

(2003) 04 AP CK 0084
In the Andhra Pradesh High Court
Case No : Criminal RC. No. 341 of 2000

B. Sunderji

APPELLANT

Vs

M. Anjaneyulu and Others

RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401

Citation : (2003) 2 ALD(Cri) 58 : (2003) 2 APLJ 341 : (2003) CriLJ 3783

Hon'ble Judges : S.R.K. Prasad, J

Bench : Single Bench

Advocate : M. Narender Reddy and E.V. Bhagiratha Rao, for the Appellant;
Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S.R.K. Prasad, J.—The de facto complainant, petitioner herein, files this criminal revision case against the judgment in C.C. No. 216 of 1999 dated 28.2.2001 on the ground of perversity and miscarriage of justice and for disbelieving the ocular evidence, which is supported by medical evidence and other witnesses.

2. The learned counsel for the petitioner mainly contends that there is material to show that the incident took place and the same is corroborated by P.W.2, who was a farm servant, and also supported by medical evidence. He contends that the judgment of the court below is perverse and the findings are to be set aside.

3. The leaned counsel for the accused, who are respondents 1 to 3, contends that the versions are not supported by medical evidence and P.W.2 is only farm servant who is interested in P.W.1 and the incident has never happened. It is also contended by the learned counsel that the father and brother of P.W.1 are not examined in respect of the incident that took place at the photo studio.

4. This revision is preferred invoking Section 401 Cr.P.C. The Supreme Court in K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, has categorically stated that the High Court would interfere with an order of acquittal only in exceptional

cases when there is some glaring defect in the procedure or there is a manifest error on a point of law leading to a flagrant miscarriage of justice. Some category of cases of this kind, which would justify the High Court in interfering with the finding of acquittal in revision, have been indicated by the Supreme Court as under:

- (i) the trial court had no jurisdiction to try the cases, but still acquitted the accused;
- (ii) the trial court wrongly shut out evidence which the prosecution wanted to produce;
- (iii) where the evidence was wrongly held to be inadmissible;
- (iv) where the material evidence was overlooked;
- (v) where acquittal is based on compounding of the offence which is invalid under the law.

5 It is clear from the above that if the material evidence is overlooked, the court can interfere by way of revision. It is also made clear that if the appreciation of evidence is perverse, the court also can interfere. What is perverse has been dealt with in a decision reported in Parry's (Calcutta) Employee's Union Vs. Parry and Co. Ltd. and Others, . The relevant portion at para 58 reads as follows:

"It has been argued before us that the findings of the Tribunal are perverse and are the result of bias. But merely because the Tribunal has drawn certain adverse inferences or conclusions from the evidence on record, it does not necessarily lead to the conclusions that the Tribunal was partial or biased or that the findings are perverse. The Tribunal has given reasons in great detail and it may be that in certain matters the line of reasoning is not very cogent or logical or the Tribunal may have made observations and offered criticism which the Tribunal might not properly have made. But that is far from saying that the findings are arbitrary or perverse or are actuated by bias. A perverse finding is not only against the weight of evidence but is altogether against the evidence itself. A wrong finding is not necessarily a perverse finding. A finding cannot be said to be perverse merely because it is possible to undertake a different view on the evidence. The Tribunal has found upon consideration of the evidence in this case that the retrenchment was not bona fide and it was actuated by parochial considerations and the Tribunal has given reasons for coming to the conclusion. It may be that this finding is a wrong one. But it cannot be said that it is a finding which is based on no evidence or is a perverse finding"

6. It is clear from the aforesaid decision that perverse finding is not only against the weight of evidence but is altogether against the evidence itself. A finding cannot be said to be perverse merely because it is possible to undertake a different view. If a finding is given not based on material on record but it is based on hypothetical conclusion not based on sound reasoning and not supported by any material it is called perverse. What constitutes a perverse

order has been clearly stated in a decision reported in M.S. Narayanagouda Vs. Girijamma and Another, . If an order is made in conscious violation of the pleadings and law, it is perverse order. A perverse order made in contravention of the basic principles of the rules of natural justice cannot be allowed to stand uncorrected. It is to be seen whether there is perverse appreciation of the facts and law in this case. Failure to consider evidence on touchstone of truth and judge broad probabilities and making out imaginary third case may indicate perversity. The duty of the courts is to cull out the truth and also find out whether the injured person has come with true version. It is also to be seen whether there is any motive for him to come with a false case before the court. The court has also to decide whether the persons alleged have caused offence. It is a case where the injured has come before the court and speaks about sustaining of injuries. He identified the persons who caused the injury. He has produced medical certificate. The court has to see whether any incident took place and whether there was a possibility of sustaining injuries as alleged. The court has to separate the chaff from grain and evaluate the evidence and judge the evidence on the touchstone of truth. It cannot be expected to give a benefit of doubt for every minor discrepancy. The appreciation of evidence should be based on sound principles of reasoning and probabilities. The question as to whether the accused have caused all the injuries or some of the injuries and whether exaggerated version has been given by P.W.1 are to be seen by the lower court. It has not been adverted in that direction. There is also version given by the first accused in his evidence that earlier he reported against the petitioner that he was performing operations without any qualifications and practicing medical profession. These matters are to be considered by the lower court. The learned Magistrate has failed to appreciate the evidence in proper perspective, which resulted in miscarriage of justice. The judgment is nothing short of perverse judgment and giving too much importance to the benefit of doubt. In that view of the matter, the judgment of the lower court is liable to be set aside and the matter is liable to be remanded to the lower court to reappraise the entire evidence to arrive at the correct conclusion uninfluenced by the observation made regarding the merits of the case.

7. Accordingly, the learned Judicial Magistrate of First Class, Narayanpet, is directed to restore C.C. No. 216 of 1999 to its file and reappraise the evidence keeping in view that truth has to be culled out and justice has to be rendered in the light of the observation made by this Court avoiding tilting the balance totally to one side while appreciating the evidence.

The criminal revision case is, accordingly, allowed.