

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1723 of 2005

JUDGMENT:

This revision is preferred under Sections 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") by the *de facto complainant* questioning the legality, propriety and regularity of the Calendar and Judgment in S.C.No.368 of 2003 dt.06.01.2005 passed by Additional Assistant Sessions Judge, Eluru, finding the accused/respondent Nos.2 to 4 herein, not guilty for the offences punishable under Sections 341, 324, 354 and 384 IPC and acquitted them.

The case of the prosecution in brief is that the victim-PW.1 is native of Boyagudem of Chintalapudi Mandal and she is a widow living alone in her own house and eking out her livelihood by selling milk and cultivating her agricultural lands. Taking advantage of her loneliness, the accused assaulted on her on one occasion and thus, she filed a case against them, which is pending before the Court of Judicial First Class Magistrate, Chintalapudi.

On account of pendency of Criminal case against the accused, they bore grudge against the victim and hatched a plan to obtain her signatures on blank papers with a view to get the said case compromised in the Court. In execution of their evil plan, on 01-02-2003 at about 8.00 PM while Pw.1 was proceeding with milk can towards customer's house and when she reached near the house of A.2, A.1 abused her in filthy language and caught hold of her tuft and forcibly pulled her into the house and wrongfully restrained and demanded her to put her signatures on blank papers, but she denied the demand. Thereupon, all the accused outraged the modesty of the victim by pulling her saree and tore her blouse and tied back her both

hands with a rope and beat her with sticks and caused simple injuries and the same was witnessed by PWs. 2 and 3, who are agricultural coolies working under Pw.1 and who interfered and rescued her from the illegal confinement of accused. Thereupon, the accused attributed illegal contact to Pw.2 with PW.1 and tied back his hands with a rope and beat them and they also extorted and taken away one she-buffaloe of PW.1 by putting her in fear and threat and thereafter, she reported the matter to the police vide Ex.P.1. On the strength of Ex.P.1, the police registered a case in Cr.No.17 of 2003 under Sections 341, 324, 384 and 354 r/w 34 IPC and issued FIR.

During the course of investigation, PW.9 inspected the scene and prepared rough sketch and referred Pw.1 to the Doctor/ Pw.7, who issued Wound Certificate, vide Ex. P.5 and later he filed charge sheet after completion of investigation.

On appearance of the accused, the trial Court took the case on file against accused for the offence punishable under Section 354 of Indian Penal Code (for short "I.P.C.") after following necessary procedure and framed charges for the offences punishable under Sections 324,354 and 384 IPC and the contents of the charges were read over and explained to them in Telugu, they pleaded not guilty and claimed to be tried.

During trial, PWs. 1 to 9 were examined and Exs. P.1 to P.7 were marked, Ex.D.1 was marked. After completion of prosecution side evidence, the accused were examined under Section 313 Cr.P.C. explaining the incriminating material appeared against them in the evidence of prosecution witnesses, but they denied the same and reported no defence.

Upon hearing both the counsel, the trial Court found the accused not guilty for all the offences for which they charged, assigning its own reasons and acquitted them.

Aggrieved by the Calendar and Judgment in SC.No.368 of 2003, the present Criminal Revision case is filed mainly contending that the Sessions Court ignoring the evidence of Pws. 1 and 2, who are injured witnesses and whose testimony is trustworthy found the accused not guilty erroneously, and apart from that the findings recorded by the Sessions Court are not based on material and they prayed to set aside the acquittal passed by the Sessions Court convicting the accused for the offences they were charged.

During hearing, Sri M.V. Bharati, learned counsel for the Appellant, reiterated the contentions raised in the grounds of appeal, whereas the learned Public Prosecutor for the State of Andhra Pradesh supported the Judgment, drawing attention of this Court to para No.17 of the Judgment.

The jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is Limited. Section 401 Cr.P.C confers a kind of paternal and supervisory jurisdiction on the high Court, over all other criminal Courts 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 the other 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*¹. 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 mis-directions as must have occasioned a failure of justice, as held in *Prahlad v. Emporer*². 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:

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, there is a clear bar under Section 401(3) Cr.P.C. to convert an acquittal into conviction, but the Court may set aside the judgment and order for re-trial of the accused for the offences they charged in extreme circumstances, but while exercising power under Sections 397 and 401 Cr.P.C., this Court cannot found the accused guilty recording conviction and sentence them, in view of the specific bar under Section 401(3) Cr.P.C..

In the present case, the accused outraged the modesty of Pw.1, who is a woman, by pulling her saree and toring her blouse, but the

¹ (1964) 1 Cr.L.J.443 (SC)

² 48, Cr.L.J.173,174(pat)

trial Court disbelieved the evidence as the torn saree and blouse were not seized and produced before the Court. Pw.7 did not give any explanation for failure to seize the torn saree and blouse of the victim, which are material objects to prove the incident. In the evidence, Pw.2 did not speak about pulling of saree of Pw.1 and outraging her modesty by the accused. PW.2 turned hostile and did not support the case of the prosecution. Though Pw.3 was examined, he also did not speak anything against the accused about outraging the modesty of Pw.1 by pulling her saree and tearing her blouse. Even as per the recitals in Ex.P.1 report, she did not state anything about pulling of her saree and torn her blouse and thus, the police did not seize those two material objects. Therefore, the trial Court disbelieved the offence punishable under Section 354 IPC and this Court, while exercising power under Section 401 Cr.P.C., cannot convert an acquittal into conviction, in view of the bar under Section (3) of 401 Cr.P.C, as I find no extreme circumstances to interfere with the fact findings recorded by the trial Court to exercise extreme power of Ordering re-trial.

The trial Court also disbelieved causing injuries on the body of Pws. 1 and 2 after tying their both hands to their back. As per the evidence of Pw.1, they all beat her with a pestle, which is a hard log uses for crushing, known as Chutny Pounder. If Pw.1 beat with such instrument, she would have sustained grave injuries on her body. But, strangely, the Doctor, after examination, found only two simple injuries vide Ex.P.5. The first injury is on the palmar aspect of left thumb of PW.1. If really, the accused caused injuries on the body of Pw.1 with a pestle, she would have sustained grievous injuries and not the simple injuries vide Ex.P.5.

The other probable circumstance disbelieving causing of grave injuries on the body of Pw.1 is that the Doctor, who issued Wound

Certificate, clearly admitted that there is a possibility of sustaining such injury due to fall on hard surface and when there is such possibility, it is difficult to conclude that the accused caused such grave injury on the body of Pw.1 and, therefore, the trial Court rightly disbelieved the offence punishable under Section 324 and this Court even after advertng to the evidence on record, find no ground to interfere with such findings. It is evident from the material on record that Pws. 4 and 5 did not support the prosecution case and on the other hand, failure to seize any material objects creates any amount of suspicion about occurrence of incident itself and that apart, earlier there was an animosity between Pw.1 and the accused and the motive behind the alleged offence is lodging a complaint and registering of crime and pendency of the same before the concerned Court. The motive is a double edged weapon either it can be a reason for foisting a false case or committing such offence and it is not a substantive piece of evidence, but a corroborative piece of evidence. Basing on the motive attributed to the accused, it is difficult to believe the very incident itself. Thus, the trial Court rightly disbelieved the incident itself and acquitted the accused.

Keeping in view the limited power of this Court, as stated in the earlier paras, I am unable to interfere with the fact findings recorded by the trial Court to convert acquittal into conviction, in view of Section 403(1) Cr.P.C as I find no extreme circumstances to order for re-trial of the case and consequently, the appeal deserves to be dismissed as it lacks merits.

Accordingly, this Criminal Revision Case is dismissed.

Consequently, miscellaneous applications pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:10.08.2017
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C. No.1723 of 2005
Dt. 10-08-2017

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