

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Cr1.R.C.No.537 of 2005

ORDER:

This criminal revision case is filed under Sections 397 and 401 Cr.P.C questioning the propriety, legality and regularity of the judgment, dated 12.10.2004 in S.C.No.406 of 2001 passed by the VI Additional Sessions Judge, Ananthapur at Gooty finding all the accused not guilty for the offence punishable under Section 302 IPC while finding them guilty for the offence punishable under Section 148 IPC and they are convicted and sentenced to pay fine of Rs.700/- each, in default each accused shall undergo one month simple imprisonment.

2. The petitioner is the *de facto* complainant.

3. The case of the prosecution, in brief, is that A1 to A11 are residents of Thondapadu and they belong to one group supported by Cheruvu Rangaiah alias Society Rangaiah, who served as Paid Secretary of the Primary Agricultural Society of Thondapadu. Originally Society Rangaiah was the resident of Chandana. In view of his employment as Paid Secretary, he has been residing in Thondapadu since 1983. In the Grampanchayat Elections for the year 1995, Lakshminarasamma wife of Cheruvu Rangaiah contested to the post of Sarpanch of Thondapadu against Golla Sunkappa. But Lakshminarasamma wife of Cheruvu Rangaiah was defeated in the election against Golla Sunkappa. As a result of elections, differences arose between Sunkappa group and Rangaiah group. Each group was trying to establish its supremacy. As a

result, violent incidents have took place and consequently criminal cases were foisted against one group by the other including M.C.No.49 and 50 of 1997 on the file of Mandal Executive Magistrate.

4. While so, in the month of August, 2000, the Government declared that the post of Sarpanch is reserved for O.C Women (General) and consequently, it created an apprehension in the mind of the deceased Sukkappa's group as Rangaiah would definitely hold the field on behalf of his wife and she will be elected in the ensuing elections in the month of September, 2000. Secondly, Kunti Obulesu and Konda Narasimhulu, followers of the deceased were assaulted by the followers of Rangaiah in the month of June, 2000 in connection with Panchayat relating to land dispute at Engilibanda Village. The above incident increased the ill-feelings within both groups and each group was waiting for an opportunity to take revenge against other.

5. While the matter stood thus, on 11.09.2000 at about 03.30 PM, when Rangaiah was proceeding to Thondapadu from Gooty on his Moped along with Suryanarayana as a pillion rider, the members of the rival group attacked Rangaiah and shot him dead. The death news of Rangaiah spread, A1 to A11 and other followers of Rangaiah got enraged and formed into an unlawful assembly came to Thondapadu armed with deadly weapons. When deceased Sunkappa went to Jawar crop to drive the pigeons at 02.00 P.M. he informed to PW.1 to bring coffee to him. The accused in the manner stated above armed with deadly weapons on the

misapprehension that Sunkappa was responsible for the murder of Rangaiah started chasing Sunkappa when he was in the Jawar field, while witnessing PW.1 and others and at last caught hold of the deceased Sunkappa at Jakkala Cheruvu ground nut field, when he fell down, they surrounded him and hacked him to death. Therefore, the complaint was lodged against respondents 1 to 11 by PW.1 for the offence punishable under Section 302 IPC.

6. On the strength of the complaint, the police registered a case in Crime No.92 of 2000 and investigated into and filed charge sheet before the Judicial Magistrate of First Class, Gooty and in turn, it was registered as P.R.C.No.5 of 2001 and committed the case under Section 209 Cr.P.C. to the Sessions Division, Anantapur as per orders dated 24.03.2001. In turn, the Principal District and Sessions Judge, registered the same as S.C.No.406 of 2004 and made over to the VI Additional Sessions Judge, Gooty. Though the prosecution figured A7 and A.8, the investigation discloses that they did not participate in the offence, hence, they were deleted.

7. After securing presence of the accused, the Sessions Judge framed charges against A.1 to A6 and A.9 to A.11 for the offences punishable under Sections 148 IPC and 302 IPC. The charges were read over and explained to the accused in Telugu, the accused pleaded not guilty and claimed to be tried.

