

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL Nos.164 of 2016 and 1088 of 2017

and

CRIMINAL REVISION CASE No.534 of 2016

COMMON JUDGMENT:

The journey of this case started with a private complaint filed by the complainant, with the following facts and allegations:

The wife of the complainant purchased 3.41 acres of land in Sy.No.364/A in Gudivada village, under a registered sale deed dated 19.12.1990 and General Power of Attorney was given to the complainant. The complainant has been cultivating salt by raising bund all around the land. A suit in O.S.No.286 of 1994 got to be filed by the complainant, on the file of the Principal Junior Civil Judge, Yelamanchili. A Commissioner was appointed in the said suit for noting down the physical features of the locality and the accused trespassed in the said land and started making illegal constructions, in the month of January 1995 and also cut away the bund belonging to the land and spoiled large area of the land. They did not stop constructions, in spite of protest, on which the complainant filed IA.No.156 of 1995 and obtained an order of status quo. In the meanwhile, the accused filed IA.No.202 of 1995 for appointment of Commissioner, the Commissioner filed report, stating the accused trespassed and committed acts of mischief. Due to the said mischief, the complainant sustained loss of more than Rs.1,00,000/-. All the accused threatened to beat and kill the complainant on his obstruction on 08.10.1995 at about 10.00 AM. Police did not take any action and hence, he filed private complaint.

2. The Judicial First Class Magistrate, Yelamanchili took cognizance of the case for the offence punishable under Sections 447, 427, 323 and 506 of the Indian Penal Code and after complying with all the required legal formalities, the Court examined the accused under Section 251 of the Criminal Procedure Code and explained the accusations for the said offences. After recording the plea of the accused that they are not guilty, the Court conducted trial of the case, during which P.Ws.1 to 9 were examined and Exs.P1 to P20 were marked. After concluding the evidence, the accused was questioned on the incriminating circumstances appearing against them and they denied the same, but did not adduce any evidence. The trial Court, after considering the material on record, passed the judgment in CC.No.685 of 2011 dated 27.09.2011 convicting the accused for the offence under Section 447 IPC and acquitting them for the offence under Sections 427, 323 and 506 IPC. Against the said judgment, the complainant went in appeal in CRLA.No.5 of 2012, while the accused preferred appeal in CRLA.No.41 of 2012, questioning the conviction under Section 447 IPC. By virtue of a common judgment dated 21.12.2015, the Sessions Judge, Mahila Court, Visakhapatnam, partly allowed CRLA.No.5 of 2012 by finding the accused guilty for the offence under Section 427 IPC and dismissed CRLA.No.41 of 2012 filed by the accused.

3. Against dismissal of CRLA.No.41 of 2012, the accused preferred CRLRC.No.534 of 2016, on the ground that the Court below failed to see that O.S.No.286 of 1994 on the file of the Principal Junior Civil Judge, Yelamanchili was filed and an application for interim injunction

was also filed and the present allegation is that the petitioners damaged the wall of the property and the said property is a subject matter of the suit, that is pending. The Court below erred in placing reliance on the highly interested and discrepant testimony of P.Ws.1 to 6. The Court below failed to consider the evidence of P.W.9, wherein it was clearly admitted that no permission was granted by the R & B Department, to construct the wall. The Court below failed to see that the allegations are basically civil in nature and in view of the pendency of the civil suit and the title is yet to be decided, the court ought to have given the benefit of doubt, to the accused.

CRLA.No.164 of 2016 is filed by the accused, aggrieved by the conviction that was awarded by the Court below, for the offence punishable under Section 427 IPC by virtue of its judgment in CRLA.No.5 of 2012.

