
(2013) 01 AP CK 0052

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 803 of 2006

Bogadi Haribabu and 3 Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 34

Citation : (2014) 1 ALD(Cri) 253 : (2013) 2 ALD(Cri) 59

Hon'ble Judges : K.S. Appa Rao, J

Bench : Single Bench

Advocate : M.V.S. Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

K.S. Appa Rao, J.—This Criminal Revision Case is filed against the judgment dated 29.12.2005 passed by the XI Additional District & Sessions Judge, (F.T.C), Guntur at Tenali in Criminal Appeal No. 450 of 2004. The said Criminal Appeal was directed against the judgment dated 27.10.2004 passed in C.C. No. 158 of 2002 on the file of the II Additional Munsif Magistrate at Repalle, wherein and whereby the learned Magistrate convicted the accused/appellants for the charge u/s 323 read with 34 IPC and sentenced to suffer rigorous imprisonment for a period of 1 year and to pay a fine of Rs. 1,000/- each, in default they should suffer simple imprisonment for 3 months each. It is further ordered that out of the fine amount recovered a sum of Rs. 1,250/- each shall be applied in the payment of compensation to P.Ws.1 and P.W.3. The brief facts of the prosecution case are that the wife of A.1 was elected as Surpanch of the village. P.W.1 sent a petition against the wife of A.1 about her dishonest activities and upon which on 22.4.2002 the extension officer of Panchayat was conducted an enquiry in the Panchayat office in Allaparru. During the enquiry, A.1 picked up a quarrel and dragged out P.W.1 from Panchayat office by caught hold of his collar and assaulted P.W.1. When P.Ws.2 to P.Ws.4 intervened they were also beaten by the accused. P.Ws.1 to 4 were referred to Government Hospital, Repalle, where

police recorded the statement of P.W.1, upon which they registered a case in Crime No. 39 of 2002 u/s 324 read with 34 IPC. After investigation, the police filed charge sheet before the trial court for the charge u/s 323 read with 34 IPC against all the accused.

2. To prove the guilt of the accused, the prosecution in total examined P.Ws.1 to 9 and marked Exs. P.1 to P.11 and on behalf of defence Exs. D.1 to D.9 were marked.

3. On hearing the appellants, the learned Sessions Judge set aside the sentence of imprisonment imposed by the trial court while confirming the fine imposed by trial court. Being aggrieved by the same, the present appeal is filed on the ground that there are discrepancies in the evidence of P.Ws.1 to 4 and 6. They all belong to one group. Who are opponents of the Surpanch of the village. In view of the political rivalry, this case is foisted against the accused. But the trial court without giving any weight of these discrepancies wrongly held that they are not going to the root cause of the case. It is further alleged that both the courts though observed that the prosecution failed to prove the specific overt acts against the petitioners and disbelieved the report lodged by the P.W.1 but laid conviction without any tangible evidence and the same is not sustainable.

4. Now the point that arises for consideration is whether the impugned judgment passed in Criminal Appeal No. 450 of 2004 confirming the judgment of the trial court in C.C. No. 158 of 2002 is sustainable and the prosecution proved the guilt of the accused for the offence u/s 323 and read with 34 IPC.

5. As seen from the record, P.Ws.1 to 4 are the eye witnesses to the occurrence. A perusal of their evidence shows that they have stated that the incident occurred near the Panchayat Office on 22.4.2004 at 11.00 a.m. P.W.6, who is an independent witness also corroborated the evidence of P.Ws.1 to 4 with regard to time and place of the occurrence. Admittedly A.1 is the husband of the Surpanch against whom P.W.1 made a complaint and to enquire the same, this P.W.2 came to the office of the Panchayat on that day at 10.30 a.m. Meanwhile, the alleged incident had taken place. On cursory reading of the evidence of P.Ws.1 to 4, it is stated that they were beaten and sustained injuries in the hands of the accused. The record reads that P.Ws.1 to 4 immediately after the incident rushed to the hospital and on the intimation of the hospital authorities, the police took up the investigation. It is not the case as if this injured immediately rushed to the police station and lodged a report. P.W.1 explained in his evidence that as he sustained grievous injuries in the hands of the accused he immediately rushed to the hospital for treatment. Admittedly these P.Ws.1 to 4 were examined by P.W.7 Dr. K. Janaradhana Rao. According to P.W.7, he examined P.W.1 and found the following injuries on P.W.2:-

1. An incised injury 1 1/2" X muscle deep over the front of the upper third of left thigh. Fresh bleeding present.

2. A red contusion for 2" X 1" inch back of lower third of left elbow.

3. A red contusion of 3 inches x 1" posterial aspect of middle third of right thigh arm.

4. Sub congenetival haemorrhage present in left eye.

5. Complaints of pain over front and back of neck tenderness present.

He is of the opinion that the injuries are simple in nature and would have been caused with sharp and blunt object within 6 hours prior to his examination. Ex. P.8 is the wound certificate issued by him to P.W.1.