8. During trial, the prosecution examined PWs.1 to 9, marked Exs.P.1 to P.10, Exs.D.1 to D.4 and Mos.1 to 5. After closure of the prosecution evidence, accused were examined under Section 313

Cr.P.C. explaining incriminating material available in the evidence of prosecution witnesses, they denied and reported no defence.

9. Upon hearing arguments of both counsel, the trial Court found A1 to A11 not guilty for the offence punishable under Section 302 IPC and found A1 to A6 and A9 to A11 guilty for the offence punishable under Section 148 IPC, convicted and sentenced them to pay Rs.700/- each, in default each accused shall undergo one month simple imprisonment.

10. Aggrieved by the acquittal, the present revision case is filed mainly on the ground that the trial Court finding the accused guilty for the offence punishable under Section 148 IPC and acquitting them for the offence punishable under Section 302 IPC is highly illegal and contrary to principles of law and that the trial Court having held that the evidence of PW.1 and PW.7 discloses the presence of the accused at Thondapadu, who chased the deceased Sunkappa at material point of time, acquitted the accused for the offence punishable under Section 302 Cr.P.C. erroneously and thereby committed gross error in acquitting them for the said offence. Therefore, requested this Court to set aside the acquittal for the offence punishable under Section 302 IPC and sentence them appropriately finding them guilty for the said offence.

11. Learned counsel for the revision petitioner Dr.J. Vijaya Lakshmi appeared on behalf of Sri K.Somakonda Reddy, Advocate contended that the acquittal of accused for the offence punishable under Section 302 IPC while holding them guilty for the offence punishable under Section 148 IPC is a clear illegality and the

findings recorded by the trial Court is manifestly perverse and this Court can interfere with the findings recorded by the trial Court while exercising powers under Sections 397 and 401 Cr.P.C. and requested this Court to convict the accused for the offence punishable under Section 302 IPC also.

12. Learned Additional Public Prosecutor for the State argued in support of the petitioner and non-appeared for the respondents, though notices were served as per the endorsement.

13. The scope of revision under Sections 397 and 401 of Cr.P.C. is limited and mostly it is confined to legal aspect. The fact findings can be interfered only when the Court found that the fact findings recorded by the trial Court are manifestly perverse or apparently erroneous. Therefore, it is the duty of the petitioner to establish that the findings of the trial Court are manifestly perverse or apparently erroneous.

14. Learned counsel for the petitioner drawn the attention to the findings recorded by the trial Court holding A1 to A6 and A9 to A11 guilty for the offence punishable under Section 148 IPC, which establish their partition in the commission of offence.

15. The trial Court having held that the respondents formed into unlawful assembly with deadly weapons committed offence punishable under Section 148 IPC and acquitted the accused for the offence punishable under Section 302 IPC on the ground that some unknown culprits committed the murder of Sunkappa and FIR would not have altered at the earliest point of time with SHO.

The independent witness PW.7 has already deposed that at material point of time the accused armed with deadly weapons, chased Sunkappa towards Jawar crop. In spite of lengthy cross-examination on behalf of the accused nothing was elicited. The evidence of PW.1 was corroborated and particularly as she found that the accused formed themselves into unlawful assembly and chased Sunkappa and created apprehension that Sunkappa will be killed by the accused. Therefore, the trial Court believed the evidence of PWs.1 and 7 about chasing of Sunkappa by A1 to A6 and A9 to A11 and others and death of Sunkappa is also not in dispute. Since the death of Sunkappa is established by examining PW.4-doctor, who conducted autopsy over the dead body coupled with Ex.P.3-postmortem report. The doctor opined that the cause of death was due to fatal injuries received by Sunkappa. Apart from that Ex.P.5-inquest report coupled with oral evidence of PW.5-K.Adinarayana Reddy, retired VAO establish that the cause of death was due to injuries received by Sunkappa.

16. But now, the question is, who caused injuries, which resulted in death of Sunkappa.

17. The contention of the learned counsel for the petitioner is that trial Court having held that the accused committed the offence punishable under Section 148 IPC for forming into an unlawful assembly and chasing Sunkappa armed with deadly weapons ought to have found the accused guilty for the offence punishable under Section 302 IPC.

