

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1348 of 2005

JUDGMENT:

This criminal revision case, under Sections 397 and 401 of Cr.P.C., is filed questioning the propriety and legality of the judgment, dated 30-01-2004 passed in S.C.No.276 of 2002 by the Assistant Sessions Judge, Nandigama, against the acquittal of A-1 to A-3/respondents 1 to 3 for the offence punishable under Sections 148 and 307 read with 34 of IPC and acquittal of A-4/respondent No.4 for the offence punishable under Sections 323, 307 and 307 read with 34 of IPC.

The defacto complainant and accused are residents of Vellanki village of Veerulapadu mandal, within the limits of Veerulapadu Police Station. The 1st accused is the father of 2nd and 3rd accused. The 4th accused is the wife of the 2nd accused. Accused Nos.1 to 4 were harassing the complainant and his wife Padmavathi un-necessarily and creating troubles to them regarding the boundary dispute. The accused bore grudge against the complainant and his wife and were waiting for an opportunity. The accused used to harass the complainant daily by picking up quarrels with them and on the advice of the father-in-law of the complainant; the complainant and his wife were maintaining distance with the accused. While the matter stood thus, on 20-12-1997 at

about 6 P.M., when the complainant was serving grass to the buffalo, in front of his house, all the accused went to the house of the complainant, the 1st accused was armed with axe, the 2nd and 3rd accused armed with iron rods and the 4th accused joined them, abused the complainant and attacked him and beat him and his wife Padmavathi indiscriminately without showing any mercy. The 1st accused beat the complainant with axe on the left side of his head; 2nd accused beat the complainant with iron rod on the both sides of his ribs; A-3 beat on the both sides of his ribs and on the head above the injury caused by A-1. The 4th accused abetted the 1st and 3rd accused to beat the complainant and asked them not to leave and kill him. A-2 beat with iron rod on the right side of forehead and left elbow of the complainant's wife Padmavathi. A-3 also beat the said Padmavathi with iron rod on the back of right collar bone. A-4 caught hold the tuft of Padmavathi and abetted A-1 to A-3 to kill and hack complainant and his wife. In the incident, the complainant and his wife received grave bleeding injuries were sutured in the Government hospital. The said incident was witnessed by Mallempudi Hanumantha Rao and Mallempudi Punnamma and others and due to their intervention the complainant and his wife were rescued from the hands of accused. On the statement of the complainant, Veerulapadu Police registered a case in Crime No.66 of 1997 for the offence punishable under Section 324 read with 34 of IPC.

During the course of investigation, A-1 to A-3 were arrested and remanded to judicial custody and thereafter they were released on bail. During investigation police examined several witnesses and recorded their statements and filed a Memo based on the evidence collected during investigation to alter the Section of law from Section 324 of IPC to Section 307 of IPC. Based on the evidence collected, the Magistrate accorded permission for alteration.

After appearance of the accused charges for the offences punishable under Section 324 of IPC against A-1 to A-3 and Section 323 against A-4 and Section 307 against A-4 and Section 307 read with 34 IPC against A-1 to A-4 and Section 148 IPC against A-1 to A3 were framed, read over and explained to them. They pleaded not guilty and claimed to be tried.

As stated above, basing on the statement of the complainant, police registered a case against the accused for the offence punishable under Section 324 IPC. The police filed charge sheet which was numbered as C.C.No.78 of 1998 on the file of the Judicial Magistrate of First Class, Nandigama. The accused, the witnesses and the injured are one and the same in both the cases, therefore, both the cases were tried together by exercising power under Section 210 of Cr.P.C.

During trial, on behalf of prosecution, PWs.1 to 8 were examined and got marked Exs.P1 to P6. After closure of

prosecution evidence the accused were examined under Section 313 of Cr.P.C., explaining the incriminating material that appeared against them. The accused denied the same and reported no defence.

Upon hearing argument of both counsel the Sessions Court found the accused guilty for the offence punishable under Section 324 of IPC and they were convicted and sentenced for the said offence. But, A1 to A3 were acquitted for the offence punishable under Sections 148 and 307 read with 34 of IPC and A4 was also acquitted for the offence punishable under Sections 323, 307 and 307 read with 34 of IPC.

Dissatisfied with the acquittal of accused for the offences, as stated above, the present revision case is filed by the defacto complainant on various grounds.

The main contention of the petitioner/defacto complainant is that PWs.1 to 5, who are injured witnesses, testified about the occurrence of incident, nature of incident and including causing injuries and the testimony of PWs.1 to 5 is supported by medical evidence. But the trial Court did not consider the evidence on record in proper perspective and committed grave error and found them not guilty for the offences, stated above.

As stated above, the case of the prosecution is that A-1 to A-3 armed with deadly weapon caused bleeding injuries on the body of PWs.1 and 2 and they were treated by the Doctor on reference by police. But the injuries found on the body of PW-1, by the Doctor, who is examined as PW-4 are as follows:

- 1) a lacerated injury 10 X $\frac{1}{2}$ X $\frac{1}{2}$ cm in the left parietal region, blood clots present; red in colour
- 2) A contusion 6 cm in length over left side of chest, tenderness present
- 3) A contusion of 5" over left lumbar region; tenderness present

In the cross-examination of PW-4 he admitted that the injuries caused with sharp edged object may not always cause incised wound and some times incised wound may be caused. The wound certificate issued by him was marked as Ex.P2. Similarly, in the cross-examination it is suggested to PWs.1, 3 and 5, by the accused, in their cross-examination that PW-1 received injuries in the hands of public while he was creating nuisance in drunken state and that the accused did not beat him. But the witnesses denied the suggestion and therefore, the injuries caused on the body of PW-1 with blunt object is established and consequently the trial Court found the accused guilty for the offence punishable under Section 324 read with 34 of IPC while finding A1 to A3 not guilty for the offence punishable under Sections 148 and 307 read with 34 of IPC and A4 not guilty for the offence

punishable under Sections 323, 307 and 307 read with 34 of IPC.

