

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.2667 of 2017

ORDER:

This criminal revision case is filed under Sections 397 and 401 Cr.P.C. questioning the propriety and legality of the judgment dated 21.07.2017 passed in Crl.A.No.135 of 2016 by the Special Sessions Judge for trial of cases under SCs &STs (POA) Act (FAC VI Additional Sessions Judge, Gooty), confirming the judgment dated 11.08.2013 in C.C.No.40 of 2013 passed by the Judicial Magistrate of First Class, Gooty, against respondents 1 to 3 finding them not guilty for the offences punishable under Sections 506, 324, 341, 109 read with 34 of IPC.

2. The petitioner/*de facto* complainant lodged a complaint-Ex.P.1 before the Sub-Inspector of Police, Gooty. On the strength of the complaint, the police registered FIR-Ex.P.7.

The case of the prosecution is that the petitioner is an agriculturist and also running a Dhaba near Bata Sunkulamma Temple under the name and style of Manoj Dhaba. Since the petitioner had illegal intimacy with the 1st respondent/A1, relatives of the petitioner/PW.1 held panchayat and chastised them and since then, they were not on talking terms. On 29.01.2013 at about 09.00 PM, while the petitioner was proceeding on TVS motor cycle towards his village and when he reached near water tank on N.H.44 road at Karadikonda Village at the instigation of A1, A2 and A3,

A3 hurled a stick towards the petitioner, due to hurling, he sustained dumb injury to his right hand, A2 attacked with a sickle and hurled it towards his back side, due to it, he sustained bleeding injury to his right leg. Then, the petitioner escaped from scene of offence due to fear and informed the incident to PWs.2, 3 and 5, who in turn shifted him to the Government Hospital, Gooty. While he was undergoing treatment, police came to the hospital and recorded Ex.P.1-statement on 31.01.2013. PW.7-Medical Officer examined the petitioner and found linear cut injury on right thigh 2 x 1 cms and abrasion on right elbow 2 x 1 cm size. On the strength of the same, the police registered a case in Crime No.40 of 2013 for the above offences and took up investigation.

3. During the course of investigation, the police examined witnesses, recorded their statements, examined scene of offence in the presence of mediators and seized MOs.1 and 2 under Ex.P.8-police proceedings. After collection of Ex.P.5-wound certificate, the police filed charge sheet.

4. The trial Court, after following necessary procedure, framed charges for the offences punishable under Sections 506, 324, 341, 109 read with 34 of IPC, read over and explained to them in Telugu, for which the accused pleaded not guilty and claimed to be tried.

5. During trial, the complainant was examined as PW.1 besides examining PWs.2 to 8 and marked Exs.P.1 to P.9 and after closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., explaining the incriminating circumstances that appeared against him. He denied the same and reported no evidence.

6. Upon hearing argument of both the counsel, the trial Court found the accused not guilty as there is any amount of inconsistency between ocular, testimony and medical evidence, more particularly with regard to the nature of injury and inconsistency in the evidence of PWs.1 and 2 while disbelieving the evidence of PWs.1 to 3.

7. Aggrieved by the acquittal of the accused, the petitioner preferred CrI.A.No.135 of 2017, which ended in dismissal by judgment dated 21.07.2017 confirming the acquittal order passed by the trial Court under impugned calendar judgment.

8. Now, the present revision is filed challenging the concurrent fact findings recorded by both Courts on the ground that the Courts below did not appreciate the medical evidence with reference to nature of injury and testimony of PW.1 and committed an error in finding the accused not guilty.

9. During hearing, learned counsel for the petitioner would draw the attention of this Court to paragraphs 16 and 20 of

the trial Court Judgment where the trial Court discussed about oral evidence of injured witness and the medical certificate issued by PW.7- Dr.Yellapa and also drawn the attention to the contents of Ex.P.1-statement of PW.1 which show that the petitioner suffered injury due to hit with stick. Therefore, the Courts below did not appreciate the evidence in proper perspective and committed an error and requested this Court to set aside the acquittal recorded by the Courts below and sentence them properly.

10. 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.

11. Section 401 confers power on this Court to revise the order passed by the Courts below and it firstly read along with Section 397 of Cr.P.C. Apart from that, there is a clear interdiction 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. Thus, there is a direct bar on the powers of this Court to record conviction of respondents 1 to 3 by reversing the acquittal recorded by the Courts below and this Court normally would not interdict exercise of appreciation of evidence while exercising power under

Sections 397 and 401 of Cr.P.C. since the revision is confined mostly to a legal aspect.

12. Here, the evidence on record more particularly the evidence of PWs.1 and 2 would show that Ex.P.1 is the earliest statement of PW.1 and according to the contents of Ex.P.1, A3 hurled stick against PW.1, which caused dumb injury and A2 beat him with stick and he sustained bleeding injury to left leg and also thigh, but in the medical evidence of PW.7-doctor found cut injury on right thigh of 2 x 1 cm and abrasion on right elbow 2 x 1 cm. In the evidence, PW.1 changed his version and contended that A2 caused injury with a stick and if such cut injury on the right thigh was caused with stick, there must be variation in the depth of the injury and there must be a punctured wound due to contact of lip of sickle, as it is a curved weapon, but no such punctured wound was found. No depth of the wound was found as per the medical evidence of PW.7-doctor coupled with Ex.P.5-wound certificate of PW.1. Hence, the alleged bleeding injury caused by A2 is not proved and it is not supported by medical or oral evidence and in view of the discrepancy in the earliest statement and testimony before this Court, the trial Court disbelieved the evidence of PW.1 with regard to causing of injuries by A2.

13. So far as injury caused by A3 is concerned, he hurled stick and caused dumb injury, which is not found in Ex.P.5-

wound certificate noted by PW.7, during examination. Therefore, there is absolutely no evidence to believe that A3 caused any dumb injury on the body of PW.1. Apart from the above discrepancy between ocular testimony and medical evidence, PW.7-doctor made it clear that there is possibility of sustaining such injuries referred in Ex.P.5 due to fall from two wheeler. When there is a possibility of sustaining the injuries referred in Ex.P.5 due to fall from two wheeler, the story of prosecution that A.2 and A.3 caused such injuries cannot be believed in view of my observations in the earlier lines. Therefore, taking into consideration the facts and circumstances of the case, the trial Court disbelieved the evidence of the witnesses and acquitted them. That apart, the appellate Court also confirmed the fact finding recorded by the trial Court.

14. When the trial Court erroneously acquits the accused for the said offence and when the revisional Court finds 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

¹ AIR 1962 SC 1788

jurisdiction should 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 (3) of Section 401 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 indirect method of ordering re-trial, 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 appellate 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 by the appellate 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. In view of law declared by the Apex Court it is impermissible to convert acquittal into conviction and if find no exceptional circumstances to order retrial, consequently the revision is liable to be dismissed.

15. Therefore, I find no grounds to interfere with the concurrent fact findings of both Courts below and consequently, the criminal revision case is liable to be dismissed at the admission stage.

16. 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: 24.10.2017
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