

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No.158 OF 2013

ORDER:

This criminal revision case is filed by the petitioner-appellant-accused aggrieved by the judgment dated 04.01.2013 passed in Crl.A. No.77 of 2012 by the Sessions Judge, Mahabubnagar, confirming the judgment dated 01.09.2012 passed in CC No.421 of 2007 by the Judicial Magistrate of First class, Shadnagar, convicting the petitioner for the offences under Sections 448 and 295 IPC and sentencing him to suffer simple imprisonment for a period of six months each for the said offences, which were directed to run concurrently.

2. The parties are hereinafter referred as arrayed before the trial court.

3. The case of the prosecution, in brief, was that on 02.10.2007 at about 10.00 PM, the accused Md. Shabbeer Ali trespassed into Lord Anjaneya Swamy temple and passed urine on the idol of Lord Anjaneya Swamy. The witnesses Chakali

Srisailam and Samburapu Buchaiah, S. Yadaiah and M. Venkatesh witnessed the same and tried to catch hold the accused, but he ran away from there. They informed the husband of the Sarpanch and he lodged a report on 03.10.2007 at 6.30 PM and the same was registered as Crime No.407 of 2007 for the offences under Sections 448 and 295 IPC by the Sub-Inspector of Police, P.S., Shadnagar. The SI of police visited the scene of offence, drafted the crime detail form in the presence of the witnesses, apprehended the accused on 09.10.2007 at 7.00 AM, effected his arrest and produced him before the court. The charge sheet was filed against the accused for the offences under Sections 448 and 295 IPC for defiling the place of worship and hurting the sentiments of the Hindu community.

4. The case was tried by the Judicial Magistrate of First Class, Shadnagar. During the course of trial, the prosecution examined PWs.1 to 6 and got marked Exs.P1 to P3. No defence evidence was adduced by the accused.

5. On considering the oral and documentary evidence on record, the trial court found the accused guilty for the offences under Sections 448 and 295 IPC and convicted him to six months simple imprisonment each on both counts.

6. Aggrieved by the said conviction and sentence, the accused preferred an appeal. The appeal was heard by the Sessions Judge, Mahabubnagar, vide Crl.A. No.77 of 2012 and the lower appellate court also dismissed the appeal confirming the judgment of conviction and sentence passed by the Judicial Magistrate of First Class, Shadnagar in CC No.421 of 2007, dated 01.09.2012.

7. Aggrieved further, the petitioner-appellant-accused preferred this revision contending that both the courts below failed to note that there was personal vendetta between the accused and PW.1 as PW.1 believed that the accused canvassed against PW.1's wife, who contested on TDP ticket in the Sarpanch Elections. Knowing the above facts, PWs.2 to 4 along with LW.5-Venkatesh, who owed money to the accused, hatched a conspiracy against the accused and gave false information to PW.1, who already bore

grudge against the accused and lodged a false complaint against him. The courts below passed the conviction and sentence basing on assumptions and presumptions. There was a delay of twenty and half hours in lodging the report, though the scene of offence was located within 5 kilometers from the police station and the delay was not explained properly. The motive behind the offence was alleged to be due to the disputes between LW.5 and the accused, but the prosecution failed to examine LW.5 before the court to prove the motive. Due to disputes between LW.5 and the accused, the case was foisted. All the eye-witnesses admitted in their cross-examination that the doors of the said temple were not being locked and there was a possibility of animals entering into the temple. There was a rivalry between the prosecution witnesses and the accused. The courts had not given much importance to the defence version and prayed to set aside the conviction and sentence of imprisonment passed against the accused.

8. Heard learned counsel for the petitioner-accused and the learned Public Prosecutor for the respondent.

9. The learned counsel for the accused argued on the same lines as raised in the grounds of appeal.

10. Learned Public Prosecutor submitted that there were concurrent findings of conviction recorded by the trial court and the appellate court basing on the evidence of the eye witnesses and there was no need to interfere with the judgments of the courts below.

11. Normally, this Court had no authority to appreciate the evidence in revision in the manner as the trial court and appellate court were required to and could exercise its power of appreciation of evidence only in exceptional cases which would require interference for correction of a manifest illegality or for prevention of gross miscarriage of justice or the courts had excluded the evidence which was admissible or relied on inadmissible evidence by overlooking the material evidence. The scope of revisional power of the High Court was considered by the High Court of

Allahabad in **Satya Narain v. State of U.P. and others**¹ by

referring to various judgments as follows:

“5. The judicial review in exercise of revisional jurisdiction is not like an appeal. It is a supervisory jurisdiction which is exercised by the Court to correct the manifest error in the orders of subordinate courts but should not be exercised in a manner so as to turn the Revisional court into a Court of Appeal. The legislature has differently made provisions for appeal and revision and the distinction of two jurisdictions has to be maintained.