CRLA.No.1088 of 2017 is preferred by the complainant under Section 372 Cr.P.C., aggrieved by the acquittal of the accused, for the offences punishable under Sections 323 and 506 IPC and also on the ground that the sentence awarded for the offence under Sections 447 and 427 IPC is inadequate. The grounds on which the said appeal is preferred are that there is substantial evidence for awarding conviction to the accused, for the said offences. The Court below awarded a sentence of fine of Rs.500/- to the accused for the offence under Section 447 IPC, which is lesser than the punishment provided under the provisions of IPC. The Court below rightly confirmed the judgment of the trial Court but partly allowed the appeal and modified the sentence and directed the accused to pay compensation of Rs.10,000/-

each and in default to undergo simple imprisonment for a period of one month for the offence under Section 447 IPC, which is also less. The Court below modified the judgment in CC.No.685 of 2001 dated 27.09.2011 and sentenced the accused to pay Rs.10,000/- each for the offence under Section 427 IPC, in default to undergo simple imprisonment for a period of one month, which is also inadequate, as the loss caused to the complainant is in lakhs of rupees. The Court below erred in concluding that the accused did not commit the offence under Sections 323 and 506 IPC.

4. Heard the complainant, who appeared in person, Mr. T. Pradyuma Kumar Reddy, for the appellant/accused and the Public Prosecutor appearing for the respondent.

CRLA.No.1088 of 2017:

5. The complainant, being aggrieved with the verdict of acquittal recorded under Sections 323 and 506 IPC, preferred this appeal. But a perusal of the evidence shows that the complainant, as P.W.1, mentioned two names, as the persons, who were beaten by the accused, who are K. Ramunaidu and K. Satyanarayana. For the reasons best known to the complainant, the said persons were not examined as witnesses on his behalf and the Court below has rightly appreciated the said fact. It also observed that the threats that were levelled against P.W.1, allegedly, were also not proved cogently, as the witnesses, who were allegedly present at the time of the commission of the alleged offence, did not support the same.

6. Hence, when such lapses are made out in the case of the complainant and when the complainant, at this stage, is not able to

succeed in showing that the observations of the Court below are erroneous, there cannot be any reason for this Court to interfere with the impugned judgment and reverse the findings of acquittal. The law is well settled that the Courts have to be slow while reversing the judgment of acquittal and even if there are two views possible, the Court shall not over turn the view that was taken by the trial Court on the mere ground that there is another view that is possible.

Hence, with the above discussion, the appeal of the complainant is dismissed.

CRLA.No.164 of 2016:

7. The learned Sessions Judge, Mahila Court, Visakhapatnam, in CRLA.No.5 of 2012 preferred by the complainant in CC.No.685 of 2001, interfered with the impugned judgment therein and convicted the accused for the offence under Section 427 IPC.

8. The Court below observed that the Additional Judicial First Class Magistrate, Yelamanchili, who passed the impugned judgment did not bestow his attention regarding the mischief that was caused by the accused, making the entire land a barren one and that he also failed to appreciate the evidence of P.Ws.2 and 5, that salt crop was raised after the purchase of the land and they could not raise salt crop for over 15 years and the damages sustained by P.Ws.1 and 2 run into lakhs of rupees. It also observed that the counsel submitted that as per orders in CRLMP.No.8694 of 2008, this Court directed for disposal of CRLMP vide order dated 30.12.2008 and the trial Court had attached properties of Visakha Aqua Farms Private Limited for Rs.75,00,000/- through Tahsildar and it was recorded on the Court

docket on 17.09.2009. The Court below also observed that the Additional Judicial First Class Magistrate, Yelamanchili failed to appreciate the recitals and contents of Exs.P2 to P5, P13, P14 and P20, which apparently showed commission of offence under Section 427 IPC.

