

(2011) 04 AP CK 0009

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 664 of 2005

A. Kuppu Swamy Reddy

APPELLANT

Vs

Gummadi Sankara Reddy, Gummadi Mohan Reddy, Gummadi
Karunakara Reddy and State of A.P.

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 427, 447, 506

Citation : (2011) 04 AP CK 0009

Hon'ble Judges : B.N. Rao Nalla, J

Bench : Single Bench

**Advocate : S. Girimoji Rao, for the Appellant; A. Vinod Kumar, for Respondents
Nos. 1 to 3 and Public Prosecutor, for the Respondent**

Final Decision : Dismissed

Judgement

B.N. Rao Nalla, J.—A-1 to A-3 in C.C. No. 237 of 2001 on the file of the learned IV Additional Judicial Magistrate of First Class, Chittoor were acquitted of the charges under Sections 447, 427 and 506 of IPC by the said Court by its judgment dated 21-04-2004. Aggrieved by the said acquittal order of the trial Court, the de facto complainant preferred this Criminal Revision Case on the following grounds:

- (i) that the trial Court failed to appreciate the evidence and other material on record in proper perspective;
- (ii) that the trial Court ought not to have disbelieved the evidence of PWs.1 to 3;
- (iii) that the trial Court ought to have considered the evidence of PW.6;
- (iv) that the trial Court was not justified in considering the evidence of PWs.2 to 5 as they are interested witnesses;
- (v) that the trial Court ought to have disbelieved the evidence of PWs.7, 8 and 9;

(vi) that the trial Court ought to have considered Exs.P-5 and P-14 letter written by PW.8, the Mandal Revenue Officer, and PW.9, the Village Administrative Officer to the Station House Officer, N.R. Pet; and

(vii) that the trial Court ought not to have considered the delay in preferring the complaint by PW.1 in view of the death of a relative of his wife.

2. The learned Counsel for the revision Petitioner - complainant raised the selfsame grounds as he has raised in the grounds of the revision.

3. The facts of the case, in brief, are that on 27-08-2001 at about 7-00 AM, Respondent Nos.1 to 3, A-1 to A-3 respectively, armed with axes, saws and bill-hooks went in two jeeps along with the police and they have highhandedly trespassed into the land of the Petitioner in Survey No. 247/1B situated in Arathala Village and cut down 16 Neem trees, 3 Maddi trees, 6 Tamarind trees and one Red sandal wood tree, worth of Rs. 20,000/-. They have also cut down 2 Tamarind trees, 4 Neem trees and one Maddi tree, worth of Rs. 5,000/-, situated in Government land in Survey No. 246/13. It is further the case of the Petitioner that when he objected Respondent Nos.1 to 3, they threatened him with dire consequences. Hence, he preferred Ex.P-1 complainant to the police of N.R. Pet who registered a case in Crime No. 159 of 2001 against Respondent Nos.1 to 3 for the offences under Sections 447, 427 and 506 IPC and laid charge sheet in to the Court against them.

4. On Respondent Nos.1 to 3 pleading not guilty to the charges, they were tried for the same.

5. In support of its case, the prosecution has got examined PWs.1 to 13 and got marked Exs.P-1 to P-14 and M.Os.1 and 2. However, no witnesses were examined and no documents were marked on behalf of Respondent Nos.1 to 3.

6. The trial Court, taking the evidence of the prosecution witnesses and other material on record into consideration, found Respondent Nos.1 to 3 not guilty of the offences they charged with i.e. under Sections 447, 427 and 506 IPC and accordingly they were acquitted of the said charges. Assailing the said judgment and order of acquittal of Respondent Nos.1 to 3 by the trial Court, the de facto complainant preferred this revision as has already been stated supra.

