

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Revision Case No.45 of 2007

Between :-

Bijiga Sreenu and others .. Petitioners

and

The State of A.P.,
Rep.by Public Prosecutor
High Court, Hyderabad .. Respondent

DATE OF JUDGMENT PRONOUNCED: 28th July, 2015

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copies of Judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wish to see
the fair copy of the Judgment? Yes/No

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

Criminal Revision Case No.45 of 2007

ORDER:-

This revision is directed against the Judgment, dated
02-01-2007 in Criminal Appeal No.193 of 2005 on the file of the III-

Additional Sessions Judge, Nalgonda at Suryapet, by which the learned Sessions Judge has confirmed the conviction of the petitioners/accused by the learned Asst.Sessions Judge, Suryapet, in S.C.No.398 of 2004, dated 17-11-2005 and sentence of rigorous imprisonment for a period of one year for the offence punishable under Section 324 IPC., and Rs.2,000/- each for the offence punishable under Section 148 IPC.

2. The case of the prosecution in brief is that the *de facto* complainant/injured/PW.1 is the brother of A.8. PW.1 refused to give the land that fell to his share on lease basis to his brother A.8 and instead gave it to Thuluri Subba Rao (PW.8). The other accused are the close relations of A.8. A.1 and A.2 are the sons of A.8; A.3 is the sister-in-law of A.8; A.4 is the brother of A.3; and A.5, A.6 and A.7 are the villagers of A.3 and A.4.

On 17-01-2004 at about 05.30 p.m., when PW.1 was in the house, all the accused persons armed with deadly weapons such as sticks, axes, stickles, formed themselves into an unlawful assembly, went to the house, dragged PW.1 out of the house, and attacked him indiscriminately. P.Venkateshwarlu (PW.2), Sheelam Nagamani (PW.3), Sheelam Venkateshwarlu (PW.4) came to his rescue. The accused persons also beat them and caused injuries. On the same day at about 07.30 p.m., the complaint-Ex.P.1 was lodged by PW.1. On the basis of which, a case in Cr.No.7 of 2004 was registered and investigation was taken up. The injured were referred to the Government Hospital where the Doctor-PW.10 treated them and issued the wound certificates – Exs.P.4, P.5 and P.6 certifying that PWs.1 and 2 sustained grievous injuries whereas PW.3 sustained simple injuries. Scene of offence panchanama was conducted, which is Ex.P.3 and the weapons M.Os.1 to 6 were seized.

3. The accused denied the charges. The prosecution examined PWs.1 to 11 and got marked Exs.P.1 to P.7 and M.Os.1 to 6. The accused denied the evidence on record and specifically contended that they are falsely implicated due to family disputes. No defence is produced but Exs.D.1 to D.5 which are the relevant portions in Section 161 Cr.P.C., statements of PWs.2, 3 and 4 were marked.

4. After hearing the arguments of both sides and perusing the material on record, the learned trial Judge convicted and sentenced the accused as stated above while acquitting the accused for the offences punishable under Sections 448, 325 and 307 IPC. The conviction and sentence was confirmed in appeal. Hence, the revision.

5. Learned Counsel appearing for the petitioners contends that both the Courts below have erred in convicting the accused, that except for the interested testimony of PWs.1 to 5, which is full of discrepancies and inconsistencies, there is no independent corroboration, that there was no motive for the accused to attack the witnesses, that the evidence was not appreciated in proper perspective and hence the Judgments are liable to be set aside.

6. On the other hand, learned Public Prosecutor submits that the evidence of the injured witnesses – PWs.1 to 3 is consistent and cogent and it is corroborated by the medical evidence on record and also two of the independent witnesses and the same having been properly appreciated by both the Courts below, the Judgments do not warrant any interference.

7. Arguments of both sides heard.

8. The point for consideration is as to whether the prosecution could prove its case beyond reasonable doubt so as to sustain the conviction and sentence as imposed by both the Courts below or whether the Judgments rendered by the trial Court and the first appellate Court suffers from any material illegality or irregularity warranting interference by the revisional Court?

9. **Point:-** The accused and the prosecution witnesses are close relations. PW.1 and A.8 are the own brothers and the other accused are the sons and relatives of A.8. The cause of attack is said to be the refusal of PW.1 to give the land that fell to his share to A.8 on lease, since PW.1 was working as an electrician. When PW.1 gave the land to PW.8 on lease, the brother-A.8 and his family members started disputes with PW.8 and in pursuance thereto, on 17-01-2004, the incident took place. The

prosecution witnesses – PWs.1, 2 and 3 are the injured and their evidence need to be carefully scrutinized for determining the guilt or otherwise of the accused.

