



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2018

Date of Reserving the Order	Date of Pronouncing the Order
13.12.2017	04.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.R.C.(MD) . No.800 of 2008

Asirvatham

... Petitioner / P.W.1

-VS-

1. Engin Durai

... 1st Respondent / Accused

2. The Inspector of Police
Kalakad Police Station
Tirunelveli District.
(Crime No.220/2006)

... Respondent

This Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, against the Judgment of acquittal, dated 04.08.2008, made in S.C.No.247 of 2007, by the learned Assistant Sessions Judge, Valliyoor.

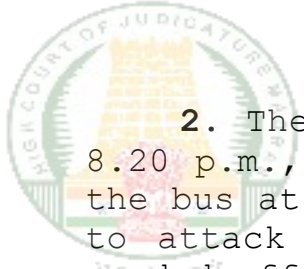
For Petitioner : Mr.C.Christopher

For Respondents : Mr.C.Vetriyan for R1
Mr.C.Ramesh

Additional Public Prosecutor for R2

ORDER

The petitioner / P.W.1 has filed this revision, challenging the Judgment, of acquittal, dated 04.08.2008, made in S.C.No.247 of 2007, on the file of the Assistant Sessions Judge, Valliyoor, <https://hcservices.ecourts.gov.in/hcservices/> acquitting the first respondent / accused from the charges framed against him for offences under Sections 294(b) and 307 I.P.C.



2. The case of the prosecution is that on 11.07.2006 at about 8.20 p.m., P.W.1 was returning from Tirunelveli and got down from the bus at about 8.20 p.m., and at that time the accused attempted to attack him by aruval by aiming at his head, but since P.W.1 warded off the same with his right hand he sustained cut injury on his right fore hand. Then P.W.1 raised alarm. On hearing the same, P.W.2, P.W.3 and P.W.6 came there and on seeing them, the accused ran away from the scene of occurrence. Thereafter P.W.1 was taken to Tirunelveli, High-Ground Hospital by P.W.2 and P.W.4 and was admitted as in patient in the hospital. Then on the next day 12.07.2006 at 8.00 a.m. P.W.9 Sub-Inspector of Police, attached to Kalakad Police Station, went to Tirunelveli, High-Ground Hospital and recorded Ex.P.1 complaint from P.W.1. Thereafter, at about 11.00 a.m., he registered a case in Crime No.220 of 2006 under Sections 294(b), 307 of IPC against the accused and prepared Ex.P4 FIR and sent the same to the higher officials. P.W.10, Inspector of Police attached to Kalakad Police Station, on 12.07.2006 at about 11.00 a.m., took up the cse for investigation and went to the place of occurrence at 12.30 p.m., and prepared observation mahazar Ex.P5 in the presence of P.W.3. Thereafter, he prepared rough sketch Ex.P6 and seized blood stained earth and sample earth and mahazar Ex.P7. Thereafter, he examined P.W.2, P.W.3 and P.W.6 and recorded their statement. On 13.07.2006 P.W.10 examined P.W.1 and P.W.4 recorded their statement. On 17.07.2006 P.W.10 got information that the accused surrendered before Judicial Magistrate, Ambasamudram. On 20.10.2006 P.W.10 examined P.W.1 and recorded further statement from P.W.1. Thereafter, he sent the seized blood stained earth and sample earth to the court under the cover of requisition letter. Ex.P8 is Chemical Analysis Report. After completing investigation P.W.10, Investigating Officer laid charge sheet against the accused on 20.11.2006.

3. The learned jurisdictional Magistrate had taken cognizance of the final report and since the offence punishable under Section 307 I.P.C., being triable exclusively by the Court of Sessions, the learned Judicial Magistrate, after furnishing the copy of the documents relied on the prosecution side to the first respondent / accused under Section 207 Cr.P.C., had committed the case, under Section 209 Cr.P.C., to the learned Principal Sessions Judge, Tirunelveli, who took the same on file in S.C.No.247 of 2007 and made over the same to the learned Assistant Sessions Judge, Valliyoor, for trial. Subsequently, the Trial Court had framed charges under Sections 294(b) and 307 I.P.C., against the first respondent / accused and when the first respondent / accused was explained and questioned about the charges framed against him, he had denied the charges framed against him and sought for trial to prove his case and accordingly, trial was conducted.