He further deposed that on the same at about 2 p.m. he examined P.W.4 and he found the following injuries:

1. A contusion of 2" over right parietal area.

2. Complain severe pain over front of neck, over back. Tenderness present. He is of the opinion that the injuries are simple in nature and might have caused with a blunt object within 6 hours prior to his examination.

On the same day at about 1 PM he examined P.W.3 and found the following injuries.

1. A lacerated injury of 1" X 1" X into bone deep over right check and right side of nose red in colour.

2. A red contusion of 2 1/2" X 1/2" below right eye, with an abrasion of 1/2 x 1/2" red in colour.

Complaint of severe pain over back of neck on right thigh. Tenderness presents. No bony injury. He is of the opinion that the injuries are simple in nature. Age is 6 hours prior to his examination. Ex. P.5 is the wound certificate issued by him.

On the same day at about 3.20 p.m. he examined P.W.2 and he found the following injuries.

1. A contusion of 1 1/2" X diameter over fight partial area.

Complaint severe pain over chest and leg. Tenderness present but no visible injury is seen. He is of the opinion that the injuries are simple in nature and aged within 6 hours prior to his examination. The injury might have been caused with a blunt weapon. Ex. P.6 is the wound certificate issued by him. Sine the accused did not challenge this part of the case, I see no reason to dilate the case of the prosecution with regard to the injuries found by the doctor on the P.Ws.1 to 4.

6. The plea of the defence is that these injured P.Ws.1 to 4 might have inflicted the injuries as noted by P.W.7 doctor in the wound certificates Exs. P.3 to 6. A perusal of those documents, it is clear that he certified that the above said injuries can be caused with sharp and blunt object within 6 hours prior to his examination and they are fresh in nature. This witness was cross-examined by the defence, regarding wound certificates, Exs. P.3 to P.6, wherein he asserted in

the cross-examination that it is possible that the injury No. 1 in Ex. P.3 can be inflicted by any person. There is no suggestion to the witness regarding other injuries sustained by the other injured. About the possibility of sustaining those injuries, in the absence of any suggestion to P.W.7 regarding the other injuries sustained by the P.Ws.1 to 3, the possibility of self infliction as argued by the learned defence counsel cannot be swallowed by any stretch of imagination. Therefore, in the evidence of P.W.7, it is possibly proved by the prosecution that P.Ws.1 to 3 sustained injuries as stated by them before the police as well as to the Medical Officer P.W.7. In that view of the matter the evidence of P.W.7 remained un-rebutted. Though it is raised by the defence counsel during the course of arguments that both the trial court and the first appellate court found there are some discrepancies in the evidence of prosecution witnesses on the offence proper conviction laid by both the courts below is not sustainable. On perusal of the evidence of P.Ws.1 to 3 as stated already, they have stated in one voice, the time and place of occurrence, the manner in which they were handled by A.1 to A.5. Admittedly the offence had taken place in Panchayat office when P.W.5 came to conduct enquiry against the wife of A.1 on the report given by P.W.1. Though P.W.5 turned hostile, he stated that he came to the Panchayat office on 22.4.2004 and conducted the enquiry against the wife of A.1 and when the Surpanch i.e., the wife of A.1 was producing the cash ledger and other documents, many people rushed into the chamber resulting commotion in the chamber and on seeing the same, he came out from the room.

7. The learned Public Prosecutor in the trial court correctly treated the witness as hostile and cross-examined him and suggesting that he was won over by the Surpanch of the Village. P.W.9 is the another independent witness who was working as Village Surpanch, Allapur also testified that on 22.4.2004 at about 10.00 a.m. when he was sitting outside, many people came there. Though P.Ws.5, 8 and 9 did not support the case of the prosecution in to, but their evidence show that there was enquiry against Village Surpanch took place can be accepted. Thus evidence laid by the prosecution can safely conclude that the incident took place near the Panchayat Office on 22.4.2004 at 12.30 pm. That the Medical evidence show that the P.Ws.1 to 4 were examined at 1.30 p.m. on the same day and noted the injuries sustained by them and they are fresh in nature. Accordingly, the medical evidence also lends assurance to the case of the prosecution.

8. Regarding the alleged discrepancies, omissions and contradictions as reported in C. Muniappan & others v. State of Tamil Nadu their Lordships of the Apex Court held that it is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the Court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the

matter and shake the basic version of the prosecution witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.

