case of the prosecution that P.W.1 lodged Ex.P1 complaint on 13.09.2003 at about 10.00 P.M. and took up investigation on that date. Therefore, the question of police recording the statement of P.W.4 at the police station on 10.09.2003 does not arise.

According to the evidence of P.W.6, P.W.1 stated before him that he was beaten with a stone like material on his left eye-brow, whereas in his evidence, he stated that he was beaten with an iron rod on his left eye-brow.

So far as the injuries received by P.W.1, it is the evidence of P.W.1 that A-1 to A-5 beat him indiscriminately with hands and

legs and also with an iron rod on his left eye brow, whereas P.W.2 stated that A-1 beat P.W.1 with an iron rod on his left eye-brow. However, P.W.5-doctor, who treated P.W.1, found a lacerated injury over the left eye-brow and abrasions over the right little finger, left neck and left elbow joint, which are simple in nature. P.W.1 in his cross-examination admitted that he was treated by a Government doctor at the first instance and later he has taken treatment from a private doctor, who issued Ex.P4-wound certificate. That apart, the injuries mentioned in Ex.P8 issued by P.W.5-Government doctor and the injuries mentioned in Ex.P4-wound certificate issued by a private doctor are not tallying. Therefore, the evidence of P.Ws.1 and 2 is not corroborated with the medical evidence.

There are number of material contradictions and omissions in the evidence of P.Ws.1 to 4 and, therefore, their evidence cannot be relied on.

According to the prosecution, the incident took place on 10.09.2003 at about 7.30 P.M. P.W.1 presented Ex.P1 report to P.W.6-Investigating Officer on 13.09.2003 at about 10.00 P.M. Thus, there is three days delay in lodging the complaint, which is fatal to the case of the prosecution. There is no plausible explanation from P.W.1 for the said abnormal delay in lodging the complaint to police. It is in the evidence of P.W.1 that after this incident A1 went to the police station and gave complaint against him that he was beaten. There is nothing on record as to what has happened to the complaint given by A-1 against P.W.1.

After giving cogent and convincing reasons, the appellate Court rightly held that the prosecution failed to establish that the accused are responsible for commission of offence and accordingly acquitted the accused of the charges levelled against

them. Therefore, the order of acquittal needs no interference, as there are no compelling reasons to interfere with the same. The revision fails and is liable to be dismissed.

In the result, the Criminal Revision Case is dismissed.

Miscellaneous petitions, if any, pending shall stand closed.

M.S.K.JAISWAL,
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09-02-2016

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