

HON'BLE SMT. JUSTICE ANIS

CRIMINAL REVISION CASE No.928 OF 2008

ORDER:

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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 24.06.2008, passed by the III Additional Sessions Judge, Guntur, in Criminal Appeal No.136 of 2007, whereunder and whereby, the sentence passed against the revision petitioner herein for the offence punishable under Section 324 read with 34 of the Indian Penal Code, 1860 (for short, 'IPC'), vide judgment dated 04.04.2007 in C.C.No.8 of 2005 by the II Additional Munsif Magistrate, Repalle, was confirmed.

2. The revision petitioner herein is A-1 and the respondent herein is the complainant in C.C.No.8 of 2005 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 case of the prosecution in brief is that on 19.11.2004 at about 6.30 P.M., while PW.1 was going back to his house, A-1 called him to his house and on that he went there and sat in the Varanda of the house of A-1. At that time, A-2 to A-4 were present along with A-1. A-1 asked PW.1 about the details of the meeting held on 18.11.2004. PW.1 informed A-1 that the membership of A-1 was not accepted by one of the members. On that, A-4 uttered that PW.1 was responsible for the same and instigated the other accused to attack. Then, A-2 caught hold of the hands of PW.1, A-1 hacked on his neck, loin portion and temple portion with the toddy knife and A-3 restrained PW.1 from escaping. When the wife of A-1 raised hues and cries, PWs.5 and 6 rushed there and on seeing them, A-2 to A-4 escaped from there. Thereafter, PW.1 was shifted to the hospital in a rickshaw and while going to hospital, PWs.2 and 3 saw PW.1 and enquired about the incident. PW.1 was admitted in Government Hospital, Repalle. On receipt of information, PW.6 visited the hospital and recorded the

statement of PW.1 at 8.30 P.M., on 19.11.2004 and registered a case in Crime No.176 of 2004.

4. During the course of investigation, PW.6 recorded the statements of the witnesses. After receiving the wound certificate from the Government Hospital, PW.6 arrested the accused. After completion of investigation, he filed charge sheet against the accused for the offence punishable under Section 324 read with 34 I.P.C.

5. The learned trial Judge framed charges against the accused for the offence punishable under Section 324 read with 34 I.P.C. During trial, on behalf of the prosecution, PWs.1 to 6 were examined and Exs.P.1 to P.6 were marked. On behalf of the defence, no evidence, either oral or documentary, was adduced.

6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C putting all incriminating material available against them. They denied the material evidence and reported no oral or documentary evidence on their behalf.

7. The trial Court, after hearing the arguments and after perusing the record, convicted A-1 and A-2 and sentenced them to undergo Rigorous Imprisonment for a period of six months and to pay a fine of Rs.1,000/- each for the offence punishable under Section 324 read with 34 I.P.C., and in default of payment of fine, to suffer Simple Imprisonment for three months, while acquitting A-3 and A-4 for the said offence.

8. Aggrieved by the sentence and conviction of the trial Court, A-1 and A-2 preferred Criminal Appeal No.136 of 2007 before the III Additional Sessions Judge, Guntur. After considering the oral and documentary evidence on record, the Appellate Court, vide judgment dated 24.06.2008, confirmed the conviction and sentence against A-1 for the offence punishable under Section 324 read with 34 I.P.C., and acquitted A-2 for the said offence.

9. Being aggrieved by the judgment of the Appellate Court passed in Criminal

Appeal No.136 of 2007, A-1 preferred the present revision case.

10. The learned counsel appearing for the revision petitioner/A-1 argued that the revision petitioner is innocent and not committed any offence; the injuries on PW.1 are simple in nature; except the evidence of PW.1, there is no other evidence to prove the offence against the petitioner and further the Police failed to recover the material objects. It is also argued that the evidence of PWs.1 and 2 is highly interested; their evidence is full of discrepancies and not consistent and that the petitioner has already undergone imprisonment in jail. He, therefore, prayed the Court to allow the revision case, setting aside the conviction and sentence passed against the revision petitioner/A-2 by the Courts below.

11. On the other hand, the learned Public Prosecutor for the State of Andhra Pradesh argued that the evidence of PWs.1 to 6 clearly establish that the revision petitioner is one of the accused, who attacked PW.1 on 18.11.2011 and caused bleeding injuries and the evidence of the Doctor – PW.2 supported the evidence of PW.1. Thus, the evidence of PWs.1 to 6 supported the prosecution case and, therefore, both the Courts gave a concurrent finding that the revision petitioner is liable for punishment for the offence under Section 324 read with 34 I.P.C., and prayed the Court to dismiss the revision case.

12. Now, the point for determination is:

“Whether the revision petitioner is entitled to set aside the concurrent judgments passed by both the trial Court and the Appellate Court for the offence punishable under Section 324 read with 34 I.P.C., as prayed for or not?”

13. **POINT:**

A perusal of the record shows that PW.1 is the *de facto* complainant and injured and he stated regarding the manner in which the injuries received in the hands of A-1 to A-4. The evidence of PW.1 is supported by the evidence of PW.2, the Doctor, who categorically stated that PW.1 received the injuries and

they are simple in nature and issued Ex.P2 -wound certificate. As per the evidence on record, there is no dispute with regard to the acquaintance of accused with PW.1. They are known to each other. PW.1 categorically stated as to how the accused attacked him and according to him, A-1 hacked on his neck, loin portion and temple portion with the toddy knife, due to which he sustained bleeding injuries. Further, the evidence of PW.1 is supported by the evidence of PW.2 - Doctor and Ex.P2 - wound certificate issued by him. Though, the other witnesses, PWs.2 and 3, are not the eye witnesses, they have seen while PW.1 was going to the house of A-1 on the date of the incident. Thereafter, they came to know about the injuries sustained by PW.1. The evidence of PWs.1 to 6 is consistent and there are no contradictions to disbelieve the evidence of PW.1, who is the injured witness. Therefore, both the Courts below rightly gave a finding that A-1 is liable for punishment for the offence under Section 324 read with 34 I.P.C.

14. Learned counsel for the revision petitioner argued that the revision petitioner has to maintain his family and he is the sole breadwinner of the family and he has old parents and, therefore, a lenient view may be taken.

15. Considering the facts and circumstances of the case and also the nature of the injuries, the conviction recorded against the revision petitioner/A-1 by the II Additional Munsif Magistrate, Repalle, in C.C.No.8 of 2005 for the offence punishable under Section 324 read with 34 I.P.C. as confirmed by the III Additional Sessions Judge, Guntur, in CrI.A.No.136 of 2007 is hereby confirmed. But, the sentence of imprisonment of six months imposed by both the Courts for the offence punishable under Section 324 read with 34 I.P.C. is hereby modified and reduced to two months. The period of imprisonment already suffered by the revision petitioner/A-2 is directed to be given set off.

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

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

ANIS, J

Date:17.04.2015

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