6. Construing old Section 439 of Criminal Procedure Code, 1898, pertaining to revisional jurisdiction, the Court in *D. Stephens Vs. Nosibolla*, AIR 1951 SC 196 said that revisional jurisdiction under Section 439 of the Code ought not to be exercised lightly particularly when it is invoked by private complainant against an order of acquittal which could have been appealed against by the Government under Section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. In other words, the revisional jurisdiction of the High Court cannot be invoked merely because the lower court has taken a wrong view of law or misappreciated the evidence on record.

7. In *K. Chinnaaswamy Reddy Vs. State of Andhra Pradesh*, AIR 1962 SC 1788 it was held that revisional jurisdiction should be exercised by the High Court in exceptional cases only when there is some glaring defect in the procedure or a manifest error on a point of law resulting in flagrant miscarriage of justice. However, this was also a case in which revisional jurisdiction was invoked against an order of acquittal. If the Court lacks jurisdiction or has excluded evidence which was admissible or relied on inadmissible evidence or material evidence has been overlooked etc., then only this Court would be justified in exercising revisional power and not otherwise.

¹ Crl.Revision No.388 of 2004 dated 22.07.2019.

8. The above view has been reiterated in Mahendra Pratap Singh Vs. Sarju Singh, AIR 1968 SC 707; Khetrabasi Samal Vs. State of Orissa, AIR 1970 SC 272; Satyendra Nath Dutta and another Vs. Ram Narain, AIR 1975 SC 580; Jagannath Choudhary and others Vs. Ramayan Singh and another, 2002(5) SCC 659; and, Johar and others Vs. Mandal Prasad and another, 2008 Cr.L.J. 1627 (S.C.).

9. In Duli Chand Vs. Delhi Administration, 1975(4) SCC 649 the Court reminded that jurisdiction of High Court in criminal revision is severely restricted and it cannot embark upon reappreciation of evidence. While exercising supervisory jurisdiction in revision the Court would be justified in refusing to re-appreciate evidence for determining whether the concurrent findings of fact reached by learned Magistrate and Sessions Judge was correct.

10. In Pathumma and another Vs. Muhammad, 1986(2) SCC 585 reiterating the above view the Court said that in revisional jurisdiction the High Court would not be justified in substituting its own view for that of a Magistrate on a question of fact.

11. In Munna Devi Vs. State of Rajasthan and another, 2001(9) SCC 631 the Court said:

“The revision power under the Code of Criminal procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the First Information Report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged.”

12. In Ram Briksh Singh and others Vs. Ambika Yadav and another, 2004(7) SCC 665, in a matter again arising from the judgment of acquittal, the revisional power of High Court was examined and the Court said:

“4. Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. Though the jurisdiction under Section 401 cannot be invoked to only correct wrong appreciation of evidence and the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice.”

12. On a perusal of the judgments of the trial court as well as the appellate court, it appears that they were carried away by the allegations made against the accused. When the allegations are of such a serious nature of defiling the idol in the temple, which was located in the middle of the village in the presence of the eye-witnesses, the delay in filing the FIR is fatal to the prosecution case. No explanation was given by the prosecutor for the said delay in lodging the complaint.

13. PW.1 stated that he served as Village Sarpanch of Elikatta village in the year 2007. The lower appellate court considered the said fact as an admitted one. But, PW.1 himself in his cross examination admitted that “It is true that by the date of this case, my wife was the village Sarpanch”. He also stated in

Ex.P.1 as “Village Sarpanch of Elikatta village”, which was admittedly false statement.

14. PW.1 stated in his evidence that on 02.10.2007 at about 10.00 PM while LWs.2 to 5 were making themselves ready to start Bhajan at Anjaneya Swamy temple situated in the middle of the village, the accused directly entered into the temple sanctum sanctorum and passed urine on the idol of Lord Anjaneya Swamy and the said incident was witnessed by LWs.2 to 5. When LWs.2 to 5 tried to catch hold the accused, he pushed them aside and ran away from the scene. At about 10.30 PM, LWs.2 to 5 came to his residence and informed the incident to him. As it was a late night, he advised LWs.2 to 5 to come on the next day morning. On 03.10.2007 they went to the police station and lodged report to the police under Ex.P.1. He further stated that later police visited their village Elikatta and on their reaching the village, all the villagers gathered at the temple and also called the accused to that place.

