

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.806 of 2005

ORDER:

Defacto complainant in Crime No.22 of 2001 of Bangarupalem Police Station, P.W.1 in S.C.No.290 of 2001 on the file of Assistant Sessions Judge, Chittoor preferred this revision under Sections 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") questioning the acquittal of accused, finding them not guilty for the charges framed against them by the Sessions Court.

The case of the prosecution, in nutshell, is that there was a civil dispute between P.W.1 and A.1 over the cart track at their house in respect of the said dispute over the pathway, P.W.1 filed a civil case in Principal Junior Civil Judge's Court, Chittoor, against A.1 in O.S.No.153 of 1994 and obtained permanent injunction restraining the accused from interfering with peaceful possession of the land of P.W.1. In E.A.No.1202 of 2000, P.W.1 obtained police protection orders from I Additional Junior Civil Judge's Court, Chittoor against the accused. On 22.12.2000 surveyor visited the land of P.W.1 and laid boundary marks on the land of P.W.1 in pursuance of Court orders. After surveyor marked the boundaries, P.W.1 started digging pits in his land for laying fencing. Then A.1 with his followers highhandedly came and obstructed P.W.1 from digging pits. A.1 also did not care for the presence of police to protect P.W.1 as per court orders. Police registered a case against A.1 and when police came to make enquiry on 26.01.2001, A.1 and

his followers ran away and again returned to village after departure of the police. Hence, A.1 to A.17 bore grudge against P.W.1 to finish him and were waiting for an opportunity to do away with his life.

During the night of 26/27.01.2001 at about 2.00 a.m. while P.W.1 to 3 were sleeping in their house, A.1 to A.17 formed themselves into unlawful assembly with common object of killing P.W.1 in pursuance of the said common object and with due preparation to beat P.W.1 went to the house of P.W.1. All the accused armed with sticks broke the doors of the house, trespassed into the house and dragged P.W.1 out of his house. All the accused dragged P.W.1 to the house of A.1 by beating him. In front of the house of A.1, all the accused tied P.W.1 to a stone pillar with coconut rope. A.1 instigated the accused to kill P.W.1 to remove him from their way. At his instigation, all the accused beat P.W.1 indiscriminately with sticks, hands and legs. A.1 beat P.W.1 with sticks on his left waist and back and caused injuries. A.2 beat P.W.1 with a stick on his back and caused injuries. A.5 beat P.W.1 with a stick on his right leg and caused injury. A.3 beat P.W.1 with a stick on his left foot and caused injury. A.6 beat P.W.1 with a stick on his left hand and caused injury. When P.W.2 intervened to rescue P.W.1; A.1, A.3, A.5, A.15 beat P.W.2 and caused injuries. When P.W.3 intervened, accused pushed her aside.

On receipt of telephone call from P.W.3, S.I of police Bangarupalem arrived at the scene of offence with his staff. On seeing them all the accused ran away. P.Ws.1 and 2 were brought to police station after the occurrence. At about 03.00 a.m. P.W.1

lodged a report with S.I. of Police, basing on the said report Cr.No.22 of 2001 was registered by the police against the accused.

During investigation, Inspector of Police examined several witnesses, recorded their statements under Section 161 (2) Cr.P.C., observed scene of offence, filed final report before Judicial Magistrate of First Class, Chittoor. On taking cognizance, IV Additional Judicial Magistrate of First Class, Chittoor, having come to conclusion that the case is exclusively triable by a Court of Sessions, after following necessary procedure committed the case to Principal Sessions Judge, Chittoor, who in turn made over the Sessions Case to the trial Court to try and decide in accordance with law.

After securing the presence of the accused, hearing Public Prosecutor and counsel for defence, the trial Court framed charges under Sections 147, 148, 458 (altered from 452 of I.P.C.), 342, 307 and 323 of I.P.C. against A.1 to A.17, under Section 324 I.P.C. against A.1, A.2, A.3, A.5 and A.6, under Section 324 read with 149 of I.P.C. against A.4, A.7 to A.17, under Section 324 I.P.C. against A.1, A.3, A.5 and A.15 and under Section 324 read with 149 I.P.C. against A.2, A.4, A.6 to A.14, A.16 and A.17, read over and explained to the accused in Telugu, they pleaded not guilty and claimed to be tried.

On behalf of the prosecution, P.Ws.1 to 8 were examined and Ex.P.1 to P.6 and M.O.1 were marked. 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.

Upon hearing argument of both counsel, trial Court found A.1 to A.3, A.5 and A.6 guilty for the offence punishable under Sections 323 and 342 of I.P.C.; convicted and sentenced to pay fine of Rs.500/- on each count for each accused i.e. total fine of Rs.5,000/- in default to suffer S.I. for one month by each of the accused for each offence and found not guilty for the offence punishable under Sections 147, 148, 458, 307, 324 and 324 read with 149 of I.P.C. and they are acquitted for the said charges. The trial Court also found A.4, A.7 to A.17 not guilty for the offences with which they are charged and they are acquitted accordingly.

