
(2010) 07 AP CK 0041

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 559 of 2006

The Public Prosecutor

APPELLANT

Vs

Kamidi Veera Venkata Satyanarayana Murthy and Others

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Penal Code, 1860 (IPC) — Section 304, 34, 401, 401(3), 439(4)

Citation : (2010) 07 AP CK 0041

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

Bench : Single Bench

Advocate : Party in Person in Criminal Appeal No. 559 of 2006 and C.S. Venkatesh, in Criminal R.C. No. 926 of 2007, for the Appellant; C. Praveen Kumar, for the Respondent

Judgement

B.N. Rao Nalla, J.—As these two matters arise out of the judgment dated 23.05.2003 delivered in C.C. No. 290 of 1999 and the accused in these two cases are one and the same, they are taken up together for disposal by this common judgment.

2. The learned III Additional Judicial First Class Magistrate, Rajahmundry, vide his judgment dated 23.05.2003, acquitted A1 to A4 of the offences punishable under Sections 498-A and 506(2) IPC. Aggrieved by the acquittal of the accused, the State preferred CrI.A. No. 559 of 2006, while the de facto complainant preferred CrI.R.C. No. 926 of 2007.

3. The case of the prosecution, in brief, is that on 05.02.1992, in Thokada village, the marriage of PW1 - de facto complainant with A1 was performed. A2 and A3 are the parents of A1. At the time of the marriage, the father of PW1 gave 30 sovereigns of gold, Rs. 25,000/- towards purchase of Scooter and Rs. 60,000/- for purchasing furniture and also agreed to give Ac. 06.30 cents of land to A1 towards Pasupukunkuma. For three years, the accused demanded his wife and father-in-law to sell away Ac. 06.30 cents of land for the purpose of

purchasing land at Kurada, to which, his father-in-law agreed. When A1 demanded that the sale proceeds of the land should be deposited in the bank, his father-in-law entertained suspicion as to the bona fides of the accused. Taking into consideration the fact that A1 was harassing PW1 for the last three years to sell away the property, ultimately, her father refused to sell away the land. Then, A3 - mother of A1, abused PW1 saying that after her death A1 would contact another marriage. A2 wrote a letter asking the father of the de facto complainant to sell away the land in question. In that connection, all the accused threatened PW1 that they would kill her by leaking gas and pouring kerosene on her if she failed to sell away the land in question. Since PW1 was not blessed with any issue, the accused demanded her to get Rs. 70,000/- from her parents towards D and C operation of PW1. When the father of PW1 expressed his inability, all the accused abused him, while A1 and A2 beat PW1 and drove her out of their house. Subsequently, A1, A2 and A4 went to the father of PW1 and demanded him to dispose of the land in question and also to give Rs. 70,000/- towards operation. Unable to bear the harassment, PW1 lodged Ex.P1 - complaint with the police, based on which, Cr. No. 105 of 1998 was registered against all the accused for the offences punishable under Sections 498-A and 506(2) IPC, and on 30.09.1998, at 05.00 P.M., A1 to A3 were arrested and sent for remand. After completion of investigation, charge sheet was laid against them. Charges under Sections 498-A and 506(2) read with Section 34 IPC were framed against them.

4. To substantiate the case of the prosecution, it examined PWs.1 to 7 and got marked Exs.P1 and P2. No witnesses were examined on behalf of the defence, but Exs.D1 to D4 were marked. Taking into consideration the evidence of the prosecution witnesses as well as the entire material on record, the trial Court came to the conclusion that the prosecution failed to bring home the guilt of the accused for the offences punishable under Sections 498-A and 506(2) IPC, and accordingly, acquitted them of the charges as stated in paragraph No. 2 supra.

5. A perusal of the evidence of PW1 discloses that on one occasion, when her father visited the house of the accused, all the accused demanded him to dispose of the property, and on his refusal, A1 beat his daughter - PW1, in his presence while the other accused abused him in filthy language.

PW2 stated in his evidence that when he visited the house of the accused to fetch his daughter home for Sankranti festival, they demanded that he should dispose of the property and also pay Rs. 70,000/- towards operation expenses.

The evidence of PW3 is that when he along with PWs.2, 4 and LW5 - Kondaiah went to the house of the accused for mediation, A1 and A2 demanded PW2 a sum of Rs. 70,000/- towards operation expenses for PW1. He further deposed that if PW2 fails to pay Rs. 70,000/- the accused stated that they would not allow PW1 to lead conjugal life with A1.

The evidence of PW4 is to the effect that he came to know through PW2 that the accused demanded PW1 to sell away the land and also demanded Rs. 70,000/-

towards her operation expenses.

PW5 is a neighbour of the accused. He did not support the case of the prosecution. He only stated that there were no disputes between PW1 and the accused.

PW6 is the Investigating Officer, who arrested the accused and sent them for remand, whereas PW7, who is another Investigating Officer deposed as to the filing of charge sheet after completion of the investigation.