9. While following the aforesaid guidelines in the dictum of the Apex Court, the prosecution's case cannot be brushed aside and disbelieved while disbelieving the evidence of P.Ws.1 to 4 as they stated in one voice that they were beaten by A.1 to A.5 in the Panchayat Office when they gave evidence before the enquiry officer P.W.5. There is no reason for P.Ws.1 to 4 to give any false evidence by making self inflictions as noted by P.W.7 in wound certificates Exs. P.3 to P.6. The injuries noted in the aforesaid wound certificates are lacerated sutured injuries. It is an admitted fact that the enquiry officer came to the Panchayat Office on that day to make an enquiry against the allegations made by the P.W.1 against the Surpanch i.e., the wife of A.1. As seen from the facts of the case admittedly there were political rivalry between the two groups and the accused belongs to one group and whereas P.Ws.1 to 3 belongs to another group. So admittedly the political rivalry was the root cause for the incident. Simply because the accused party belongs to Surpanch group and the complainant belongs to opponent group, we cannot mark P.Ws.1 to 4 are planted witnesses.

10. Even, PW.5 the hostile witness himself stated that on seeing the commotion in the room, he came out of the said room anticipating danger in the hands of the accused persons. Therefore, it can be easily inferred that the said commotion was intensified by A-1 to A-5, then PW.1 came out of the office at that time. Unfortunately, this PW.5 being the Official witness turned hostile and did not support the prosecution case for the reasons best known to him. It is also an admitted fact that PW.5 came to the Panchayat Office on that day to enquire about the truth or otherwise of the allegations made against the Surpanch i.e., the wife of A-1 on the petition lodged by PW.1. According to the evidence of PW.5, while he was verifying the cash book and other records, he noticed many people entering the office room and created commotion. The conduct of PW.5 in leaving the office on seeing the mob and the commotion is self explanatory about the way in which the accused party took the law into their hands and created tense in the minds of the people including the official witness PW.5.

11. In this case PWs.2 to 4 are the injured and sustained injuries in the hands of A-1 to A-5. If at all PW.1 foisted the case against A-1 to A-5 due to political rivalry, he would have implicated the wife of A-1 also in the report lodged before the Police. Admittedly, PW.1 was at loggerheads with the wife of A-1 as she been the Surpanch of the village. If really to wreck vengeance against the wife of A-1, PW.1 would have certainly implicated the Surpanch i.e., the wife of A-1 in this complaint also but the Surpanch was not implicated. So the circumstances in this case clearly reads that the P.Ws.1 and 2 were attacked by A.1 to A.3 belongs to Surpanch. On the grouse that P.W.1 is the root cause for the enquiry conducted by P.W.5. So in totality of the circumstances viewed from any angle, the

prosecution by examining P.Ws.1 to 4 and P.W.7 and other witnesses proved the guilt of the accused for the offence u/s 323 read with 34 IPC and the trial court came to the right conclusion while convicting them for the said offences. The injuries noted under Exs. P.3 to P.6 are self explanatory about its gravity. As seen from the evidence of PW.7 he examined PW.1 and noticed that there is Sub congenetival haemorrhage present in the left eye and incised injury 1 1/2 X muscle deep over the front of the upper third of left thigh; fresh bleeding present apart from the other injuries. Further, he found another lacerated injury of 1" X 1" X into bone deep over right cheek and right side of nose red in colour of PW.3 besides other contused injuries on the left eye. The fourth injury noticed on PW.3 certainly leads to disfiguration of the face as the said lacerated injury is to the deep on the right cheek but, the first appellate Court for the reasons best known to it had taken a lenient view while setting aside the sentence of one year imprisonment and confirmed the fine of Rs. 1,000/- payable by the accused without any basis. When the prosecution proved that the 4 prosecution witnesses sustained injuries as noted by PW.7 and some of the injuries are more deep injuries and that those injuries were caused in a broad day light in the Panchayat Office, in the knowledge of so many villagers, taking lenient view while imposing fine in the circumstances stated by the first appellate Court gives any amount of suspicion, though there is ample convincing evidence for deterrent punishment. In that view of the matter, the finding of the first appellate court setting aside the sentence imposed by the trial court and confirmed the fine is not appropriate. The Courts while deciding the matters should exercise the judicial discretion in a right perspective while taking into consideration the gravity of the offence. When the prosecution is able to prove the gravity of the offence, the court, should not shirk its responsibility while modifying the sentence of imprisonment into fine to please the convict. These observations, in my view are regrettable but inevitable in the facts and circumstances of the case. In the background of the case, viewed from any angle, the finding of the appellate court while imposing fine while setting aside the conviction and sentence is very liberal and not in accordance with the gravity of the offence. However, in the result, the Criminal Revision Case is dismissed.