

THE HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.1603 OF 2007

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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 13-11-2007, passed by the II Additional Sessions Judge, Nalgonda at Suryapet, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 326 IPC, vide the judgment dated 13-03-2006 in C.C.No.872 of 2002 by the Judicial Magistrate of First Class, Kodad, was confirmed.

2. The revision petitioner herein is Accused No.1 and respondent herein is the complainant in C.C.No.872 of 2002 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 are that on 25-11-2002 at about 4.00 P.M. PW1 came to Police Station and lodged a report stating that on the same day at about 11.30 A.M. while himself and PWs.2 and 3 were cutting the thorny bushes in their fields the accused 1 and 2 picked up quarrel with him and abused them in filthy language and beat them with sticks and iron rod, as a result they received injuries. On the report given by PW.1, police registered the case in Cr.No.95 of 2002 and issued F.I.R. During the course of investigation, police recorded the statements of witnesses and referred the injured to Government Hospital for treatment. Thereafter on 28-11-2002 police arrested the accused and recorded the confessional statement in the presence of PW6 and one Allu Srinu and seized the stick under the

cover of panchanama and sent the accused to the Court for remand. After completion of investigation and after receiving wound certificate PW7 filed charge sheet into the court.

4. The learned Judicial Magistrate of First Class, Kodad, took cognizance of the case and framed the charges for the offences punishable under Sections 324 and 325 r/w 34 IPC against the accused. During trial, to prove the case of prosecution, PWs.1 to 8 were examined and Exs.P1 to P5 were got marked.

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

6. The trial Court, after hearing the arguments and after perusing the record, convicted accused No.1 for the offence punishable under Section 326 IPC and sentenced him to undergo simple imprisonment of three (3) months and to pay a fine of Rs.5,000/-, and in default of payment to undergo simple imprisonment for a period of 20 days and sentenced accused No.2 to pay a fine of Rs.500/- for the offence punishable under Section 323 of IPC and in default of payment to undergo simple imprisonment for a period of one week.

7. Aggrieved by the conviction and sentence passed by the trial Court, accused Nos.1 and 2 preferred Criminal Appeal No.84 of 2006 before the II Additional Sessions Judge, Nalgonda at Suryapet, where the Appellate Court after considering the evidence on record confirmed the conviction and sentence imposed by the trial Court and

dismissed the appeal.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.84 of 2006, accused No.1 preferred the present revision case.

9. Learned counsel appearing for the revision petitioner/A1 argued that the trial Court has not framed the charge under Section 326 of IPC and convicted the accused under the said charge. He also contended that PW8 – Doctor stated that the injuries mentioned in Exs.P4 and P5 can be possible by fall on a hard surface and the prosecution witnesses have not stated that accused beat PW2 with stick and PW1 is a planted witness for the prosecution and no offence has been committed by the petitioner/A1 punishable for the offence under Section 326 of IPC, therefore, prayed the Court to set aside the judgment, dated 13-03-2006 passed in C.C.No.872 of 2002 and the judgment passed by the appellate Court in CrI.A.No.84 of 2006, dated 13-11-2007. Learned counsel for the petitioner also argued that a lenient view may be taken and to enhance the fine amount by reducing the sentence.

10. On the other hand, the learned Public Prosecutor appearing for the State argued that the evidence on record clearly established that both the accused attacked PWs.1 and 2 on 25-11-2002 and the said quarrel was witnessed by PWs.3 to 5 and both the Courts believed the evidence of prosecution witnesses and convicted the petitioner/A1 under Section 326 of IPC and the findings of both the Courts are concurrent as the prosecution able to prove the guilt of accused beyond all reasonable doubt. Therefore, the petitioner/A1 has not made out any case to set aside the concurrent findings of

both the Courts below and prayed the Court to dismiss the revision.

11. Now, the point for determination is --

Whether the prosecution could bring home the guilt of the petitioner/A1 for the offence punishable under Section 326 IPC, with which he is charged?

12. **POINT:**

A perusal of the evidence on record shows that PW1 is the *de facto* complainant who gave a complaint under Ex.P1 stating that on 25-11-2002 at about 11.30 A.M. while himself and PWs.2 and 3 cutting thorny bushes both the accused came there and picked up a quarrel with him and abused them in filthy language and beat him with sticks and iron rods due to which he received injuries. The evidence of PW1 is supported by the evidence of PWs.2 and 3. PW2 is also an injured person supported the evidence of PW1 and the evidence of PWs.1 and 2 is supported by the evidence of PWs.3 and 5. The other witnesses examined by the prosecution are also supported the case of the prosecution.

13. The main contention of the learned counsel for the petitioner/A1 is that the trial Court has framed the charges under Sections 324 and 325 of IPC against the accused but convicted the petitioner herein for the offence under Section 326 of IPC without framing any charge and without giving any opportunity to him. In this regard the appellate Court has rightly discussed that the charge can be framed at any time and framing of charge under Section 326 of IPC is an irregularity and not at all an illegality and also observed that the trial Court has already taken a lenient view in favour of the petitioner herein and imposed simple imprisonment for a period of three (3) months for the offence under Section 326 of IPC.

14. The evidence produced by the prosecution is supported in all aspects and the evidence of all the witnesses corroborated with each other and supported by the medical evidence of PW-8 and Exs.P4 and P5, therefore, the petitioner/A1 has not made out any case to interfere with the concurrent findings of both the Courts.

15. Learned counsel for the petitioner argued that the petitioner was already undergone some period in the jail and prayed the Court to enhance the fine amount and ready to pay some compensation to the injured person under Section 357 of Cr.P.C. Considering the facts and circumstances of the case, I am inclined to dispose of the revision as under.

16. The conviction recorded against the revision petitioner/A.1 by the Judicial Magistrate of I Class, Kodad in C.C.No.872 of 2002 as confirmed by II Additional Sessions Judge, Nalgonda at Suryapet in Crl.A.No.84 of 2006 is hereby confirmed. But, the sentence of imprisonment of three months simple imprisonment imposed by the trial Court is hereby modified and reduced to one month. The sentence of fine is not interfered with. The period of imprisonment already suffered by the revision petitioner/A.1 is directed to be given set off.

17. Accordingly, the Criminal Revision Case is partly allowed. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

JUSTICE ANIS

February 13, 2015

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THE HON'BLE SMT JUSTICE ANIS

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