

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.692 OF 2007

JUDGMENT:

Accused Nos.1 and 2 viz., Vasamsetti Saibabu and Neela Kondayya are the revision petitioners in the present Criminal Revision Case preferred under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short 'Code'), challenging the conviction recorded by the learned Judicial Magistrate of First class, Alamuru, East Godavari District, by the judgment dated 13.02.2006 in C.C. No.68 of 2002, under Section 248(2) of the Code for the charge under Section 435 of Indian Penal Code, 1860 (for short 'IPC') sentencing them to undergo simple imprisonment for one year and to pay a fine of Rs.250/- each with default sentence to undergo simple imprisonment for a period of fifteen (15) days each, and for the charge under Section 341 of IPC sentenced them to pay a fine of Rs.250/- each with default sentence to undergo simple imprisonment for a period of fifteen (15) days each, as affirmed by the learned I Additional Sessions Judge, East Godavari, Rajahmundry, by the judgment dated 02.05.2007 in Criminal Appeal No.52 of 2006.

2. Heard Sri T.V.S. Prabhakar Rao, learned counsel for the revision petitioners - accused, and the learned Additional Public Prosecutor for the State of Andhra Pradesh, and perused the material on record.

3. A few facts, which are relevant for appreciating the arguments advanced by the learned counsel for the revision petitioner and the learned Additional Public Prosecutor, require advertence.

(a) The *de facto* complainant viz., Guthula Venkateswarlu, who was examined as PW.1, and both the revision petitioners belong to same community. There was enmity between them in connection with local elections held in the previous year of the date of offence. The *de facto* complainant has been cultivating the land belonging to one P. Venkateswara Rao. While so, on the intervening night of 19/20.4.2002, at Nalluru fields, both the accused went to that field and tied the hands and legs of PW.1, who was asleep near paddy heap, with a rope and set fire to the paddy heap of PW.1 and ran away from the scene. The said paddy heap was partly burnt. Guthula Janakiramayya, who is the brother of PW.1, rushed to the spot in the early hours and untied the rope of PW.1, and, thus, a complaint was lodged at 5.00 p.m. on 20.04.2002 with the concerned Police Station.

(b) The crime was investigated into. Scene of occurrence was drafted. Photographs were also taken. The ash was also seized and half burnt grass and paddy were also seized under a cover of panchanama. Both the accused were arrested on 26.04.2002 and remanded to judicial custody and on completion of investigation, charge sheet was laid for the offences punishable under Sections 341 and 435 read with Section 34 of IPC.

(c) When the accused were examined for the said charges, they pleaded not guilty. The prosecution, to bring the guilt of the accused to home, examined PWs.1 to 8 and marked Exs.P-1 to P-6.

4. PW.1 is the direct witness to the occurrence. He states that when he slept at the fields on the date of occurrence, accused Nos.1 and 2 came to the fields in the midnight and tied his hands and legs with a rope and pushed him into *bodi* and set fire to the paddy heap with match stick and ran away from there and only he was released from the rope when his brother, Janakiramayya came there at about 3.00 a.m. and he informed the same to him and then, went to PW.5 who is the land owner, and informed the incident to fire station.

5. So far as the evidence on record is concerned, certainly there is nothing brought out in the cross-examination of PW.1 and even there is nothing in the cross-examination of PWs.2, 3 and 5. The testimony of PW.1 is significantly important in arriving in recording by the Courts below and is based on proper appreciation. The learned Magistrate referring to that PW.1 was tenant of PW.5 and support is to be found to the evidence of PWs.3 and 5 to that effect, though, PW.5 turned hostile, but, admitted that he is owner of the land in which the incident took place, and, thus, recorded conviction as mentioned in the above and inflicted the sentence of imprisonments on accused Nos.1 and 2 and fine.

6. On appeal, the learned I Additional Sessions Judge has taken up re-appraisal of evidence of the prosecution witnesses and finding that there is nothing to discard the testimony of PW.1 and, in fact the motive for setting ablaze the paddy heap of PW.1; that accused Nos.1 and 2 intended to wreck vengeance as they were at inimical terms due to differences that cropped up in connection with the elections held in the previous year of the date of incident. Thus, affirming the conviction, even maintained the sentence of imprisonment inflicted against accused Nos.1 and 2 and the fine imposed.

