

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.698 OF 2008

O R D E R:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 24.04.2008, passed by the VI Additional District & Sessions Judge, (Fast Track Court), Markapur, in Criminal Appeal No.52 of 2007, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offences punishable under Sections 326 & 324 of the Indian Penal Code, 1860 (for short 'I.P.C') vide the judgment dated 04.04.2007 in C.C.No.207 of 2003 by the Additional Junior Civil Judge, Giddalur, was confirmed.

2. The revision petitioner herein is A.1, whereas respondent is the complainant in C.C.No.207 of 2003 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C before the trial Court.

3. The brief facts of the case of prosecution are that on 13.10.2003 at evening at about 6:00 p.m, while PW.4 and one Kalavathi were proceeding on the road, A.1 & A.2 picked up a quarrel with them and when PWs.1 to 3 intervened, A.1 beat PW.2 with axe stick on his right upper arm and caused swelling, A.2 beat PW.3 with a stick on both shoulders and caused injuries, and A.1 attacked PW.1 with a stone on his nose and that A.3 to A.6 pushed PW.1 aside drain and hit him with hands and legs, and thereafter, PW.4 and others rescued the injured from the accused. On the report lodged by PW.1, the Sub-Inspector of Police, Giddalur Police Station, recorded his statement and registered it as a case in Cr.No.111 of 2003 for the offences punishable under sections 323, 324 & 326 read with 34 I.P.C and took up investigation. During the course of investigation, the Investigating Officer recorded

the statements of all the witnesses and after obtaining the wound certificates and after completing the investigation, he filed the Charge Sheet into the Court.

4. The learned Additional Junior Civil Judge, Giddalur, took cognizance of the case and framed the charges for the offences punishable under Sections 323, 324 & 326 read with 34 I.P.C against the accused (A.1 to A.6). During trial, on behalf of prosecution, PWs.1 to 10 were examined and Exs.P1 to P11 were got marked. Ex.D1 got marked during the cross examination of PW.3.

5. After closure of the prosecution evidence, accused were examined under Section 313 Cr.P.C putting the incriminatory material deposed against them. The accused denied the same, got examined DW.1 and got marked Ex.D2 on their behalf. After hearing the arguments and after perusing the record, the learned Magistrate convicted A.1 & A.2, and sentenced A.1 to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.500/- and in default to undergo Simple Imprisonment for one month for the offence punishable under Section 326 I.P.C; and also sentenced A.1 & A.2 to pay a fine of Rs.1,000/- and in default to undergo Simple Imprisonment for three months each for the offence punishable under Section 324 I.P.C.

6. Aggrieved by the conviction and sentence passed by the trial Court, A.1 preferred Criminal Appeal No.52 of 2007 before the VI Additional District & Sessions Judge, (Fast Track Court), Markapur, where the appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the findings of the trial Court, dismissed the appeal by confirming the conviction and sentence passed by the trial Court.

7. Being aggrieved by the concurrent finding of both the Courts below, passed in Criminal Appeal No.52 of 2007 and C.C.No.207 of

2003, A.1 preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/ A.1 argued that the appellate Court as well as the trial Court failed to appreciate the oral and documentary evidence adduced on behalf of the accused in proper manner and convicted A.1 & A.2; that the Courts below ought to have rejected the evidence of PWs.1 to 4 since they are related and their evidence is interested one; that the Courts below ought to have seen the evidence of PWs.7 & 8, who are the independent witnesses and did not support the case of prosecution; that non-examination of the Radiologist is fatal to the case of prosecution; that the prosecution witnesses gave different versions with regard to the scene of offence and further, the scene of offence is located in the residential locality of the accused; that the injury sustained by PW.2 is not properly explained as the second requisition pasted on X-ray cover bears the date as 11.10.2003, whereas the fracture injury was received by PW.2 prior to 15.10.2003 in a different transaction; and that non-examination of independent witnesses is fatal to the case of prosecution and finally prayed the Court to allow the revision case.

9. On the other hand, the learned Public Prosecutor appearing for the State of Andhra Pradesh argued that the evidence of PWs.1 to 4 is consistent about the overtacts of the accused; that the wound certificates has been issued on 13.10.2003 itself, but it is showed that they have been issued on 20.11.2003 and the Investigating Officer laid the charge sheet along with the wound certificates; that non-examination of the Radiologist is not fatal to the case of prosecution; that the evidence of prosecution witnesses is consistent; that PWs.1 to 3, clearly stated about the overtacts of the accused and the trial Court as well as the appellate Court rightly held that the revision petitioner along with others attacked PWs.1 to 3 and caused injuries, and

therefore findings of both the Courts below needs no interference and prayed the Court to dismiss the revision case.