<https://hcservices.courts.gov.in/hcservices/> 4. During the course of trial, on the side of the prosecution, P.Ws.1 to 11 were examined and Exs.P1 to P9 and M.O.1 were marked.



On the side of the defence, no witness was examined and no document was marked.

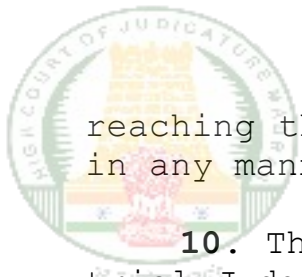
5. After completion of the trial and after examining the oral and documentary evidence, the Trial Court, by Judgment, dated 04.08.2008, found the first respondent / accused not guilty for the offence punishable under Sections 294(b) and 307 I.P.C., and acquitted him from the said charges. Challenging the same, the present revision has been filed.

6. The learned counsel for the petitioner would submit that the trial Judge erred in holding that the alleged eye witnesses P.W.2, P.W.3 and P.W.6 did not support the prosecution, hence he rejected the evidence of P.W.1 and existence of Ex.P1. Merely because the other eye witnesses have turned hostile it would not affect the prosecution case since P.W.1 who is an injured witness has spoken about the occurrence and that he had suffered grievous injury and the Doctor P.W.8 who had examined P.W.1 had deposed that P.W.1 sustained 15 x 4 cm incised wound on his right hand and he gave a wound certificate Ex.P3.

7. He would further contend that the next ground pointed out by the learned trial Judge for acquitting the accused is that the motive was not proved and it was unbelievable. As per the judgment of the Hon'ble Apex Court as well as our High Court when it is a case of eye witness the motive did not play an important role in criminal cases. In a case of circumstantial evidence, the motive aspect played an important role in deciding the case. So far as this case is concerned, this is a case of an eye witness and injured witness and who is a natural witness and he is the best person to depose how he sustained injury at the hands of the accused. But the learned trial Judge without considering the evidence of P.W.1 and acquitted the accused by overlooking his evidence.

8. The learned counsel for the petitioner would submit that the learned trial Judge erred in holding the existence of Ex.P5-observation mahazar, rough sketch-Ex.P6 and the seizure of the blood stained earth and sample earth from the place of occurrence under the cover of Ex.P7 mahazar as doubtful and on the ground that the mahazar witness P.W.3 turned hostile.

9. The learned counsel for the petitioner further contended that the learned trial Judge erred in doubting the time of the FIR on 12.07.2006 at about 11.00 a.m., since it had reached the Court only on 14.07.2006 at about 10.30 a.m. He would further submit that though the FIR had reached the Court belatedly, the learned trial Judge failed to see that it is not a murder case and it is an offence punishable under Section 307 IPC., and much significance cannot be attached to it and thereby the delay in



reaching the FIR to the Court does not affect the prosecution case in any manner.

10. The learned counsel would further contend that the learned trial Judge erred in holding that there is a suspicion whether the Aruval was used by the accused to cause injury on P.W.1. The definite case of P.W.1 is that he was attacked by the accused by aruval. Merely because incised wound was found on the hand of P.W.1 that does not mean that aruval was not used in the occurrence by the accused. The learned trial Judge failed to consider the re-examination of P.W.8 Doctor who had clarified that the cut injury or incised injury it would depends upon the sharpness of the aruval. Therefore, merely because there was an incised wound found on the hand of P.W.1 that does not mean that the aruval was not used by the accused to cause injury on P.W.1 and therefore the prosecution has established their case in a manner known to law. Further it is an opinion given by the Doctor and the learned trial Judge erred in giving much importance to the medical opinion given by the Doctor and failed to give much more importance to the eye witness and injured witness P.W.1. The evidence of injured eye witness P.W.1 is sufficient to fasten the conviction on the accused, since he is the best person to depose regarding how he was sustained injury at the hands of the accused and further the accused and the P.W.1 are hailing from a small village and they know each other for a very long time. Therefore, there is no necessity for him to implicate the accused falsely by leaving the real assailant.

