

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2864 OF 2017

JUDGMENT:

The appellant - complainant in Criminal Appeal No.78 of 2016, on the file of the VI Additional Sessions Judge, Gooty, is the revision petitioner in the present Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code').

2. Respondent Nos.2 and 3, who are arraigned as accused Nos.1 and 2, alleged to have committed the offences punishable under Sections 324, 354 and 506 IPC.

3. On the complaint lodged by the revision petitioner, crime was registered, charge sheet was laid, trial has taken place before the learned Assistant Sessions Judge, Gooty, in Sessions Case No.453 of 2014, on committal and being made over to it. The learned Assistant Sessions Judge analyzed the evidence of PWs.1 to 7 and Exs.P-1 to P-6 adduced by the prosecution and Ex.D-1, a contradiction marked in the statement of PW.2 recorded under Section 161 of the Code, found that the prosecution failed to prove the charges alleged against respondent Nos.2 and 3 beyond all reasonable doubt and, accordingly, acquitted them under Section 235 (1) of the Code, by judgment, dated 11.05.2016 .

4. The *de facto* complainant aggrieved over the order of acquittal recorded by the learned Assistant Sessions Judge, Gooty, preferred the Criminal Appeal No.78 of 2016. On reappraisal of evidence on record, the learned Sessions Judge affirmed the order of acquittal passed by the learned Assistant Sessions Judge and dismissed the appeal.

5. Further aggrieved, the present Criminal Revision Case is filed by the *de facto* complainant.

6. Heard Sri I. Venkata Prasad, learned counsel for the revision petitioner, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

7. In the grounds of appeal, the revision petitioner would agitate that the lower appellate Court did not properly appreciate the evidence of PWs.1 to 3, 5 and 6 with reference to the overt acts of respondent Nos.2 and 3 causing injury to PW.1 and attempting to outrage the modesty of PW.2 and failed to consider the evidence of PW.1 being corroborated by the contents of Ex.D-1 and statement given to PW.6. He further submits that the presence of PW.3 cannot be doubted as he went to grocery shop and arrived at the scene. Further contention is that there is no delay in lodging the complaint with the police concerned, but the Courts below went wrong in assuming that there was delay in sending the FIR to the Court. Still

further ground agitated is that the medical evidence corroborates the ocular evidence of PWs.1 and 2. Yet another ground agitated is that the Courts below wrongly harping on the aspect of civil dispute which is not the subject matter of criminal case. Further agitating that, any witness can be examined under Section 311 of the Code, sought to set aside the order of acquittal passed by the Courts below.

8. In fact, the revision petitioner is facing concurrent findings recorded by the Courts below basing on appreciation of evidence of PWs.1 to 3 and the remaining two witnesses examined as PWs.4 and 7. To overthrow the findings recorded, the revision petitioner has pointed out that the findings recorded by the Courts below do suffer from patent illegality warranting interference.

9. Now, it is to be seen, whether the concurrent findings recorded by the Courts below suffer from any patent illegality, or tainted with utter perversity as sought to be contended by the learned counsel for the revision petitioner?

10. Perused the judgments rendered by both the Courts below. There appears to be certain improvements made by PW.1 in his evidence. He has spoken to abusive phrases in his evidence attributing to both accused Nos.1 and 2. The filthy language said to have used by accused Nos.1 and 2 at the relevant time does not find place in Ex.P-1. Thus, for the first time, they occur in the evidence of

PW.1 and PW.2. This is one of the aspects of the case, which cannot lightly be brushed aside for the reason that they do account for omission though not amounting to material contradiction to completely cut at the root of the case of the *de facto* complainant, but at least to the extent to show that they were not giving true version before the Court, can be gathered. In case those words have been really used or uttered by accused Nos.1 and 2 at the relevant time and the place of occurrence, they ought to have been mentioned in the complaint by PW.1.

i) Second aspect is, that Ex.P-1 does not spell out the presence of PW.3, who is brother of PW.1, and he does not even show who had all witnessed the alleged occurrence. This apart, there is material omission in the evidence of PW.1 as Ex.P-1 does not spell out accused No.1 attempting to pierce PW.1 with a broken cool-drink bottle and when PW.1 raised his left hand, the broken cool-drink bottle touched his left fore arm and accused No.1 abused PW.1 in most filthy language. Certainly, it has to be held that the contents of Ex.P-1 do not, therefore, corroborate the evidence of PWs.1 and 2 in all material aspects. These omissions have been taken into consideration by both the Courts below and given due weight to them in assessing the genesis of the case put forth by the *de facto* complainant and examined in the light of the disputes on civil side between the parties. In that regard, it is on record that accused No.1 purchased 1/3rd share

in the house from one Tirumala Reddy and even Tirumal Reddy from whom accused No.1 purchased 1/3rd share earlier, filed suit in O.S. No.21 of 1986 on the file of the Junior Civil Judge, Tadipatri for specific performance of contract. Even in paragraph No.16 of the discussion of the lower appellate Court, it is to be found that PW.1 was subjected to payment of fine imposed by Judicial Magistrate of First Class about his adamant behaviour in Court while giving the evidence. The lower appellate Court in paragraph No.19 refers to the contradiction in the evidence of PWs.1 to 3. The appropriate contradictions, in fact, instead of using the word 'contradictions' it can be termed as 'inconsistency' in the evidence of PWs. 1 to 3 as they consistently speak about the overt acts attributed to accused Nos.1 and 2. The said discrepancies were discussed in paragraph No.19, which are unnecessary to project and even Ex.D-1, a contradiction in the evidence of PW.1 was marked.

11. Turning to the delay, it is not as though there was delay in lodging the complaint, but there was delay in sending the FIR to the Court. Of course, much weight is not given to the said aspect and, therefore, it can be completely ignored. However, concerning the medical evidence, the learned appellate Court would point out the time of examination of PW.1 by the doctor is discrepant. The learned lower appellate Court would point out that PW.5 – Medical Officer examined PW.1 on the date of incident itself at 8.45 p.m. and found

injury in the left arm of PW.1, which differs with the time of examination as spoken to by PW.1 and PW.6. According to them, after PW.1 presented Ex.P-1 report at 9.00 p.m., he was referred to the Government Hospital, Tadipathri for treatment, but the doctor asserts that he has examined PW.1 at 8.45 p.m. itself which amounts to examination of PW.1 by the Medical Officer prior to registration of Ex.P-1. Since the same is not clarified by the prosecution, the lower appellate Court felt that it contributes to view the case of the prosecution with suspicion and, thus, pointing out the discrepancy in the evidence on record and the material contradiction mentioned in the above on account of omissions referred to in the above, the lower appellate Court agreed with the findings recorded by the trial Court and affirmed the order of acquittal.

12. These findings, when intrinsically examined in the light of the evidence of PWs.1 to 7, certainly, cannot be faulted. The findings recorded by the Courts below, more particularly, the lower appellate Court which has taken up the exercise of independent assessment of evidence on record, in recording the findings is based on process of reasoning in appreciating the evidence in accordance with evidentiary rule. Contextually it is to be stated that in a criminal case, where warrant case is tried on a police report, certainly, the prosecution has to prove charges framed against the accused beyond all reasonable doubt, which is totally lacking in the present case. Therefore, it is to

be held that the revision petitioner is absolutely unable to point out or project that the findings recorded by the Courts below do suffer from patent illegality warranting interference. Thus, there is no merit in the present Criminal Revision Case.

13. Accordingly, the Criminal Revision Case is dismissed confirming the judgments passed by the Courts below.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the revision case, stand closed.

January 02, 2018.
Mgr

A. SHANKAR NARAYANA, J

