

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY THE SIXTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVENTEEN

P R E S E N T

HONOURABLE SRI JUSTICE
M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 797 OF 2017

Between:

Kannedari Srinivasa Rao

...

Petitioner/PW-1
{ Appellant }

V/s.

The State of Andhra Pradesh
Represented by the Public Prosecutor
High Court of Judicature for the State of
Telangana & Andhra Pradesh,
Hyderabad & Ors.

...

Respondents/Respondents

Counsel for the Petitioner : Sri K. Mohan Rami Reddy

Counsel for the Respondents: Sri Manda Adam for R-1 & R-2
Public Prosecutor for R-3

The court made the following: [ORDER follows]

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY**CRIMINAL REVISION CASE NO. 797 OF 2017****ORDER :**

This Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., questioning the propriety and legality of the judgment dated 31/10/2016 passed in Criminal Appeal No. 82 of 2015 by the Judge, Family Court-cum-VIII Additional District and Sessions Judge, Prakasam at Ongole, confirming the acquittal of the accused recorded by the II-Additional Judicial Magistrate of First Class, Ongole in C.C.No. 259 of 2010, dated 02/02/2015.

2. The Revision Petitioner herein is the defacto-complainant, who lodged a complaint against the respondents 1 and 2 herein alleging that on 15/06/2007 at about 01:00 p.m., the surveyor came and planted boundary pegs. Thereupon, grew wild on the action of accused, on the same day at about 06:00 p.m., when PW-1 questioned about the measuring of lands, then A-1 beat PW-1 with stick all over his body and caused injuries on his body, resulting which PW-1 fell on the ground, then A-2 kicked PW-1 with his legs and caused injuries. On the

intervention of elders, PW-1 was rescued from the hands of the accused and got admitted in the hospital. The statement of PW-1 was recorded and on the complaint of PW-1, a case in Crime No.33 of 2007 was registered by the Kothapatnam Police for the offence punishable under section 324 read with section 34 of IPC against A-1 and A-2, issued Ex.P-6/FIR and investigated into. On examination by PW-9 Dr.T.Ramesh, Civil Assistant Surgeon, Govt.Hospital, Ongole, Ex.P-8 injury certificate of PW-1 was issued and he opined that the injuries sustained by PW-1 are simple in nature and might have caused by blunt object. After completion of investigation, charge sheet was filed before the II-Additional Judicial Magistrate of First Class, Ongole, who in turn taken cognizance of the offence and after securing the presence of the accused, copies of documents were furnished to A-1 and A-2 and they were examined under section 239 Cr.P.C., explaining the substance of accusation. Charge under section 324 of IPC was framed against A-1 and charge under section 324 read with section 34 of IPC was framed against

A-2 were framed against them and they pleaded not guilty and claimed to be tried.

3. During the course of trial, PWs 1 to 10 were examined and Exs.P-1 to P-8 were marked on behalf of the prosecution.

4. After closure of the prosecution evidence, A-1 and A-2 were examined under section 313 Cr.P.C., explaining the incriminating material appearing against them in Telugu. A-1 and A-2 denied the same and reported no defence evidence.

5. Upon hearing the argument of Assistant Public Prosecutor and defence counsel, in view of discrepancy between ocular evidence and medical evidence, the trial court acquitted the respondents 1 and 2 [A-1 and A-2] for the offence punishable under section 324 read with section 34 of IPC finding them not guilty.

6. Aggrieved by the calendar and judgment of acquittal of respondents 1 and 2 [A-1 and A-2] in C.C.No. 259 of 2010, the defacto-complainant preferred Criminal Appeal No. 82 of 2015 before the Judge, Family Court-cum-VIII-Additional District and Sessions Judge,

Prakasam at Ongole, who in turn on re-appreciation of oral and documentary evidence, dismissed the above criminal appeal vide judgment dated 31/10/2016 by confirming the acquittal recorded by the trial court and found the respondents 1 and 2 [A-1 and A-2] not guilty and acquitted them for the offences punishable under section 324 read with section 34 of IPC.