10. PW.1 in his deposition stated that on 17-01-2004 at about 05.30 p.m., when he was at his house, A.7 came to him and caught hold of his collar and pulled him from the house and fell down on the steps of the house. Then, A.1 to A.6 and A.8 came and A.1 was holding an axe, A.2 was holding a knife, A.3 was holding a cart peg, A.4 was holding a stickle, A.5 to A.7 were holding sticks and A.8 was holding a piston. At first, A.1 beat him with an axe on his right side of cheek, A.2 stabbed him with a knife on his chest three times on right side, A.3 beat him with a cart peg on his head and back side and stomach, A.4 beat him with a sickle on his back and the other accused beat him with sticks and A.8 beat him on his back with piston. On seeing the incident, PWs.2 and 3 came to the spot along with other witnesses and they also sustained injuries in the hands of the accused. According to him, PW.2 came to his rescue and that A.2 stabbed PW.2 on the left hand and PW.3 was beaten by A.3 with a cart peg on her back side and about 30 to 40 persons rushed to the spot and he sustained bleeding injuries and he was conscious and when the blood was coming out of the injuries, he was taken to the Police Station, Kodad (Rural) in an auto along with other injured persons. Thereafter, he gave complaint-Ex.P.1 to the police. According to him, himself and his five brothers have divided their properties about twenty years back and that prior to his employment, he used to cultivate his land and after employment, his land was being cultivated by A.8 on lease but failed to give the premium to him, so he let out his land to one Subba Rao for the year 2003-2004. Then A.8 and his sons used to quarrel with said Subba Rao and filed criminal cases against him and that M.Os.1 to 6 are the weapons with which they were beaten by the accused.

11. PW.2 deposed that on the date of the incident at about 06.00 p.m., when he was going to the house from the tank, he found galata at the house of PW.1 and he went there and A.2 and A.3 beat PW.1 with an axe and sickle and the other accused were also present at that time and A.2

stabbed him with a knife used for cutting coconuts on his left hand and due to the said stabbing, his three nerves were cut and A.3 also beat PW.3 with a stick and she also sustained injuries. All the three injured persons were taken to Police Station and later shifted to Government Hospital, Kodad for treatment.

12. PW.3 also deposed in the same lines as stated by PWs.1 and 2 with regard to the alleged incident and according to her, herself and PWs.1 and 2 were beaten by the accused and caused injuries.

13. The eye-witnesses to the incident are said to be PWs.4 and 5. PW.4 deposed that on the date of the incident at about 04.00 p.m., when he was at his house, he heard some galata at the house of PW.1 and that he went to the spot and found A.1 to A.3 and A.8 beating PW.1 and that A.1 was holding an axe, A.2 was holding a knife and A.8 was holding a stick and that A.1 beat PW.1 with an axe on the right side of the cheek, A.2 stabbed PW.1 over his chest, A.3 beat PW.1 with hands and A.8 beat PW.1 with a stick on his back. When he went to the rescue of PW.1, A.5 beat him with hands over the ribs and PWs.2 and 3 were also sustained injuries in the said incident. PW.2 was beaten by A.2 with a knife on his left hand and A.8 beat PW.3 on her right side of the ribs. He along with PWs.1 to 3 went to the Police Station and from there, they were referred to Government Hospital, Kodad.

14. The evidence of PW.5 is similar to that of the other eye-witnesses.

15. The prosecution also relied upon two other independent witnesses said to be the eye-witnesses but their evidence is of no help to the prosecution.

16. Ex.P.1 is the First Information Report lodged by PW.1 immediately after the incident. All the accused persons were known to PW.1 by names. In Ex.P.1, no specific overt acts are mentioned and it is stated that when he was in the house, the accused persons named therein have entered into the house, pulled him out of the house, beat him with axe on the left ear, left side of the chest and when PWs.2 and 3 intervened, they also sustained injuries. Absolutely, no specific overt acts are mentioned about the assault either on PW.1 or on PWs.2 and 3 in the complaint-

Ex.P.1. As against the above, there is evidence of PW.1 wherein he specifically deposed that he was first beaten by A.1 on right side of his cheek with an axe, A.2 stabbed him with a knife on his chest three times. A.3 also beat him with a cart peg on his head and stomach. A.4 beat him with a sickle on the back. A.8 beat him with a piston on his back. According to PW.1, he sustained injuries on the left side of the cheek, three injuries on chest, head, back side and stomach. The Medical Officer-PW.1, who treated PW.1, found the following injuries:-

- 1) Cut injury over right cheek;
- 2) Cut wound on the right side of the chest;
- 3) Incise cut injury over vertebral column; and
- 4) Scratch over sternum.