11. Further the trial Judge had failed to consider the victim P.W.1's evidence and the evidence of P.W.4 who corroborated the motive aspect. According to P.W.4 her husband eloped with P.W.7 who is the wife of the accused and the said motive is the root cause for the present occurrence.

12. The learned counsel for the petitioner would further contend that the trial Judge had overlooked the material evidence available on record and would submit that when the order of acquittal had been passed overlooking material evidence, the High Court can interfere by setting aside the order of acquittal and remit the case for retrial.

13. To substantiate the argument the learned counsel for the petitioner relied on the decisions of the Apex Court reported in:

1. AIR 1962 SC 1788 (K.Chinnaswamy Reddy vs. State of Andhra Pradesh)

2. (1999) SCC (Cr1.) 1311 (Gurushinder Singh vs. Joga Singh and another)

3. 2003 Cr1.1.7. 3995 (A.Ramanamma vs. Nakka Neelamma)

4. (2004) 7 SCC 665 (Ram Briakesh Singh vs. Ambika Yadav)



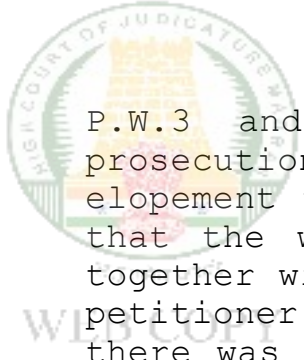
14. The learned counsel for the respondent would submit that the judgment of the trial Court is a well considered one and that the judgment of acquittal has been passed taking into consideration all factual and legal materials in the case. He would submit that the learned trial Judge had not overlooked any material and had given a proper finding after taking into consideration the legal and factual aspects. He would further contend that the learned Judge had analyzed the evidence of each and every witness and also analyzed all the aspects of the case. He would submit that the trial Court had taken into consideration the F.I.R and the delay in the F.I.R, the alleged motive, the medical evidence, non-examination of vital witnesses and also there are several other enemies against the petitioner. The learned counsel would submit that there is no serious error of law, no manifest illegality or perversity in the judgment rendered by the trial Court and would submit that it is well settled by a catena of decisions that the High Court will not ordinarily interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for correction of a manifest illegality so as to prevent gross miscarriage of justice. He would also submit that the High Court will not be justified in interfering with an order of acquittal merely because the trial Court has taken a wrong view of the law or has erred in appreciation of evidence.

15. The learned Additional Public Prosecutor would submit that the State had not filed any appeal against the order of acquittal.

16. Heard Mr.C.Christopher the learned for Petitioner, Mr.C.Vetriyan learned counsel for the first respondent and Mr.C.Ramesh, learned Additional Public Prosecutor for the second respondent.

17. I have consciously and carefully perused the materials on record and also the judgment of the trial Court which is under challenge in this revision.

18. The case of the prosecution as spoken by the petitioner is that there was enmity between the petitioner and the respondent since 10 years prior to the occurrence the petitioner had eloped with the wife of the respondent and that on 11.7.2006 at 8.30 p.m., while the petitioner was alighting from the bus the respondent had abused him stating that the petitioner had dishonoured him by eloping with his wife and took out a sickle hidden from his waist and attempted to cut his neck and when the petitioner had attempted to ward it off with his right hand he had sustained an injury on the right wrist. The petitioner had stated that the occurrence was witnessed by P.W.2, P.W.3 and P.W.6 and when they raised alarm the respondent had run away. Whereas P.W.2,