7. Now the question that arises for consideration is whether there are any grounds for allowing this revision?

8. As per Ex.P-1 complaint, the incident has taken place on 27-08-2001 at about 7-00 AM. However, Ex.P-1 complaint was preferred by PW.1 on 29-08-2001 i.e. two days after the incident. PWs.3 to 5 are examined as eyewitnesses to the incident. Of course, PW.2, who is the daughter of PW.1, has also testified that she has witnessed the incident. Therefore, it goes without saying that PWs.2 to 5 are the direct eyewitnesses to the incident as per the prosecution case. It is in the evidence of PW.2 that on the date of incident, she went to the place of occurrence and saw all the Respondents - A-1 to A-3 along with some other

persons coming in a jeep armed with axes, saws and billhooks and cutting down the trees numbering 56 and when she along with her father - PW.1 objected for the same, Respondent Nos.1 to 3 threatened them with dire consequences and thereafter they (Respondent Nos.1 to 3) also cut the trees in the Government poromboke land. PWs.3, 4 and 5 have also testified on similar lines as that of PW.2.

9. The evidence on record also reveals that not only PW.2, PW.4 is also related to PW.1. Further it is in the evidence of PW.2 that two days after the incident, her father PW.1 had preferred Ex.P-1 police complaint. It is further in her evidence that on the date of complaint, the police visited the scene of offence at about 5-00 PM whereas it is in the evidence of PW.12, the investigating officer, that he received Ex.P-1 complaint from PW.1 at 6-00 PM on 29-08-2001 basing on which he registered a case in Crime No. 159 of 2001 against Respondent Nos.1 to 3 and issued Ex.P-9 FIR. He further testified that on the following day, he visited the scene of offence and examined the witnesses.

10. It is in the evidence of PW.1 that the police did not visit the scene of offence seven days after the complaint and it is also not disputed that the complaint was preferred on 29-08-2001. Finding the above discrepancy in the evidence of PWs.1, 2 and 12, the trial Court disbelieved the evidence of PWs.1 and 2 that on the date of incident, Respondent Nos.1 to 3 had trespassed into the land of PW.1 and cut down the trees. Though PW.3, who is also related to PWs.1 and 2 by courtesy, was examined as an eyewitness to the incident, he has testified that he could not say about the presence of PWs.1 and 2 at the scene of offence when the incident has taken place and that he was present there only for five minutes and came to know about cutting of the trees. The trial Court, having regard to the evidence of PW.3, doubted about Respondent Nos.1 to 3 trespassing in to the land of PW.1 and cutting the trees. In the circumstances, it can safely be said about the evidence of PW.3 that when he is examined as an eyewitness to the incident along with other witnesses including PWs.1 and 2, he is expected to have the knowledge of the presence of PWs. 1 and 2 there, but he has chosen to say otherwise. Moreover none of PWs.2 to 5 has attributed any specific overt-acts to any of Respondent Nos.1 to 3 in getting the trees cut down and the same appears to have prompted the trial Court in coming to the conclusion that their testimony is with that of PWs.4 and 5 since they are also deposed on similar lines.

11. Further, it has to be seen that as per Ex.P-6 scene of observation panchanama, only 33 trees were cut down whereas PWs.1 to 5 have stated that 58 trees were cut down.

12. On the other hand, it is the case of Respondent Nos.1 to 3 that since they have disputes with PW.1, taking advantage of the situation that unknown persons had cut down his trees, he had foisted a false case against them with an intention to harass them.

13. In any case having regard to the evidence of PWs.2 to 5, who are examined

as eyewitnesses to the incident, as well as the evidence of PW.1 and other prosecution witnesses, it cannot be said that the prosecution has succeeded in proving its case beyond all reasonable doubt as required by law.

14. Therefore, this Court is of the view that the trial Court did not commit any error or irregularity in finding Respondent Nos.1 to 3 (A-1 to A-3) not guilty of the offences under Sections 447, 427 and 506 IPC and consequently acquitting them therefor, as such, the revision is devoid of merits and deserves to be dismissed.

15. In the result, the Criminal Revision Case is dismissed confirming the impugned judgment in C.C. No. 237 of 2001 dated 21-04-2004 passed by the learned IV Additional Judicial Magistrate of First Class, Chittoor in all respects and acquittal of Respondent Nos.1 to 3.