18. A specific finding as to why the evidence of PWs.1 and 7, who are eye witnesses was disbelieved was recorded by the trial Court. When the trial Court disbelieved the evidence of PWs.1 and 7, who spoke about commission of offence by the accused, no reason was found by the trial Court to acquit the accused for the offence punishable under Section 302 IPC. There is no dispute that when the findings of the trial Court are manifestly perverse and apparently erroneous, this Court can interfere with the fact findings after analyzing the entire material available on record as discussed above.

19. In the present facts of the case, the contention of the learned counsel for the petitioner is that the reasoning recorded by the trial Court is erroneous since the trial Court found the accused guilty for the offence punishable under Section 148 IPC, but acquitted them for the offence punishable under Section 302 IPC, though concluded that the accused formed into unlawful assembly, chased Sunkappa and armed with deadly weapons, towards his Jawar crop field and that itself is sufficient to conclude that the cause of death of Sunkappa was due to assault by the accused.

20. When the trial Court erroneously acquits the accused for the said offence and when the revisional Court finding that the findings of the trial Court are not based on evidence, the High Court can order for re-trial and cannot convert the acquittal into conviction in view of the bar under Sub-Section 3 of Section 401 Cr.P.C. The earlier judgment of the Apex Court in **K. Chinnaswamy Reddy v.**

State of A.P.¹ made it clear that it is open to the High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. The Court may however indicate some cases of this kind, which would in their opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal Court has wrongly held evidence, which was admitted by the trial Court to be inadmissible, or where material evidence has been overlooked either by the trial court or

¹ AIR 1962 SC 1788

by the appeal Court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal

21. Therefore from the law declared by the Apex Court, it is explicit that when the findings of the trial Court are not based on no evidence, the Court can order retrial. In the present case, the evidence of PWs.1 to 7 is consistent about the chasing of Sunkappa towards Jawar field, armed with deadly weapons and having believed their evidence in toto and finding the accused guilty for the offence punishable under Section 148 IPC ought to have convicted the accused for the offence punishable under Section 302 IPC, if injuries were caused by the accused, which lead to death. But the trial Court found some material inconsistencies in the evidence of PW.1 with regard to the inflicting injuries on the body of the Sunkappa and with reference to the weapons used in the commission of offence and the medical evidence is inconsistent with the ocular testimony. According to PW.1, that her father was hacked to death by hunting sickles and axes, whereas, the doctor categorically opined that the injuries would not have been possible by sharp edged weapons like hunting sickles and axes. However, PW.1 categorically stated that her father was only murdered by causing injuries with sharp edged weapons. Based on the inconsistency between ocular evidence and medical evidence, the case of the prosecution was disbelieved. When there is such material inconsistency in the evidence of PW.1 and medical

evidence of PW.4-doctor, it is difficult to hold the accused caused injuries with the weapons they were holding, it is difficult to find the guilty for the offence punishable under Section 302 IPC based on testimony of PW.1. However, PW.7 is the alleged direct witness, who witnessed chasing Sunkappa armed with deadly weapons like hunting sickles etc. Even if his evidence with regard to the chasing of Sunkappa by the accused is believed, the injuries found on the body could not have been caused with sharp edged weapon as per medical evidence of PW.4. In such a case, the benefit of doubt would go to the accused and therefore, the trial Court rightly acquitted the accused extending the benefit of doubt, in view of the material inconsistencies in the ocular evidence and medical evidence and consequently, it is difficult for this Court to hold that the findings of the trial Court are perverse or apparently erroneous or without any basis. Therefore, this Court has no other option except to concur with the findings recorded by the Courts below by exercising power under Sections 397 and 401 Cr.P.C.

22. In view of foregoing discussion, I find no manifest perversity or apparent error in finding the accused are not guilty for the offence punishable under Section 302 IPC, warranting interference by exercising power conferred by Sections 397 and 401 Cr.P.C and consequently, the revision case is liable to be dismissed.

23. Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 05.10.2017
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