7. Aggrieved thereby, the defacto-complainant/PW-1 filed the present criminal revision case on various grounds. The courts below did not appreciate evidence with regard to land dispute between the parties and the respondents 1 and 2, who raised the dispute and beat PW-1 and others, which goes to show that the respondents 1 and 2 herein are aggressors and they are liable to be convicted. The lower appellate failed to appreciate the evidence in proper perspective and the discrepancy is not material discrepancy, as both are case and counter-case. The courts below ought to have seen that the Investigating Officer though is one and the same in both the case and counter-case did not file charge sheet of counter-case in this case intentionally. The courts

below ignored the evidence of PWs. 1, 2, 3, 8 and 9 coupled with the evidence of PW-10 is consistent, trustworthy would have convicted the respondents 1 and 2 herein. When the evidence of PW-1 is consistent, both trial court and appellate court erred in acquitting and finding respondents 1 and 2 not guilty and that apart the medical evidence supports the case of prosecution that PW-1 received injuries in the hands of PW-1 with a dangerous weapon. Therefore, the courts below erroneously held that there is discrepancy in the evidence of PWs 1 to 3 and PW-10 with regard to seat of injuries caused by respondents 1 and 2 [A-1 and A-2] on the body of PW-1 and further held that there are several discrepancies, omissions and exaggerations in the evidence of PWs 1 to 3 and PW-10 and those discrepancies are minor discrepancies to discredit the same. Therefore, prayed this court to allow this revision and convict the respondents 1 and 2 [A-1 and A-2] for the offences punishable under section 324 read with section 34 of IPC.

8. During hearing, Sri K. Mohan Rami Reddy, learned counsel for the Revision Petitioner while reiterating the contentions would draw the

attention of this Court to the findings recorded by the trial court and appellate court at Para Nos. 19, 20 and 21 of the trial court judgment more particularly when PW-9 Dr.T.Ramesh, on examination found no tenderness on the chest of PW-1 and that itself is not a ground to acquit the respondents 1 and 2 herein for the offences punishable under section 324 read with section 34 of IPC.

9. Sri Manda Adam, learned counsel for the respondents 1 and 2 argued the matter in support of the findings recorded by both the courts below.

10. The main reason for acquitting the respondents 1 and 2 [A-1 and A-2] by the trial court is that the material discrepancies in the evidence of PW-1 and the medical evidence of PW-9 Dr.T.Ramesh coupled with Ex.P-8 wound certificate. According to the case of prosecution, A-1 beat PW-1 with stick on all over his body and caused injuries on his body, resulting which PW-1 fell on the ground and then A-2 kicked PW-1 with his legs and caused injuries. There must be force while beating PW-1 by A-1. If A-1 beat with such force on the chest of

PW-1, he would have received grave injury with tenderness. According to testimony of PW-1, A-1 beat with stick on all over his body but PW-9 Medical Officer, on 15/6/2007 at 08:20 p.m., examined PW-1 and found two injuries (i) complaining of pain in chest and (ii) complaining of pain in abdomen. On examination, PW-9 found no tenderness and swelling noticed in the umbilical region and he mentioned the injuries in Ex.P-8. Similarly A-2 kicked PW-1 with his legs and caused injuries but no tenderness was found. In this case, A-1 allegedly beat PW-1 with stick on all over his body and on account of which PW-1 fell down. In such circumstances, there must be tenderness on the body of PW-1 more particularly on the chest. No other injury was found by PW-9 while issuing Ex.P-8. The other witnesses; PWs 4 to 7, who are independent eye-witnesses to the incident did not support the prosecution and they turned hostile and denied their statements recorded by the police as in Exs.P-2 to P-5. The other witnesses are only PWs 2 and 3. PW-2 is the elder brother of PW-1 and PW-3 is the younger brother of PW-1. The testimonies of PWs. 2 and 3 are not sufficient to hold that respondents 1

and 2 caused injuries on the body of PW-1. Therefore, in view of discrepancy between medical and ocular evidence, the trial court disbelieved the prosecution case and extended benefit of doubt to the respondents 1 and 2. The appellate court on re-appreciation of evidence dismissed the appeal in view of material discrepancies between the ocular evidence and medical evidence. Hence, it is difficult to reverse such finding by this Court.

11. The scope of revision under section 397 and 401 of Cr.P.C. is limited. This Court cannot interfere with the concurrent fact findings of the court below unless there is manifest error apparent on record. But this Court can order for re-trial in exceptional circumstances. Even to order for re-trial, no such exceptional circumstances are brought to the notice of this Court. When there is no evidence that A-1 and A-2 caused such injuries with stick, this Court cannot normally interfere with the concurrent findings recorded by the court below. Consequently, I find no merit in this criminal revision case and it deserves to be dismissed.

12. In the result, the Criminal Revision Case fails and is accordingly *dismissed* at the stage of admission.

13. As a sequel, *miscellaneous petitions* if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY.



HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 797 OF 2017
[DISMISSED]



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