9. But the said approach of the learned Sessions Judge seems to be erroneous, firstly, due to the reason that the orders in CRLMP.No.8694 of 2008 are not filed before the Court and even if they are filed before the Court, it is only an order of attachment. The final judgment with regard to the damages claimed by the complainant seems to have been rendered in A.S.No.19 of 2001 by the Senior Civil Judge, Yelamanchili on 02.04.2014 and the said judgment records that the relief of mandatory injunction claimed therein cannot be granted as the plaintiff did not choose to make necessary amendments in the plaint, seeking such relief. It also observed that when there is no pleading with regard to alleged encroachment of the land by the defendant, any amount of evidence, adduced by the plaintiff, to prove the said fact, would be of no use and observing so, the Court declined to grant relief of mandatory injunction. The said Court also observed that there is no whisper in the report of the Revenue Divisional Officer, as to how he came to a conclusion that the defendant encroached up to 0.04½ cents of plaintiff's land, for construction of western side syphon or drainage water sluice and that the report is contrary to the contents of Ex.C1 report, submitted by the Advocate Commissioner. It also observed that the warrant was executed in presence of both parties and their counsel and that he got measured the entire land,

with the assistance of Surveyor and found that there was an encroachment of one link of plaintiff's land and an extent of 18 to 20 cents of plaintiff's land was damaged, as the defendant stored some construction material therein. It also observed that Ex.A3 report is quite contrary to Ex.C1 report and it does not reveal as to how the RDO found that the defendant has encroached upon 0.04½ cents of plaintiff's land. It further observed that the acts of the plaintiff, in getting the land measured through revenue officials, when the suit was subjudice before a competent civil Court, is not fair and the report submitted by the RDO cannot be given due weight, as it does not reveal as to how the RDO found that there is an encroachment.

10. The judgment also observed that as per the correspondence Exs.B3 to B6 it is manifest that the department, after taking consent from the revenue officials and R & B officials, had made construction of the syphon and if the construction made by the defendant was illegal, the revenue officials and R & B people would not have allowed them to make such construction. Hence, in the light of the above observations, the report given by the said RDO, Narsipatnam, to the Collector, Visakhapatnam, dated 11.02.1997, stating that the petitioner would be put to irreparable loss of 0-05½ cents of land due to construction of syphon and drainage sluice by M/s. Visakha Aqua Farms, cannot be taken as a conclusive proof of the fact that the accused constructed a syphon. So also, the letter of the Executive Engineer, R & B, Visakhapatnam, addressed to the complainant, stating that no permission has been granted to go ahead with the execution of syphon work on his land, by this department by M/s. Visakha Aqua Farms

Private Limited, cannot be considered. Though the orders in the interlocutory applications, granting status quo and interim injunction are filed, the final order in the suit i.e. O.S.No.286 of 1994 are not filed. The only judgment filed is in A.S.No.19 of 2001 and the cross-objections therein. The appeal is against O.S.No.286 of 1994. From the contents of the judgment, it can be understood that damages were awarded to the complainant and the said damages were disallowed in the appeal.

Hence, in the light of the above, the conviction awarded for the offence under Section 427 IPC cannot be sustained. The appeal is, hence, allowed.

CRLRC.No.534 of 2016:

11. The accused, aggrieved by the concurrent judgment of the Additional Judicial First Class Magistrate and the Sessions Judge, Mahila Court, Viskhapatnam, with regard to conviction under Section 447 IPC, come before this Court by way of this revision.

12. This Court does not find any material on the basis of which the impugned judgment can be said to be erroneous. The judgment in A.S.No.19 of 2001, which gave the final verdict, with regard to the disputes between the parties, categorically held that there was ample evidence to believe that the defendant and its men have interfered with the plaintiff's possession and enjoyment of the suit schedule property. The presence of the appellants/accused at the scene of offence was spoken to by the concerned witnesses. Hence it is, amply clear, that the accused, on behalf of their firm, interfered with the possession of the land of the complainant. Section 447 IPC prescribes

punishment for the offence of criminal trespass, which is defined under Section 441 IPC which runs as follows:

441. Criminal trespass.— Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

When the evidence proved that the land belonged to the complainant and that the accused entered the land with an intention to encroach, that would certainly result in annoyance to the complainant, satisfying the ingredients of section 441 IPC.

Hence, in the light of the above, the revision is dismissed.

In the result, CRLA.No.1088 of 2017 is dismissed, CRLA.No.164 of 2016 is allowed and CRLRC.No.534 of 2016 is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

April 13, 2018
DSK

T. RAJANI, J