

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Revision Case No.3170 of 2016

ORDER:

This revision is preferred by the defacto-complainant-P.W.1 against the judgment dated 26.09.2016 in CrI.A.No.17 of 2012 passed by the II Addl.Metropolitan Sessions Judge, Visakhapatnam, confirming the judgment in C.C.No.406 of 2010 dated 09.09.2011 passed by the Chief Metropolitan Magistrate, Visakhapatnam, acquitting the case against the A.1 to A.4 (revision respondents 2 to 4), for the offence u/ sec.325 r/ w 34 IPC.

2. The grounds in the revision vis-à-vis oral submissions of the learned counsel for the revision petitioner, that the acquittal judgment of the trial Court and its confirmation by the lower appellate Court suffers from illegality, which are the outcome of ill-appreciation of the evidence of P.W.1 injured-defacto-complainant, P.W.2 direct witness to the occurrence and P.W.4 doctor who examined P.W.1 and deposed the nature of injuries sustained by P.W.1, in corroboration and with consistency in their evidence suffice to convict the A.1 to A.4, that the Courts below erred in disbelieving the entire evidence of prosecution, merely basing on the ground that the investigating officer-P.W.5 not seized any incriminating material at the scene of offence and also the independent witness did not support the case of the prosecution. Hence, to set aside the respective judgments of the Courts below by allowing the revision.

3. Whereas, it is the submission of the learned counsel for the respondents 2 to 4 and the learned Public Prosecutor for the 1st respondent that the impugned judgments of the Courts below holds good

and no way requires interference while sitting in revision and thereby sought for dismissal of the revision.

4. Heard and perused the material on record.

5. During the course of trial, on behalf of prosecution, P.Ws.1 to 5 were examined and Ex.P.1 to P.4 were marked viz; Ex.P.1 statement of P.W.1, Ex.P.2 wound certificate, Ex.P.3 First Information Report and Ex.P.4 rough sketch of scene of offence. There is no independent evidence of accused but for cross-examination of the prosecution witnesses supra. From said evidence and after hearing, the trial Court in acquitting the A.1 to A.4 held that the P.W.4 Dr. V.S.S Sarma in his cross-examination stated that he has not mentioned the radiologist report in Ex.P.2 wound certificate and the prosecution also not filed x-ray of the P.W.1, which documents are crucial to prove any grievous injury as per the settled law. Further the delay of one day in lodging complaint without assigning reasons by the prosecution is also fatal. The evidence of P.W.1-defacto-complainant and her daughter-in-law P.W.2 are not sufficient to prove guilt of them when the independent witness-P.W.3, not supported the prosecution case. The lower appellate Court did not choose to interfere with the trial Court acquittal judgment.

6. The contents of the report of P.W.1-revision petitioner in brief are that there a dispute arose between the defacto-complainant and the accused persons with regard to the vacant site situated in front of the house of the defacto-complainant for the A.3 kept fencing to the vacant site without providing way to the defacto-complainant and on that issue on the report of defacto-complainant to the municipal authorities, they warned the A.3 and removed the fencing but the A.3 again kept the fencing material in the vacant site and when the defacto-complainant

questioned, all the accused supra beat and kicked her, A.1 beat her with a stick on her right hand and when P.W.2 came to her rescue, she was beaten by the accused persons, on which the defacto-complainant gave a statement to the police who registered as a Cr.No.191 of 2008 for the offences under Section 325 r/w 34 IPC.

7. In view of the above how far this Court while sitting in revision can interfere concerned, coming to the facts necessary and relevant for appreciation, the scope of revision against the concurrent findings of the Courts below in acquittal of the accused persons 1 to 4 is limited to the illegality or impropriety in the acquittal judgment if any and whether those are liable to be set aside or to remand back. In this regard the Court cannot ignore the fundamental principles in criminal justice that once there is acquittal from the basic presumption of innocence of accused till guilt is proved, it is strengthening from the double presumption of innocence.

8. The police after investigation filed final report from which the learned Magistrate taken cognizance for the offence supra and from framing of charges and examination from denial of the charges leveled against put to trial covered by the evidence referred supra.

9. The law is fairly settled that in the absence of radiologist report, it is difficult to hold that there is a fracture and the same is grievous injury, for otherwise to treat the same only as a simple injury from two views possible, the view in favour of the accused alone has to be given credence. However that is not a ground for acquittal but for at best to hold for a lesser offence from Section 325 IPC to Section 323 IPC, unless it is shown the so called beating with stick is the deadly or dangerous weapon to attract Section 324 IPC. Undisputedly the P.W.1

defacto complainant and her daughter-in-law P.W.2 deposed about the injury and the wound certificate issued by the Doctor-P.W.4 also to some extent correlates. P.W.3 who is the independent witness even did not support the prosecution case. The acquittal by the trial Court confirmed by the lower appellate Court is sustainable from P.W.3 did not choose to depose of the alleged occurrence and the P.Ws. 1 and 2 are the injured and her daughter-in-law respectively with interested testimony and the medical evidence from radiology report not even filed and offence u/ sec. 325 IPC is not made out as discussed supra and all the above there is a delay unexplained of one day after the occurrence in reporting to police.

10. Once it is the conclusion of the delayed report is fatal to the very case of prosecution for no explanation that itself is suffice to say there is nothing to interfere in revision against the concurrent findings of the Courts below more particularly from the cardinal principle of the double presumption in favour of the accused against acquittal while dealing with the revision.

11. Accordingly and in the result, the revision is dismissed. Miscellaneous petitions, if any pending shall stand closed.

Date:18.04.2017.

Dr. B.SIVA SANKARA RAO J,