

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.969 of 2008

ORDER:

This Criminal Revision case by the petitioner-*de facto* complainant under Sections 397 (1) and 401 Cr.P.C. is directed against the judgment dated 31-10-2007 in Criminal Appeal No.201 of 2006, on the file of VIII Additional District & Sessions Judge (Fast Track Court), Guntur, wherein and whereby the conviction and sentence recorded by the Principal Assistant Sessions Judge, Narasaraopet, vide judgment, dated 26.04.2006 in Sessions Case No.694 of 2004 against A1 of the offence punishable under Section 354 of the Indian Penal Code, 1860, (for short 'IPC') were set aside.

2. Brief facts that are necessary for disposal of the Criminal Revision Case are as follows:

The case of the prosecution is that on 15.08.2004 at about 3.00 P.M., A1 entered into the house of the de facto complainant and outraged her modesty. On the same day, A2 to A5 entered into the house of the de facto complainant and beat P.Ws. 1 and 2. The gist of the allegation made in the charge sheet is that A1 made an attempt to outrage the modesty of P.W.1 and A2 to A5 trespassed into the house and beat P.W.2.

3. Charges under Sections 354 IPC against A1 and 452 and 323 IPC against A1 to A5 IPC were framed, read over and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried.

4. In order to prove the guilt of the accused, prosecution examined P.Ws. 1 to 6 and marked Exs.P1 to P5.

5. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating material found against them in the evidence of prosecution witnesses. They denied the same. On behalf of the accused, D.Ws.1 to 4 were

examined and Exs.D1 to D6 were marked.

6. The trial Court after appreciating oral and documentary evidence, while acquitting A1 to A5 of the offences punishable under Sections 452 and 323 IPC, convicted A1 of the offence punishable under Section 354 IPC and accordingly, sentenced him to undergo R.I. for a period of five years and to pay a fine of Rs.200/- in default to suffer simple imprisonment for a period of one month. Aggrieved by the said conviction and sentence, A1 preferred Criminal Appeal No.201 of 2006 on the file of the court of VIII Additional District & Sessions Judge (Fast Track Court), Guntur. The appellate Court, after re-appraising the oral and documentary evidence, arrived at a conclusion that the prosecution failed to prove the guilt of A1 of the offence punishable under Section 354 IPC and accordingly, acquitted him. Challenging the same, the *de facto* complainant filed this revision.

7. Learned counsel appearing on behalf of the petitioner- *de facto* complainant submitted that the appellate Court committed a grave error in arriving at a finding that the incident took place on 14.08.2004 instead of 15.08.2004 at about 3.00 P.M. She further submitted that the appellate Court has not properly considered possibility of discrepancies in the wound certificates—Exs.P4 and P5. She further submitted that the appellate Court set aside the conviction and sentence imposed against A1 merely on assumptions and presumptions, which are not permissible under law; therefore, it is a fit case to allow the revision.

8. On the other hand, learned counsel appearing for the 1st respondent-A1 submitted that the appellate Court rightly appreciated the oral testimony of P.Ws.1 and 2 and disbelieved the version of the prosecution with regard to the date of the incident. He further submitted that the oral testimony of P.W.6 coupled with the recitals in Exs.P4 and P5 falsifies the prosecution version and hence, he prays to dismiss the revision.

9. Now the point that arises for consideration is whether the findings of the appellate Court are legal, proper and correct?

10. Before advertng to the findings of the appellate court, it is apposite to refer the case law on the subject. In *State of A.P. v Pituhuk Sreeinvanasa Rao*^[1], the Supreme Court held that the exercise of the revisional jurisdiction of the High Court in upsetting the concurrent finding of the facts cannot be accepted when it was without any reference to the evidence on record or to the finding entered by the trial court and the appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.

11. It has also been held by the apex Court in *Amar Chand Agarwalla v. Shanti Bose*^[2], that the revisional jurisdiction of the High Court under Section 439 CrPC (1898) is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice.

12. If the prosecution version is taken into consideration, the alleged incident took place on 15.08.2004 at about 3.00 P.M., at the house of P.Ws. 1 and 2. As per the testimony of P.W.1, A1 entered into the house, caught hold of her hand with an intention to outrage her modesty. This fact was spoken to by P.W.2. If the testimony of P.Ws. 1 and 2 is taken into consideration, the alleged incident took place on 15.08.2004 at about 3.00 P.M. A perusal of record reveals that P.W.1 lodged Ex.P1-complaint on 15.08.2004 at about 9.00 P.M. The testimony of P.W.6—Medical Officer is that he examined P.Ws.1 and 2 on 15.08.2004 at about 11.00 A.M. and the age of injuries are 14 hours prior to his examination. The testimony of P.W.6 coupled with Exs.P4 and P5-wound certificates clearly reveals that P.Ws.1 and 2 sustained injuries on 14.08.2004 only. If really the incident had taken place on 15.08.2004 at about 3.00 P.M., as put-forth by the prosecution, how

P.W.6—Medical Officer could examine P.Ws.1 and 2 on 15.08.2004 at about 11.00 A.M. This has not been explained by the prosecution by assigning cogent and valid reasons. The trial Court disbelieved the version of prosecution insofar as A2 to A5 entering into the house of P.W.1 is concerned. Admittedly, the prosecution has not filed any appeal challenging the acquittal of A1 to A5 of the offences punishable under Sections 452 and 323 IPC. The trial Court partly believed and partly disbelieved the version of the prosecution. The trial Court disbelieved the prosecution version that the incident occurred on 15.08.2004 at about 3.00 P.M. Having arrived at such a conclusion, convicting A1 of the offence punishable under Section 354 IPC is not sustainable. As per the recitals in Exs.P4 and P5—wound certificates, the incident had taken place on 14.08.2004. Thereafter, the date was changed to 15.08.2004 in Exs.P4 and P5. The prosecution has not explained the reasons for correction in the wound certificates.

13. The testimony of D.Ws.1 to 4 clearly reveals that there is political rivalry between the *de facto* complainant and the accused. In such circumstances, the possibility of false implication of the accused cannot be ruled out completely. It is settled principle of law that this Court cannot lightly interfere with the order of acquittal passed by the court below. The appellate Court, in fact, has observed in the judgment that the trial Court has not considered the discrepancies in right perspective. However, the appellate Court has rightly considered the discrepancies in the prosecution version.

14. In view of the foregoing discussion and in the light of the above decisions, I see no reasons much less valid reasons to interfere with the well considered judgment of the appellate Court. There is no illegality or irregularity in the judgment of the appellate Court, which warrants interference by this Court.

15. Accordingly, the Criminal Revision Case is dismissed confirming

the judgment dated 31.10.2007 delivered in Criminal Appeal No.201 of 2006 on the file of VIII Additional District & Sessions Judge (Fast Track Court), Guntur. Miscellaneous petitions, if any pending in this criminal revision case, shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 15.02.2016.

Hsd

[\[1\]](#) (2000) 9 SCC 537

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