Aggrieved by the acquittal of A.1 to A.3, A.5 and A.6 for the offence punishable under Sections 147, 148, 458, 307, 324 and 324 read with 149 of I.P.C. and acquittal of A.4, A.7 to A.17 for all the charges framed against them, P.W.1 in S.C.No.290 of 2001 preferred the present revision on various grounds under Sections 397 and 401 of Cr.P.C.

The main grounds urged before this Court in this revision are that the trial Court committed glaring mistake in finding the accused not guilty for the offences punishable under Sections 147, 148, 452, 342, 307 and 324 read with 149 of I.P.C. though material on record established that the accused caused injuries on P.W.1 as the accused beat P.W.1 with sticks, but the trial Court on erroneous appreciation of evidence, acquitted the accused for the

charges framed against them and requested this Court to convict the accused for the offences referred above.

When the matter reached, Sri D.Vijayachandra Reddy, learned counsel for the petitioner did not appear and advance arguments, but this Court cannot dismiss the revision for default, however this Court can decide the revision on merits in view of the law declared in “**Nisha Sharma and others v. Vinod Kumar Sharma**¹” wherein it is made clear that the revision cannot be dismissed for default and even the petitioner or his advocate did not appear before the Court, the Court shall examine the record and decide the revision on merits.

Persuaded by the law declared by the Delhi High Court, I would like to decide this revision, perusing the record.

The present revision is filed under Sections 397 and 401 of Cr.P.C. to convict the accused for various charges when the trial Court found the accused not guilty. The scope of revision under Sections 397 and 401 of Cr.P.C. is limited and unless the Court concludes that there is manifest perversity or apparent error in appreciation of evidence by the trial Court, this Court cannot normally interfere with the fact findings recorded by the trial Court. Apart from that there is a clear interdict on the powers of this Court under Section 401 (3) of Cr.P.C. as the same bars power of this Court converting acquittal into conviction.

Section 401 confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts

¹ 1990 Cri.L.J. NOC 57 (Delhi)

established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or apparent harshness of treatment which has on one hand resulted in some injury to the due maintenance of law and order or on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this section is discretionary power, has to be exercised in the aid of justice and this Court will not exercise jurisdiction under this Section if there has been no failure of justice even though the proceedings of the lower court suffer from irregularity or impropriety as held by Apex Court in “**State of West Bengal v. Tulsidas**²”. The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of relieving persons who have not had a fair trial or whose convictions have been arrived at by non-observance of material provisions of the law or by such misdirections as must have occasioned a failure of justice as held in “**Prahlad v. Emporer**³”. Further, the High Court can, in exercise of its revisional powers, either suo motu on the basis of its own knowledge derived from any source whatsoever, or on an application by a complainant, exercise the powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

² (1964) 1 CrL.L.J. 443 (SC)

³ 48, CrL.LJ 173, 174 (Pat)

Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;

Secondly, it cannot convert a finding of acquittal into one of conviction;

Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

Thus, the powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the courts below. As a general rule, the High Court will not in revision interfere with a finding of fact and this is specially so, where there are concurrent findings of facts of the lower Courts. But, in special and exceptional circumstances, the High Court is entitled to go into questions of fact and do justice, though the power should be rarely exercised, as held by Apex Court in “**S.P.S. Jayam & CO. v. Nehrusadan**”⁴.

In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly perverse or patently erroneous in view of the law declared by the Apex Court in “**Bansilal v.Laxman**”⁵.

In “**Venkatesan v. Rani and another**”⁶ the Apex Court held that the revisional jurisdiction of the High Courts while examining

⁴ 1977 CrL.L.J. 1101

⁵ (1986) 3 SCC 445

⁶ AIR 2013 SC 3320

an order of acquittal is extremely narrow and ought to be exercised only in cases where the Trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code. Needless to say, if within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction. The law in this regard is well settled by a catena of decisions. Illustratively, as also chronologically, the decisions rendered in “Pakalapati Narayana Gajapathi Raju v. Bonapalli Peda Appadu (1975) 4 SCC 477”, “Akalu Ahir v. Ramdeo Ram (1973) 2 SCC 583”, “Mahendra Pratap Singh v. Sarju Singh (AIR 1968 SC 707)”, “K. Chinnaswamy Reddy v. State of A.P. (AIR 1962 SC 1788) and “Logendranath Jha v. Polai Lal Biswas (AIR 1951 SC 316)” may be referred to. Specifically and for the purpose of a detailed illumination on the subject the contents of paras 8 and 10 of the judgment in the case of “Akalu Ahir v. Ramdeo Ram” (supra) may be usefully extracted below.