10. Now, the point for determination is --

Whether the revision petitioner herein is entitled to set aside the concurrent finding given by both the Courts below for the offences punishable under Sections 326 & 324 I.P.C, as prayed for or not?

11. **POINT**: A perusal of the evidence shows that the offence took place in Devanagaram Village of Giddalur Mandal, within the limits of Giddalur Police Station. Prior to the incident, there were ill-feelings between the family of PW.2 and family of A.1 since some time. There is a road in front of the house of A.1 running from main road, which is claimed by the family of A.1 as belongs to them. Some of the families living in the neighbourhood use the road without any objection from A.1's family, but the family of PW.2 does not use the road since one year as there are ill-feelings in between both the families. PWs.1 & 2 approached one Nidiganti Ranga Rao, who is the husband of Sarpanch, for negotiations with A.1's family to allow PW.2's family to use the road.

12. PWs.1 to 3 are the injured witnesses and PW.4, 6 to 8 are the eye witnesses to the incident. PWs.1 to 3 in their evidence clearly stated that A.1 beat PW.2 with axe stick on the right shoulder and caused fatal injury, A.1 also beat PW.1 with stone on his nose and caused bleeding injury, and A.2 beat PW.3 with a stick on both the shoulders and caused swelling injury. Thus, in so far as the evidence of PWs.1 to 3 regarding the overtacts is concerned, it is consistent and cogent and nothing has been elicited in the cross-examination of PWs.1 to 3 to disprove the manner of the attack. PW.5 is the doctor, who treated the injured PWs.1 to 3 and issued wound certificates. PW.5 doctor examined PW.1 on 15.01.2003 at 9:20 p.m and found one abrasion of 1" X ½" on the tip of nose, which was red in colour.

According to him, the injury was simple in nature, six hours prior to his examination. He issued Ex.P2 wound certificate to that effect. On the same day, he examined PW.2 and found disfiguration with swelling of right upper limb and fracture of right humerus. X-ray report reveals the fracture of right humerus and the injury is grievous in nature and could have been caused about 4 to 6 hours prior to examination. He issued Ex.P3 wound certificate to that effect. He also examined PW.3 on the same day and found one contusion 2" X ½" on centre of the left upper arm, which is simple in nature and age is being 5 to 6 hours prior to examination and issued Ex.P4 wound certificate. Thus, it is clear that the evidence of PW.1 regarding the manner of attack by A.1 is consistent and cogent and in the cross-examination, nothing has been elicited to disprove their evidence. Thus, the oral evidence of PWs.1 to 3 is supported by the medical evidence of PW.5 and prosecution able to prove that A.1 committed the offences punishable under Sections 326 & 324 I.P.C and the trial Court as well as the appellate Court rightly convicted the accused and the concurrent finding of both the Courts needs no interference.

13. Regarding the quantum of sentence, the learned counsel for the revision petitioner/A.1 requested that a lenient view may be taken as the revision petitioner/A.1 is aged about 25 years, and has to look out his family as he is the only bread winner of his family. Thus, taking into consideration the facts and circumstances of the case, I am of the view that a lenient view shall be taken in favour of revision petitioner/A.1 by reducing the sentence of imprisonment awarded under Section 326 I.P.C from one year to six months. Therefore, I am inclined to dispose of the revision as under.

14. The conviction recorded against the revision petitioner/A.1 by the Additional Junior Civil Judge, Giddalur, in C.C.No.207 of 2003 for the offences punishable under Sections 326 & 324 I.P.C as confirmed by the VI Additional District & Sessions Judge, (Fast Track Court),

Markapur, in Crl.A.No.52 of 2007 is hereby confirmed. But, the sentence of imprisonment of one year imposed by the trial Court below for the offence punishable under Section 326 I.P.C is hereby modified and reduced to six months from one year. The sentence of fine awarded for both the offences punishable under Sections 326 & 324 I.P.C is not interfered with. The period of imprisonment already suffered by the revision petitioner/A.1 is directed to be given set off.

15. Accordingly, the Criminal Revision Case is disposed of.

16. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 23.03.2015
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