The Medical Officer opined that injury No.1 is grievous and the other injuries are simple in nature. According to PW.1, injury No.1 was caused by A.1 whereas injuries No.2 and 3 are caused by A.2. The injuries that were alleged to have been caused by the other accused were not found by the Medical Officer.

17. The other injured is PW.2. He claims to have intervened when the accused were beating PW.1 and in that process, received an injury. He also claims that the accused never intended to beat him. It is in the evidence of PW.2 that he is acquainted with A.1, A.2 and A.8 and that he has not seen A.3 to A.7. About the incident proper, he deposed that hearing the galata, he went to the house of PW.1 and found A.2 and A.3 beating PW.1 with axe and sickle. According to him, it is A.2 who caused an injury on his left hand when he tried to ward off the blow. The Medical Officer-PW.10 found a cut injury, which is grievous in nature on the left cubital fossa. According to PW.2, it is A.2 who caused the said injury.

18. The other injured is PW.3 and she also went to rescue PW.1 and according to her, it is A.3 who beat her with a cart peg on the left side of her ribs, due to which she sustained a fracture. The Medical Officer-PW.10 who examined PW.3, found a contusion and tenderness over the anterior part of the left side which was found to be grievous in nature.

19. If the above evidence of three injured witnesses is carefully

analyzed, what is noticed is that it is A.1 to A.3 who caused the injuries and there is no specific allegation insofar as the other accused are concerned. Even though, the injured witnesses claim that all the accused beat them with deadly weapons such as axe, sickle, stick and piston, no injuries other than mentioned above, which are attributed to A.1 to A.3, were found on the person of PWs.1 to 3.

20. PWs.4 to 7 are said to be the eye-witnesses to the incident. It is in the evidence of PW.4 that he has seen A.1 to A.3 and A.8 beating PW.1. He also did not give any specific overt acts insofar as the other accused are concerned. According to him, it is A.8 who beat PW.3 on her right side of the ribs whereas according to PW.3, it is A.3 who beat her but not A.8.

21. The other eye-witness PW.5 stated that it is A.4 who came and pulled out PW.1 whereas it is A.7 according to PW.1. She deposed about A.1 and A.2 beating PW.1. She also speaks about A.4 having beaten PW.1 with a sickle but that is not spoken to by PW.1. According to PW.5, it is A.2 who beat PW.2 with a knife on his hand and it is A.3 who beat PW.3. The evidence of this witness is in accordance with that of PWs.1 to 3 insofar as the specific injuries that are caused to them.

22. PW.6 though said to be an eye-witness claims that he has not seen the incident but claims that when he went to the house of PW.1, he found the accused and PW.1 pushing each other.

23. PW.7 denied having witnessed any incident and has treated hostile.

24. PW.8 claims to have come to know about the incident subsequently.

25. If the above evidence of the material witnesses is carefully analyzed and when the medical evidence is read along with it, what is established is that it is A.1 and A.2 who caused injuries to PWs.1 and 2 and it is A.3 who caused on injury to PW.3. The evidence against the rest of the accused is neither consistent nor it is corroborated by any medical evidence. As already stated, PW.1 sustained three injuries which he attributes to A.1. PW.2 sustained one injury which is said to have been caused by A.2. PW.3 sustained one injury which is caused by A.3. The

evidence against rest of the accused is not consistent and cogent and therefore they are entitled to benefit of doubt.

26. The Courts below have found the petitioners/accused guilty of having committed the offence under Section 148 IPC., and sentenced each one of them to fine Rs.2,000/-. The said conviction and sentence do not warrant any interference. However, the Courts below have convicted the petitioners/accused for the offence punishable under Section 324 IPC., and sentenced each one of them to undergo rigorous imprisonment for one year. This conviction and sentence, in view of the nature of evidence on record, cannot be sustained for the reason that there is evidence only against A.1 to A.3 for having caused injuries to PWs.1 to 3. The evidence against the other accused is discrepant and not corroborated by the medical evidence on record and therefore they are entitled to the benefit of doubt. Subject to the above modification, the revision case is dismissed.

27. In the result, Criminal Revision Case is dismissed and the conviction and sentence recorded by both the Courts below against A.1 to A.8 for the offence punishable under Section 148 and against A.1 to A.3 for the offence punishable under Section 324 IPC., shall be maintained. However, the conviction and sentence recorded against A.4 to A.8 for the offence punishable under Section 324 IPC., is set aside.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

28th July, 2015

smr

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

Criminal Revision Case No.45 of 2007

