

HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRL.R.C.No.108 of 2007

JUDGMENT:

This Criminal Revision Case is preferred by Accused No.1 against the judgment of the learned Special Judge for the Trial of Offences under S.Cs and S.Ts (POA) Act-cum-VI-Additional Metropolitan Sessions Judge, Secunderabad, in Crl.A.No.1 of 2006 dated 15.12.2006.

It is the case of the prosecution that A-1 and A-3 are the sons of A-2. P.W.1, P.W.2, A-2 and one D.Sudershan are the natural brothers. There are property disputes between the accused family and P.W.1's family. On 01.08.2002 at about 2.00 P.M. P.W.1 locked the premises in dispute (shop) i.e., Door No.3-4-17, Mahankali street, Secunderabad, from inside the door and thereafter A-2 locked the said shop from outside the door and again on the same day at about 7.30 P.M. A-2 accompanied by his sons A-1 and A-3 came to the said shop and tried to break open the inner lock with a hammer and when P.W.1 objected the same, A-1 abused and beat him with a hammer on his head and below the left eye resulting in bleeding injuries. On the report given by P.W.1, police registered a case in Crime No.97 of 2002 under Section 324 read with Section 34 I.P.C.

The revision petitioner is Accused No.1. He along with two others i.e., A-2 and A-3 were tried for the offence under Section 325 read with Section 34 I.P.C. During the course of trial, the prosecution has examined P.Ws.1 to 8 and got marked Exs.P1 to P7 and M.O.1 to prove the guilt of the accused. On behalf of the accused Exs.D1 and D2 were marked. The trial Court, on appraisal of entire evidence, both oral and documentary, found the revision petitioner-A1 guilty of the offence under Section 325 I.P.C.; A-2 and A-3 are guilty of the offence under Section 325 read with Section 34 I.P.C. and accordingly convicted and sentenced them to undergo simple imprisonment for a period of one year each and to pay fine of Rs.2,000/- each, in default, to suffer simple imprisonment for a period of three months each.

Aggrieved by the aforesaid conviction and sentence, the revision petitioner-A1 preferred CrI.A.No.1 of 2006 and the learned VI- Additional Metropolitan Sessions Judge, Secunderabad, by judgment dated 15.12.2006, found the revision petitioner-A1 guilty of the offence under Section 324 I.P.C. instead of under Section 325 I.P.C. and accordingly the sentence of simple imprisonment of one year imposed by the trial Court was reduced to six months, while confirming the sentence of fine of Rs.2,000/-. However, A-2 and A-3 were found not guilty of the offence under Section 325 read with Section 34 I.P.C. and accordingly, they were acquitted of the said offence. Aggrieved thereby, the revision petitioner-A1 preferred this criminal revision.

Learned Counsel for the revision petitioner-A1 submits that the Courts below erred in placing reliance on the highly interested and discrepant testimony of P.Ws.1 to 4 and P.W.6 and erroneously convicted the revision petitioner-A1. He further submits that the evidence on record do not establish the guilt of the revision petitioner-A1 beyond all reasonable doubt. He further submits that, in any event, since the relationship between the parties is cordial at present, a lenient view may be taken in so far as the sentence of imprisonment imposed on the revision petitioner-A1 is concerned.

On the other hand, the learned Public Prosecutor representing the State contended that the appellate Court, after re-assessing the entire evidence on record, has rightly modified the sentence of imprisonment and as such no interference is called for by this Court.

Now the point that arises for consideration is as to whether the prosecution could able to prove its case beyond all reasonable doubt so as to sustain the conviction and sentence as imposed by both the Courts below?

POINT:: Perused the entire oral and documentary evidence available on record. Admittedly, the revision petitioner-A1 and A-3 are the sons of A-2. P.W.1-injured, P.W.2 and A-2 are natural brothers. There are property disputes between the accused family and P.W.1's family.

The evidence of P.W.1, who is none other than the injured-cum-defacto complainant is to the effect that on 01.08.2002 at about 7.30 P.M. when the revision petitioner-A1 was breaking open the lock of the shop in question with a

hammer, he (P.W.1) questioned him about the same and then the revision petitioner-A1 beat him with a hammer on his head and also below the left side ear, near the eye resulting in bleeding injuries and thereafter he lost consciousness and by the time he regained consciousness, he was admitted into Gandhi hospital and subsequently he was taken to a private hospital i.e., Vijaya Health Care hospital for better treatment. Further, the evidence of P.Ws.2 to 4 and P.W.6, who are eyewitnesses to the incident, amply establishes the fact that the revision petitioner-A1 beat P.W.1 with a hammer on his head and also below the left side ear, near the eye. In their elaborate cross-examination, nothing was elicited to discredit their evidence.

P.W.7, who was working as Neuro Surgeon at Vijaya Health Care Hospital, has stated in his evidence that P.W.1 was admitted in the hospital on 05.08.2002 and earlier he was treated in Gandhi hospital from 01.08.2002 to 03.08.2002. He further stated that P.W.1 sustained multiple injuries on his head and face and opined that the injuries sustained by P.W.1 were grievous in nature and might have been caused by a blunt object. The prosecution did not examine the doctor who treated P.W.1 at Gandhi hospital for the injuries sustained by him. However, Exs.P3, P4 and P7 i.e., Discharge Summary and Wound Certificates issued by Vijaya Health Care Hospital clearly establish the fact that the injuries sustained by P.W.1 were simple in nature. Since the prosecution has failed to prove the presence of A-2 and A-3 at the scene of offence when the revision petitioner-A1 beat P.W.1 with a hammer, the appellate Court rightly acquitted them for the offence with which they are charged.

On perusal of the entire evidence on record, this Court is of the view that the appellate Court has given sufficient and cogent reasons in convicting the revision petitioner-A1 for the offence under Section 324 I.P.C. Therefore, no interference is warranted by this Court as far as conviction is concerned.

With regard to the quantum of sentence, the learned Counsel for the revision petitioner-A1 submits that the revision petitioner is the son of A-2, who is none other than the own brother of P.W.1, and after this trivial incident, the relationship between the revision petitioner and P.W.1 is cordial and that they are carrying on their avocations in the premises in question peacefully. He further submits that in all earnestness the revision petitioner-A1 felt remorseful

over what had happened to his brother's son i.e., P.W.1 on account of this incident and that he was in judicial custody for about 14 days as an under trial prisoner and, therefore, he requested this Court to take a lenient view.

Having regard to the aforesaid submissions of the learned Counsel for the revision petitioner, this Court is of the view that it is suffice to reduce the sentence of imprisonment of six months, as was imposed by the appellate Court, to that of the period already undergone by the revision petitioner-A1, while maintaining the sentence of fine of Rs.2,000/- imposed against him. In addition to the fine amount already imposed, an additional fine of Rs.10,000/- (Rupees Ten Thousands only) shall be imposed against the revision petitioner-A1 so as to meet the ends of justice, in default, to suffer simple imprisonment for a period of three months. The fine amount of Rs.10,000/-, if paid by the revision petitioner-A1, shall be given to P.W.1 towards compensation.

With the above modification in the sentence, the Criminal Revision Case is dismissed.

Miscellaneous petitions, if any, pending shall stand closed.

M.S.K.JAISWAL, J

16-06-2015

Gsn