Now, in view of the injuries sustained by PW-1, whether the accused had any intention to cause death of petitioner is a question to be decided.

As seen from the material on record the accused allegedly caused injuries on the body of PW1 and evidence of PW-1 shows that A-1 beat him with an axe on the left side of his head, A2 beat him with iron rod on the both sides of ribs, A-3 beat on the both sides of his ribs and on the head above the injury caused by A-1 and A4 abetted the 1st and 3rd accused to beat him and asked them not to leave him and kill him. A-2 beat with iron rod on the right side of forehead and left elbow of his wife Padmavathi and A-3 also beat his wife with iron rod on the back of right color bone and A-4 caught hold the tuft of Padmavathi and abetted A-1 to A-3 to kill and hack him and his wife. There are corresponding injuries on the body of PW-1 when examined by Doctor – PW4 and as per the wound certificate-Ex.P2. PW-2 is the brother of PW1, who is resident of adjacent house, PW-3 is his wife. Evidence of PWs.2 and 3 is supporting evidence of PW-1 and at best their evidence also establishes that PW-1 received bleeding injuries caused with blunt object.

Though they stated that accused had an intention to kill them, if really A-1 armed with an axe, which is a deadly

weapon with one side sharp edge and other side blunt he would have caused lacerated injury to PW-1. If A-1 caused injury with a sharp side of the axe, if really he intended to kill PW-1, he ought not to have caused injury with the blunt side of the axe. This itself indicates that A-1 had no intention to kill him and apart from that the other injuries caused on the body of PW1 by the other accused are only simple in nature but they allegedly caused injuries with iron rods. If really, the other accused had an intention to kill the petitioner, they would have caused grievous injuries with iron rods, which would result fracture of ribs. But they caused only simple injuries. Therefore, taking into consideration of seat of injuries, nature of injuries the Court can draw inference that they had no intention to kill the petitioner. Hence, based on the testimony of PW1 coupled with the evidence of PWs.2 and 3 and medical evidence the trial Court rightly concluded that the accused had no intention to cause death of the petitioner and caused those injuries referred in Ex.P-2. Therefore, there is absolutely no material to establish the intention of accused to kill the petitioner while causing injuries with such deadly weapons like axe and iron rod. Hence, the finding recorded by the trial Court that they had no intention to kill the petitioner is based on appreciation of oral and documentary evidence and such finding cannot be interfered by this Court while exercising powers conferred under Sections 397 and 401 of Cr.P.C.

The powers of the Court against the acquittal interference with the acquittal are limited. The Court, normally, will not interfere with such fact finding as of general rule, where there are concurrent findings of lower Court except in special and exceptional circumstances.

Similarly, in a case reported in **K. Chinnaswamy Reddy vs State Of Andhra Pradesh**¹, the Hon'ble Apex Court held as follows:

"It is true that it is open to a 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 a. 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. We may however indicate some cases of this kind, which would in our 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

¹ 1962 AIR SC 1788

inadmissible, or where material evidence has been overlooked either by the trial court or 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; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of a. 439 (4). We have therefore to see whether the order 'of the High Court setting aside the order of acquittal in this case can be upheld on these principles. A perusal of the judgment of the High Court shows that the High Court has gone into the evidence in great detail so far as the case against the appellant was concerned. In our opinion, the High Court should not have dealt with evidence in such detail when it was going to order a retrial, for such detailed consideration of evidence, as pointed out in Logendranath's case (1) amounts to loading the dice against the appellant, when the case goes back for retrial. If the matter stood at this only, we would have no hesitation in setting aside the order of the High Court directing a retrial; but there is one important circumstance in this case to which the High Court has adverted in passing, which, in our opinion, was sufficient to enable the High Court to set aside the acquittal in this case."

In view of the law declared by the Hon'ble Apex Court this Court while exercising power under Section 397 of Cr.P.C., cannot convert the acquittal into conviction and to remit the matter to the Court only in exceptional circumstances. What are the exceptional circumstances are not enumerated in any law declared by any of the Courts. Therefore, no straight jacket formula is laid down to exercise such power of interference with the fact finding recorded by the Court below while exercising power in this case. The trial

Court on analyzing the entire material on record including the evidence of PW-1 coupled with medical evidence of PW-4 based on Ex.P-2, more particularly based on nature of injury and seat of injury and weapons allegedly used in the commission of crime concluded that the accused had no intention to kill the petitioner/defacto complainant, therefore, such fact finding cannot be interfered by re-appreciation of evidence while exercising power under Sections 397 and 401 of Cr.P.C. and that to I find no special circumstance to remit the matter to the Court below while setting aside the acquittal. Therefore, the judgment and calendar of Court below is free from any illegalities or irregularities warranting interference of this Court.

In view of my forgoing discussion, I find no ground to convert the acquittal into conviction or atleast to remit the matter to the Court below. Consequently, the revision case is liable to be dismissed.

In the result, the Criminal Revision Case is dismissed.

The Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

September 11, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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