

*** THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO**

+ CRIMINAL PETITION No.8876 OF 2015

% 11.9.2015

Shaik Dawood Shareef

..... PETITIONER

AND

The State of Andhra Pradesh, rep.by its Public Prosecutor,

High Court of Judicature at Hyderabad

For the State of Telangana and the State of Andhra Pradesh.

.....RESPONDENT

! Counsel for the petitioner : Sri D.Suresh Kumar

^ Counsel for the respondent : The Public Prosecutor (A.P.)

< Gist:

> Head Note:

? Cases referred: NIL

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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CRIMINAL PETITION No.8876 OF 2015

Between:

Shaik Dawood Shareef

.. Petitioner

and

The State of Andhra Pradesh, rep.by its Public Prosecutor, High Court of Judicature
at Hyderabad for the State of Telangana and the State of Andhra Pradesh.

.. Respondent

JUDGMENT PRONOUNCED ON : 11.9.2015

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THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

1. Whether Reporters of Local newspapers :
may be allowed to see the judgments?

2. Whether the copies of judgment may be :
marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to :

see the fair copy of the judgment?

THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.8876 OF 2015

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ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. to set aside the order, dated 21.7.2015, in Criminal Revision Petition No.11 of 2015, wherein the order, dated 10.2.2015, in CrI.M.P.No.254 of 2015 in C.C.No.711 of 2009 on the file of the Additional Judicial Magistrate of First Class at Gudivada, Krishna District was set aside.

2. Heard learned counsel for the petitioner/A-1 and also the respondent – State represented by the learned Public Prosecutor (Andhra Pradesh) and perused the impugned order.

3. Two accused persons by name Shaik Davood Sharief and Nagur Meera Vali are facing trial pursuant to the charges in C.C.No.711 of 2009 on the file of the learned Additional Judicial Magistrate of First Class, Gudivada for the offence punishable under Section 324 read with 34 I.P.C., which is the outcome of the report of the *de facto* complainant – P.W.1. The prosecution, after registering a case in Crime No.188 of 2009 on the file of Gudivada II Town Police Station, investigated and filed a final report by citing nine witnesses including L.W.8 – Dr.Sanjay and L.W.9 – Investigating Officer. L.W.1 – Shaik Rahamtullah @ Ahmed is the injured, who was examined as P.W.3 before the trial Court in the course of trial. During trial, besides examination of the charge sheet listed witnesses, some more witnesses were additionally summoned and examined including P.W.10 – Dr. B.Badarinadh, Civil Assistant Surgeon, District Headquarters Hospital, Machilipatnam, P.W.11 - Dr.A.Ajitha, Dental Assistant Surgeon, Government Hospital, Machilipatnam and

P.W.12 – S.Venkata Ramana, Deputy Civil Assistant Surgeon, Headquarters Hospital, Machilipatnam.

4. In fact, in the evidence of P.W.3 – injured, there is no whisper about his loss of any teeth. What he deposed is that A-1 threatened him with a knife and also hacked him on his face for which, he sustained injury on his chin, mouth and on nose and by that time, A-1 advised A-2 to kill him, A-2 picked up a stick and beat him on his back and left thigh besides on right leg knee for which he fell down on the ground. By that time, A-2 also beat him with the same stick near his left eye. At that time, the coolies working there came to his rescue and shifted him in 108 ambulance for treatment. That is what P.W.3 deposed in his chief examination. There is nothing even in his cross examination regarding any loss of teeth much less from the medical certificate issued by P.W.11 – Doctor, who treated him. In the chief examination of P.W.11, it is mentioned that she examined P.W.3 and noted the injuries. In the cross examination by the counsel for the accused, specific questions were put to her and she deposed that there is a possibility of teeth losing and dismantling. Regarding the duration of injury and loss of teeth, she answered that losing or missing of teeth are not fresh whereas corner of the mouth injury is of less than one week. The very cross examination of P.W.11 crystallizes that loss of teeth is not due to the occurrence of the present incident.

P.W.12 – E.N.T.Surgeon, who examined P.W.3, deposed about loss of left lower incisor tooth and in the cross examination, he deposed that the said injuries might have been caused by blunt object and that he did not mention about the same in his certificate – Ex.P-15. As Section 320(7) I.P.C. speaks loss of teeth as a grievous injury, the prosecution filed an application to alter the charge from Section 324 I.P.C. to Section 326 I.P.C. against A-1 by invoking Section 216 Cr.P.C.

5. The trial Court dismissed the application whereas in the revision by the prosecution, the same was allowed. This is the same now impugned herein.

6. In this background, a perusal of the impugned revision order reversing the order of the lower Court by allowing to alter the charge from Section 324 I.P.C. to Section 326 I.P.C. against A-1 by the learned Sessions Judge reads that as per Ex.P-12 –

Wound Certificate and the evidence of P.W.12, P.W.3 sustained grievous injury and it is there from, altered the charge under Section 326 I.P.C.

7. From a reading of Section 320 I.P.C. read with 326 I.P.C., it means voluntarily causing grievous hurt by dangerous weapons or means that it is punishable under Section 326 I.P.C. where the injury is designated as grievous.

8. P.W.12, in fact, deposed that the injuries might have been caused by a blunt object. P.W.3, in his evidence, as referred supra, deposed that A-1 hacked on his face for which, he sustained injury to his chin, mouth and nose, and A-2 beat with a stick. When such is the case, the charge is sought to be altered not only for the loss of the teeth alone but also as Ex.P-15 – Wound Certificate shows that the injury sustained by P.W.3 is grievous in nature. Section 216 Cr.P.C. entitles the Court to alter the charge at any stage even before pronouncement of judgment and further procedure has to be adopted under Section 217 Cr.P.C. by recalling of any witnesses for further cross examination in pursuance of the altered charge where necessary. In the impugned order of the learned Sessions Judge, there is nothing to find fault. Needless to say, petitioner/A-1 as well as A-2 got an opportunity to ask the trial Court to invoke Section 217 Cr.P.C. and recall the witnesses for further cross examination in reference to the charge altered from Section 324 I.P.C. to Section 326 I.P.C. It is premature to decide Section 326 or 325 or 324 I.P.C. from nature of stick that sustains, but for to say the alteration of the charge is to be with alternative under Section 221 Cr.P.C. for Sections 326 and 325 I.P.C., besides Section 324 I.P.C. Needless to say, if lesser offence of Section 324 or 323 I.P.C. is proved, the alternative charges under Sections 326 and 325 I.P.C. cover to give a finding for lesser offence as the case may be under Sections 222 and 224 Cr.P.C.

9. Accordingly, the Criminal Petition is disposed of before admission. Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

Dr. JUSTICE B.SIVA SANKARA RAO

Date: 11.9.2015

Note: L.R. Copy to be marked.

B/O

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THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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