15. It was elicited from the cross-examination of PW.1 that the mother of the accused was a Hindu woman, by name,

Parvathamma. On 03.10.2007 a big mob gathered at the temple and the accused was also present at that place. He also admitted that they were not locking the temple, but were bolting the same and he also admitted that animals used to enter into the temple. He denied that accused canvassed on behalf of Congress Party in the Sarpanch Elections against his wife and the mother of the accused used to participate in bhajans and had donated bhajan instruments such as Tabala to the Temple. He denied that LW.5 Venaktesh owed money to the accused and when the accused demanded to repay the amount, a false case was foisted against him.

16. Thus, this witness was not an eye-witness to the incident and he filed the complaint only basing on the report given to him by LWs.2 to 5. Even after he was informed about the incident immediately at 10.30 PM on 02.10.2007, he failed to lodge any report before the police. Even on the next day morning also he had not lodged the report to the police. As per Ex.P.1, the report was given in the police station on 03.10.2007 at 6.30 PM. No explanation was given for the said delay in lodging the report by the complainant-PW.1.

17. The FIR marked as Ex.P3 was registered by the police, but the same was sent to the court on 05.10.2007 at 10.30 hours. No explanation was given by the police also for sending the FIR to the court with a delay of two days. The delay in lodging the FIR raises a suspicion, whether it was a creation of afterthought or foisted with any enimical relations. On account of the delay, danger creeps in introduction of coloured versions, exaggeration or a concocted story due to deliberations and consultations. It is therefore, essential that the delay in lodging the FIR should be satisfactorily explained. But, no explanation was coming forth in this case in Ex.P1 with regard to delay in lodging the FIR. The delay in reaching the FIR to the Magistrate also should put the court on guard in examining the evidence. The object of recording the earliest version and reaching the Magistrate forthwith was to avoid embellishments and to keep the Magistrate informed of the investigation.

18. The accused had taken a specific defence that PW.1 and the prosecution witnesses had a motive to implicate him in a false case due to political disputes, as the accused canvassed on behalf of

Congress Party in the Sarpanch Elections against PW.1's wife. He also took the defence that LW.5-Venkatesh owed money to him and when he demanded to repay the amount, a false case was foisted against him. But, LW.5 Venaktesh was not examined by the prosecution and it was extracted in the evidence of PW.3 that LW.5 Venkatesh was not living in the village and he left the village three years back and his whereabouts were not known.

19. PWs.2 and 3 stated in a similar manner that the accused did not belong to their religion. On 02.10.2007 between 9.30 PM and 10.00 PM while they were chit chatting at Sri Anjaneya Swamy Temple located in the middle of their village, the accused came there and asked LW.5 to give money to him, for which LW.5 replied that he was not having money ready with him and sought one or two days time. Then, instead of returning back, the accused entered sanctum sanctorum and passed urine on the idol of Lord Anjaneya Swamy. As the accused did not belong to the same religion and as he was directly entering the sanctum sanctorum, they suspected his entry and then they went there and witnessed the act of the accused. On seeing the same, they felt angry and tried to

catch the accused, but he pushed them aside and fled away from the scene. Immediately, they rushed to PW.1 and informed the incident to him.

20. PW.4 stated that he witnessed the said incident by standing in front of the said temple. He stated that PW.2, LW.5 and a third person went behind the accused and found that the accused passed urine on the idol of Lord Anjaneya Swamy and when the said persons tried to catch him, the accused pushed them and fled away. Thus, he had not directly witnessed the incident of defiling the idol and stated that the other witnesses PW.2, LW.5 and another third person witnessed the said incident. Thus, his evidence would amount to hearsay. Both PWs.2 and 3 admitted in their cross-examination that the house of the accused was situated only behind the said temple. PW.2 though denied that the accused used to attend Ganesh Festival in the village admitted that his brother Maqbool used to attend the Ganesh festival. Both PWs.2 and 3 also admitted that the doors of the temple were not being locked, but they were bolted usually and they also admitted that when the doors of the temple were opened, the dogs and other animals were

entering into the temple. PW.4 also admitted that the temple was not locked on the date of the incident. PW.5 stated that the accused passed urine inside Anjaneya Swamy temple of their village on 02.10.2007, which was contradictory to the evidence of PWs.2 to 4 that he defiled the idol by passing urine on it. PW.5 was also the panch witness for the scene of observation panchanama. He stated that on 03.10.2007, police visited their village and conducted Ex.P.2 panchanama at 3.00 PM and he along with other witness LW.6 attested the same.

21. PW.6 was the SI of Police of PS, Shadnagar at the relevant time. He stated about PW.1 lodging report on 03.10.2007 at 6.30 PM and he visiting the scene of offence i.e. Anjaneya Swamy temple at Elikatta village on the same day night at 7.00 PM and preparing the crime detail form. Thus, as per PW.6, the crime detail form, marked as Ex.P.2, was prepared at 7.00 PM, but the evidence of PW.5 would disclose that it was conducted at 3.00 PM, which was contradictory to the evidence of PW.6. PW.6 also admitted in his cross examination that there was delay of 18 hours in lodging the report.