7. Sri T.V.S. Prabhakar Rao, learned counsel for the revision petitioners, would submit that there were certain infirmities in the case of prosecution which would cut at the root of the prosecution case which the Courts below did not notice. According to him, the first infirmity is that the prosecution failed to examine any neighbouring land owners, and, thus, the best evidence is not produced and, therefore, inference against the prosecution case has to be invariably drawn in view of Section 114(g)(2) of the Indian Evidence Act. Second submission is that no proof is filed to show that PW.1 is cultivating the land belonging to PW.5. The rope as well as match sticks was not seized from the place of occurrence. Third, the evidence of PW.1 does not find corroboration. Fourth, no photographs of scene of occurrence were filed and the prosecution deliberately withheld them. Fifth, PWs.7 and 8, who are official witnesses, failed to show survey number or location of gutted paddy,

where it situate. Sixth, PW.1's testimony is to the effect that there was only one paddy heap which was burnt at the relevant time, whereas the evidence of PW.2 is to the effect that there were two paddy heaps that were burnt. Last, the revision petitioners were falsely implicated due to enmity in the village.

8. The learned Additional Public Prosecutor would submit that all the points urged by the learned counsel for the revision petitioners - accused cannot be viewed as inherent infirmities cutting at the root of the prosecution case.

9. It is, therefore, necessary to examine the points urged by the learned counsel for the revision petitioners to see whether they would tilt the case of the prosecution.

10. So far as non-examination of neighbouring land owners is concerned, nothing was suggested that there were neighbouring land owners and no probe was made in the cross-examination. Besides the same, what all done was, PW.1 was tied with ropes and thrown into a *bodi* disabling him from moving his limbs. Therefore, there was no occasion to him to call anybody.

11. Concerning second submission that no proof was filed to show that PW.1 cultivated the land, it is to be stated that the very presence of PW.1 at the place of occurrence that night, which cannot be disbelieved, would speak that he was personally cultivating the paddy and collecting it in a heap and guarding it. Unless, there is such

strong motive for false implication which ought to be brought in the cross-examination of PW.1, it cannot be said that PW.1 was actuated by any false motive or ill-will to implicate both the accused. Further, non-seizure of match-stick and the half burnt hay would not make any difference in a case of this nature. Failing to file photographs of the scene of occurrence also would not affect the prosecution case. The failure on the part of PWs.7 and 8 to give the survey number is no ground to view the prosecution case with suspicion rather the evidence of PW.1. Even the discrepancy in the evidence of PWs.7 and 8 as regards number of heaps would account for minor discrepancy, but not a major discrepancy so as to amount to material contradiction to condemn the case of the prosecution.

12. The enmity is double edged weapon and the motive for setting fire has been spoken to by PW.1. Certainly, that cannot be viewed as of such severity so as to falsely implicate both the petitioners. It is also not the case of the revision petitioners that PW.1 himself, set fire to the heap so as to implicate the revision petitioners. Thus, there is no merit in the present revision.

13. Therefore, the Criminal Revision Case is dismissed confirming the conviction recorded for the offences punishable under Sections 435 and 341 of IPC are concerned. So far as the fine amounts imposed under both the counts are concerned, they are also confirmed.

14. However, as regards the sentence of simple imprisonment for a period of one year for the offence punishable under Section 435 of IPC is concerned, keeping in view, that the present revision case relates to the year 2006 and the C.C. relates to 2002 year, it is desirable to reduce the sentence of imprisonment from one year to six months and accordingly modified.

15. Hence, both the revision petitioners are directed to surrender before the learned Judicial Magistrate of First Class, Alamuru, by 18.01.2018, to serve out the sentence of six (6) months imprisonment. In case the revision petitioners fail to surrender, the learned Magistrate is directed to secure their presence in person and put them in prison to serve out the sentence of imprisonment.

16. As a sequel to dismissal of the present revision case, Miscellaneous Petitions, if any, pending in the present revision case stand dismissed.

A. SHANKAR NARAYANA, J

December 13, 2017.

NOTE:

Dispatch the order forthwith.

(BO) pv