“The Apex Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:

- (i) Where the trial Court has no jurisdiction to try the case, but has still acquitted the Accused;
- (ii) Where the trial Court has wrongly shut out evidence which the prosecution wished to produce;
- (iii) Where the appellate court has wrongly held the evidence which was admitted by the trial Court to be inadmissible;
- (iv) Where the material evidence has been overlooked only (either) by the trial Court or by the appellate court; and
- (v) Where the acquittal is based on the compounding of the offence which is invalid under the law.”

In those circumstances alone, the Court can exercise the jurisdiction to interfere with such findings on acquittal.

In “**Satyajit Banerjee v. State of West Bengal**”⁷ the Apex Court held that if a retrial is directed in exercise of revisional powers by the High Court, the evidence already recorded at the initial trial cannot be erased or wiped out from the record of the case. The trial Judge has to decide the case on the basis of the evidence already on record and the additional evidence which would be recorded on retrial.

In “**Johar v. Mangal Prasad**”⁸ the Apex Court held that the approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under Sections 397 and 401 of Cr.P.C., it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.

⁷ AIR 2005 SC 4161

⁸ AIR 2008 SC 1165

In “***Sheetala Prasad v. Sri Kant***”⁹ the Apex Court held that the High Court while exercising the revisional jurisdiction at the instance of a private complainant, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-section (3) of Section 401 of Cr.P.C. prohibits conversion of a finding of acquittal into one of conviction.

In view of the consistent law declared by the Apex Court in the above judgments, only in the circumstances stated above the Court can exercise its jurisdiction to interfere with the fact findings and at the same time, this Court cannot convert acquittal into conviction, but can order re-trial of the case by the trial Court in extreme circumstances where there is manifest perversity or apparent error in the judgment of the trial Court.

Coming to the present case, evidence adduced by the prosecution disclosed certain facts attributing specific overt acts against each of the accused, they are as follows:

- (1) A.1 beat P.W.1 with sticks on his left waist and back and caused injuries.
- (2) A.2 beat P.W.1 with a stick on his back and caused injuries.
- (3) A.5 beat P.W.1 with a stick on his right leg and caused injury.
- (4) A.3 beat P.W.1 with a stick on his left foot and caused injury.

⁹ AIR 2010 SC 1140

(5) A.6 beat P.W.1 with a stick on his left hand and caused injury.

(6) When P.W.2 intervened to rescue P.W.1, A.1, A.3, A.5 and A.15 beat P.W.2 and caused injuries.

Causing injuries on the body of P.W.1 and P.W.2 at best establish that only A.1, A.2, A.3, A.5 and A.6 alone participated in the incident. The trial Court found them guilty for the offences punishable under Sections 323 and 342 of I.P.C. and not guilty for the offences punishable under Sections 147, 148, 458, 307, 324 and 324 read with 149 of I.P.C. and so far as respondents in this revision are concerned no overt acts have been attributed against any individual accused, more particularly A.4, A.7 to A.17. In the absence of evidence to establish the complicity of A.1 to A.3, A.5 and A.6 for the offences punishable under Sections 147, 148, 458, 307, 324 and 324 read with 149 of I.P.C. and complicity of A.4, A.7 to A.17 for the charges framed against them, the trial Court has no option except to conclude that the respondents did commit no offence. The wound certificate of P.Ws.1 and 2 at best establish that they sustained injuries in the hands of A.1, A.2, A.3, A.5 and A.6 not in the hands of A.4 and A.7 to 17. Though specific allegation is made that when P.W.2 intervened to rescue P.W.1; A.1, A.3, A.5 and A.15 beat P.W.2 and caused injuries, but these facts were not spoken by P.W.2 in his evidence. When absolutely no evidence is brought on record to establish specific overt acts against each of the accused it is difficult to order re-trial of the case by the trial

Court while exercising power under Section 401 of Cr.P.C. since I find no extreme circumstance to order re-trial.

One of the grounds urged before this Court is that the trial Court did not appreciate the evidence, but this Court while exercising power under Section 397 of Cr.P.C. cannot reappreciate the evidence in view of the limited scope of revisional jurisdiction.

Surprisingly, only M.O.1 – rope was seized under Ex.P.4 mahazarnama dated 27.01.2001 and produced before the Court and no sticks are seized and not produced before the Court and marked as material object. Apart from that Ex.P.1 - complaint, which set the criminal law into motion, is silent with regard to specific overt acts against each of the accused. In those circumstances it is difficult to reverse the fact findings recorded by the trial Court and order retrial by the trial Court when I find no manifest perversity or apparent error, which calls for interference of this Court. Therefore, I find no merit in this revision and the same is deserves to be dismissed.

In the result, the criminal revision case is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

18.08.2017
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