6. The learned Assistant Public Prosecutor appearing for the State as well as the learned Counsel for the revision petitioner-de facto complainant contended that the trial Court failed to see that the case of the prosecution is squarely covered u/s 498-A IPC. In this context, he referred to the evidence of PWs.1 and 2 to show that there was constant harassment meted out to PW1 by all the accused demanding disposal of Ac. 06.30 cents of land that was given to PW1 towards Pasupukunkuma and also Rs. 70,000/- towards operation expenses.

7. The learned senior counsel appearing for the respondent Nos. 1 to 3 - accused contended that PWs.3 and 4 are the mediators, who are alleged to have gone to the house of the accused for mediation, but on failure of which, police complaint was lodged on 10.08.1998. There was a gap of seven months in lodging a report from the date when PW1 returned to her parents' place. He further submitted that the trial Court did not believe the evidence of PWs.1 and 2 nor that of PWs.3 and 4 in view of the discrepancies. Hence, he submitted that the order of acquittal is not perverse and the same is not liable to be set aside.

8. Heard the learned Assistant Public Prosecutor appearing for the State, the learned Counsel for the revision petitioner, the learned senior counsel for the respondents-accused and perused the order under challenge.

9. The learned Assistant Public Prosecutor tried to equate this part of the evidence of both the witnesses with the language used u/s 498-A. So far as the charge u/s 506(2) IPC is concerned, except the self-serving statement of PW1 there is no cogent evidence on record as to the incriminating circumstances that on certain occasions, the accused threatened PW1 that they would kill her by pouring kerosene on her if she failed to sell away the piece of land which her father promised to give.

10. The learned senior counsel appearing for the accused-respondent Nos. 1 to 3 relied on a decision reported in K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, wherein it is held that:

It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should, in our opinion, be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439

forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not, convert the finding of acquittal into one of conviction by the indirect method of ordering retrial when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may, however, indicate some cases of this kind which would, in our opinion, justify the High Court in interfering with a finding of acquittal in revision. These cases may be; where the trial Court has no jurisdiction to try the case but has still acquitted the accused, or where the trial Court has wrongly shut out evidence which the prosecution wished to produce or where the appeal court has wrongly held evidence which was admitted by the trial Court to be admissible, or where material evidence has been overlooked either by the trial Court or by the appeal Court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have, therefore, to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.

11 This view was confirmed by the Supreme Court in another judgment reported in *Vimal Singh Vs. Khuman Singh and Another*, wherein it is held thus:

Coming to the ambit of power of High Court u/s 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial Court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial Court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial Court has no jurisdiction to try the case or where the trial Court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue have been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial. In fact, Sub-section (3) of Section 401 of the Code forbids the High

Court in converting the order of acquittal into one of conviction. In view of the limitation on the revisional power of the High Court, the High Court in the present case committed manifest illegality in convicting the appellant u/s 304, Part-I and sentencing him to seven years" rigorous imprisonment after setting aside the order of acquittal.

12. The learned senior counsel further relied on a judgment rendered by the Supreme Court reported in *Arulvelu and Another Vs. State* represented by the Public Prosecutor and Another, wherein it is held as follows:

The real question which falls for our consideration is whether the view which has been taken by the trial Court was a possible or a plausible view.

We have carefully perused the judgment of the trial Court and the impugned judgment of the High Court. The trial Court very minutely examined the entire evidence and all documents and exhibits on record. The trial Court's analysis of evidence also seems to be correct. The trial Court has not deviated from the normal norms or methods of evaluation of the evidence. By no stretch of imagination can we hold that the judgment of the trial Court is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it and consequently, the judgment of the trial Court is perverse.

We also fail to arrive at the conclusion that the discussion and appreciation of the evidence of the trial Court so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse and the findings rendered by the trial Court are against the weight of evidence. The law is well settled that in an appeal against acquittal, unless the judgment of the trial Court is perverse, the appellate Court would not be justified in substituting its own view and reversing the judgment of acquittal.

The expression "perverse" has been dealt with in a number of cases. In *Gaya Din v. Hanuman Prasad* (2001) 1 SCC 501, this Court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

In *Parry's (Calcutta) Employees' Union v. Parry and Co. Ltd.*, the Court observed that "perverse finding" means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In another case, the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

Unquestionably, the appellate Court has power to review and re-appreciate the entire evidence on record. The appellate Court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial Court is found to be a perverse judgment. Interfering in a routine manner, where other view is possible is contrary to the

settled legal position crystallised by the aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial Court. The trial Court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial Court.