22. When PW.1 stated that a big mob gathered at the temple on 03.10.2007, and the accused was also present at that place, PW.6 stated that he apprehended the accused on 09.10.2007. Thus, the evidence of the prosecution witnesses also would disclose that there were discrepancies as to when the accused was apprehended by the police and the reason as to why the accused was not apprehended on 03.10.2007 when he was present at the scene of offence and all the villagers were also present there as a mob when the police visited the scene.

23. In the crime detail form, marked as Ex.P.2, it was also stated that the idol was found moist and in yellow colour. When such an incident as defiling of idol of Lord Anjaneya Swamy took place in the temple in the sanctum sanctorum on 02.10.2007 at 10.00 PM, the villagers leaving it in the same condition, till the police visited the scene on 03.10.2007 at 7.00 PM appears to be improbable. The idol being in moist condition almost about 20 hours after the incident, due to the defiling by the accused, also cannot be believed. The trial court observed that:

“Though there were no material observations in Ex.P.2 to show about the defilement said to have

been caused by the accused at Lord Anjaneya Swamy temple, it is to be borne in mind that the accused is alleged to have urinated on the idol of the God, for which there may not be any other remains or signs of such defilement that too when the scene of offence was observed after 20 hours of incident. Further, the act of defilement said to have been committed by the accused i.e. urinating on the idol itself is of such a nature that after committing the act there may not be any signs or circumstances to show the commission of any such act of defilement. Further, the non-observation of signs of defilement at the scene of offence by the Investigating Officer would not itself render the evidence of PWs.2 to 4 unworthy of credence as there is ample corroboration among the version of PWs.2 to 4 in respect of the contents of Ex.P.1 and the prosecution case”

24. It would disclose that though there were no observations in Ex.P.2 to show about the defilement, the court believed the evidence of PWs.2 to 4 and believing that their evidence was corroborated by Ex.P.1, confirmed the guilt of the accused. The oral evidence of the witnesses, particularly, when the accused belonged to a different community and specifically when alleged that there was a political rivalry between the parties, have to be carefully scrutinized. The delay in lodging the FIR, the contradictions in the evidence of witnesses, the improbabilities as

noted above, all give rise to any amount of suspicion about the truth of the prosecution case.

25. A person cannot be convicted unless the case was proved by the prosecution beyond reasonable doubt. In a criminal case, the burden of proof is not mere preponderance of probabilities but proof beyond reasonable doubt. The evidence of the witnesses gives any amount of doubt as to the truth of the prosecution case.

26. The trial court observed that the alleged incident was a most delicate one in Indian society and PW.1 stated that there was a gathering near the temple on 03.10.2007 regarding the incident and the accused was called to that meeting. It further observed that:

“Thus, it is clear that after discussing about the incident in the village, the matter reached police station. In view of general situation in villages, such course of discussion of the matter in the village before lodging report to police is not uncommon. Therefore, this court is of the view that the delay caused in lodging Ex.P.1 is not tainted and it is reasonable and common.”

27. If the evidence of PW.1 is believed that the accused was also called to the meeting on 03.10.2007, then why the accused was not handed over to the police by the villagers on the same day, was not answered by the prosecution. PW.6 stating that he apprehended the accused on 09.10.2007 and not stating about the presence of the accused at the scene of offence on 03.10.2007 would make the evidence of PW.1 suspicious on the said fact. The trial court observed that there were discussions of the matter in the village before lodging the report. But, if such an incident occurred, the emotions would be at peak, effecting the religious feelings and the villagers would not be deliberating upon and would not cause delay and also would not leave the person who was amidst them without handing over to the police. As such there is any amount of doubt as to the truth of the evidence of PW.1.

28. The trial court and the appellate court appeared to have been carried away by the evidence of PWs.2 to 4 without testing their evidence in detail about the possibility of foisting a false case against the accused, particularly, due to the delay in lodging the

FIR and the political rivalry between the parties. Hence, it is considered fit to set aside the judgments of the courts below.

29. In the result, the Criminal Revision Case is allowed setting aside the conviction and sentence recorded against the accused vide judgment dated 04.01.2013 passed in Crl.A. No.77 of 2012 by the Sessions Judge, Mahabubnagar. The accused is acquitted for the offences alleged against him. The bail bonds of the accused shall stand cancelled. The fine amount, if any, paid by the accused shall be refunded.

Pending miscellaneous petitions, if any, shall stand closed.

September 26, 2022
KTL

Dr. G. RADHA RANI, J