P.W.3 and P.W.6 had turned hostile and not supported the prosecution case. Further the petitioner had stated that after elopement with the wife of the respondent they had come back and that the wife of the respondent and the respondent were living together with their children and during the period of 10 years the petitioner and the respondent had been seeing each other and that there was no quarrel or dispute between them. Thereby taking into consideration the behaviour and conduct between the petitioner and respondent the trial Court had held that the motive had not been sufficiently proved. The witnesses to the preparation of Mahazar and Sketch and recovery of sand have not supported the prosecution case and there had been considerable delay in the F.I.R reaching the Court, which was also not explained. Further P.W.8 the Doctor who examined P.W.1 and issued the wound certificate Ex.P3 stating that it was a lacerated wound on the right forearm and in his evidence had stated that the wound was a lacerated wound and had stated that there was no bleeding and had opined that if the injury had been caused by a sharp edged weapon like sickle (Aruval) there will be a cut injury and that the injury being a lacerated one could have been sustained while forcibly coming into contact with a rough tin sheet. Thus the trial Court had taken into consideration all the aspects and rendered a judgment of acquittal.

19. In the decision referred to by the learned counsel for the petitioner in **K.Chinnaswamy Reddy vs. State of Andhra Pradesh** reported in **AIR 1962 SC 1788** it has been held: (para 7)

" 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 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. "

20. In a later decision in **Bindeshwari Prasad Singh alias B.P. Singh vs. State of Bihar (Now Jharkhand)** reported in (2002) 6 SCC 650 the Apex Court has held: (para 12 & 13):

"12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a re-trial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention

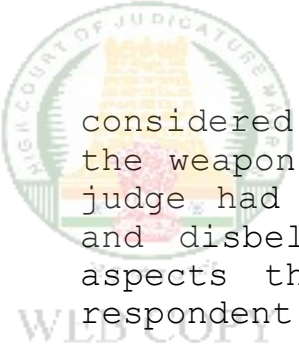


of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See AIR 1951 SC 196 : D. Stephens vs. Nosibolla; AIR 1962 SC 1788 : K.C. Reddy vs. State of Andhra Pradesh; (1973) 2 SCC 583 : Akalu Ahir and others vs. Ramdeo Ram; AIR 1975 SC 1854 : Pakalapati Narayana Gajapathi Raju and others vs. Bonapalli Peda Appadu and another and AIR 1968 SC 707 : Mahendra Pratap Singh vs. Sarju Singh).

13. The instant case is not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not re-appreciate the evidence to reach a finding different from the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted."

21. The scope of revision against acquittal filed by a private party is very limited. In a revision against acquittal the High Court can interfere only in exceptional cases when there is some glaring defect in the procedure adopted by the court or there is manifest error on a point of law or that there is manifest illegality, perversity or infirmity in the judgment of the lower Court which had resulted in flagrant miscarriage of justice. The High Court should not re-appreciate the evidence resulting in grave miscarriage of justice in exercise of revisional jurisdiction in the absence of manifest illegality.

22. Now taking into consideration the case on hand, in my opinion the trial Judge had not overlooked any material evidence. The trial Court had meticulously gone into all the aspects of the case and had also taken into consideration the aspect of the petitioner having enmity with persons belonging to other community and other political party also. As per Ex.P3 Accident Register, the wound alleged to have been sustained by the petitioner is a lacerated wound and not an incised wound as stated by the learned counsel for the petitioner and the learned trial Judge had also



considered that aspect and had doubted the evidence with regard to the weapon alleged to have been used in the occurrence. The trial judge had also discussed and considered about the motive aspect and disbelieved it. After analyzing all the legal and factual aspects the trial Judge had rendered a finding acquitting the respondent.

23. In the light of the above discussion, I find no perversity, illegality or infirmity in the judgment rendered by the trial Court. This revision lacks merit and is dismissed. The Judgment of acquittal, dated 04.08.2008, made in S.C.No.247 of 2007, by the learned Assistant Sessions Judge, Valliyoor is upheld and confirmed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To:

The Assistant Sessions Judge, Valliyoor.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.C.Vetrian , Advocate in SR No. 60110
+ 1 cc TO Mr.C.Christopher , Advocate in SR No. 59896

gr

AE/SKN RSK/SAR2/24.04.2018/9P/6C

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04.04.2018