13. The prosecution, in this case, examined PWs.1 to 7. PW1 is the wife of A1 and PW2 is her father. Even though PWs.1 and 2 spoke as to the differences between PW1 and the accused as to the disposal of Ac. 6.30 cents of land and also the demand made by the accused for an amount of Rs. 70,000/- towards operation expenses, PW5, who is the immediate neighbour of the accused living in a portion of their house, also stated that he was on cordial terms with PW1, and testified that there were no disputes or quarrels between PW1 and the accused. PW5 was not declared hostile. The trial Court, considering the evidence of PW5, who was an independent witness, that there was harassment of PW1 by the accused, disbelieved the evidence of PWs.1 and 2. PW1 has no clear evidence to show that the accused harassed her and except herself and her father, no one had knowledge about the alleged harassment meted out to her by the accused since the harassment alleged to have been taken place indoors. The evidence of PW5 is that his family members, who are residing in a portion of the house belonging to the accused, used to meet PW1 frequently, and regularly collected water from the house of A1 and the wife of A1 would meet his family members everyday and go to temple along with them, but PW1 never informed them about any kind of harassment meted out to her by any of the accused, at any stage. PW5 further stated that PW1 did not inform him nor his wife about any dowry demand made by the accused. PW5 was neither declared hostile nor was subjected to any cross-examination or re-examination suggesting any motive for him to speak in favour of the accused.

14. The evidence of PW1 is that in the year 1998, A1, A2 and A4 visited her parents while she was at her parents' house for mediation wherein, PWs.3, 4 and LW5 - Kondaiah tried to convince them as well as her parents to send her to Hyderabad along with cash of Rs. 70,000/- as well as the sale proceeds of the landed property, but her father, who acceded to pay the sale proceeds, did not pay the amount. The evidence of PW3 does not corroborate the evidence of PW1 that the mediation took place at her parents' place as it has not been spoken to that effect by PW3. Even the evidence of PW4 also does not corroborate the evidence of PW1 in this regard. Even though PW4 testified that he along with PW3 and LW5 - Kondaiah went to the house of accused for mediation, he did not speak as to the result of mediation at the house of the parents of PW1 nor did he state before the police in his statement recorded u/s 161 Cr.P.C. that when they were mediating the dispute between PW1 and the accused at the house of the accused, A1 demanded PW1 any amount towards operation or the sale proceeds. Therefore, there is any amount of variation in the evidence of PWs.3, 4 with that of PW1. It is also to be seen that the evidence of PWs.3 and 4 is not in

consonance with the means of travel to the house of the accused at Hyderabad. PW3 stated that they went to Hyderabad and came back to Thokada by bus on the same day whereas PW4 testified that they went by train and stayed for a day at Hyderabad and then returned to Thokada.

15. Further, it is pointed out from the evidence of PWs.2 and 5 that when PW2 went to the house of the accused to fetch his daughter home for Sankranti festival, A1 also accompanied them. In this context, it is to be noticed that if really, A1 had beaten PW1 in the presence of her father as deposed to by PWs.1 and 2, A1 could not have accompanied them to Thokada village and the same goes to nullify the evidence of PWs.1 and 2 that A1 harassed PW1 for not complying with his demand of Rs. 70,000/- and also the sale proceeds of the landed property that was given to her by her father towards Pasupukunkuma.

16. Moreover, it is to be seen that a long lapse of eight months in preferring Ex.P1 - complaint from the date of the alleged commission of offences, which create a doubt in the case of the prosecution that it could be a false implication of the accused. If really, harassment had been meted out to PW1 either by A1 or by his other family members, PW1 could have, in consultation with her parents, taken remedial steps immediately thereafter or may be within a reasonable time. However, the delay of eight months cannot be regarded as a reasonable time. The only independent witnesses that were examined to prove the prosecution case are PWs.3, 4 and 5. However, the evidence of PWs.3 and 4 is not corroborative. There is discrepancy in their evidence as to the place, time and mode of travel for mediation. So far as A4 is concerned, it is an admitted fact that no allegations are made against him.

17. Inasmuch as it is a well-established principle that has been laid down in the above referred judgments that only if there are substantial and compelling reasons and when the judgment of the trial Court is found to be a perverse judgment, then only the appellate Court would be justified in reversing the judgment of acquittal, this Court, after careful analysis of the facts and evidence placed on record, is of the considered opinion that the trial Court very minutely examined the entire evidence and all documents and exhibits on record, and its analysis of evidence also seems to be correct. The trial Court has not deviated from the normal norms or methods of evaluation of the evidence. Therefore, by no stretch of imagination can this Court hold that the judgment of the trial Court is based on no evidence or evidence, which is thoroughly unreliable.

18. Hence, in the above facts and circumstances of the case, it cannot be said that the trial Court committed any error or irregularity or that the finding of the trial Court is perverse and not properly reasoned, as such, the judgment of the trial Court is not liable to be interfered with.

19. In the result, Crl.A. No. 559 of 2006 preferred by the State and Crl.R.C. No. 926 of 2007 preferred by the de facto complainant are dismissed confirming the judgment dated 23.05.2003 delivered in C.C. No. 290 of 1999 by III Additional

Judicial First Class Magistrate, Rajahmundry.