

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.1221 OF 2007

ORDER:

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 05.09.2007, passed by the Principal Sessions Judge, West Godavari, at Eluru, in Criminal Appeal No.133 of 2007, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 324 of the Indian Penal Code, 1860 (for short, 'I.P.C') for two counts, vide judgment dated 24.05.2007, by the Additional Assistant Sessions Judge, Eluru, in Sessions Case No.248 of 2001, was confirmed.

2. The revision petitioner herein is the accused, whereas respondent herein is the complainant in Sessions Case No.248 of 2001 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Sessions Case before the trial Court.

3. The brief facts of the case are that the accused is a police constable in the Rural Police Station, Eluru, and he is the resident of 7th line Santhinagar, Eluru. The victim also belongs to the same area. There is a Municipal tap near the house of accused and he is in the habit of fixing up a rubber tube to the tap and draw water for his house. The accused used that water in the construction activity of a portion of his house and also used to restrict his neighbours from using the said tap water. Whiles, on 02.07.2000 at about 11:00 a.m, PW.3 went to the said tap, removed the tap attached by the accused, drew the water and went away without re-fixing the rubber tube. The mother of the accused quarrelled with PW.3 and his family members. Sometime thereafter, the accused came to the house of PW.3 and started shouting against him and his family members in a vulgar language. Since the ego was hurt with the conduct of PW.3 in that process, the accused picked up a casurina stick available at the site of building construction and hit mercilessly on the head, both hands and legs of PW.1 causing profuse bleeding injuries. When PW.2-daughter of PW.1 intervened, the accused also beat her with the same stick and caused injuries

on her left fore arm and right hand finger. Similarly when PW.3 intervened, the accused beat him with the same stick and caused injuries over his right palm, right fore arm and left thigh. All the injured went to District Head Quarters Hospitals, Eluru. The Head Constable posted at outpost Police Station attached to the hospital received the hospital intimation, reached the hospital and recorded the statement of PW.1 and forwarded the same to II Town Police, Law & Order on the point of jurisdiction. Basing on the statement of the victim-PW.1, the case in Cr.No.227 of 2000 was registered for the offence punishable under Section 324 I.P.C. The Investigating officer after recording the statement, seized the blood stained clothes in the presence of panchas under the cover of panchanama, recovered the crime weapon i.e., casurina stick and after receiving the wound certificates, after completing the investigation he added Section 307 I.P.C and filed the charge sheet into the Court.

4. The learned II Additional Judicial First Class Magistrate, Eluru, took cognizance of the case for the offences punishable under Sections 307 & 324 I.P.C and thereafter, committed the case to the Court of Sessions Division, Eluru, who made over the same to the Court of Additional Assistant Sessions Judge, Eluru, for disposal according to law. On appearance of the accused, the Additional Assistant Sessions Judge, Eluru, framed charges for the offences punishable under Sections 307 & 324 I.P.C against the accused. During trial, on behalf of the prosecution, PWs.1 to 11 were examined and Exs.P1 to P11 & MOs.1 to 4 were got marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C putting the incriminatory material deposed against him. The accused denied the incriminatory material and reported no oral or documentary evidence on his behalf.

6. The trial Court, after hearing the arguments and after perusing the evidence on record, convicted the accused for the offence punishable under Section 324 I.P.C instead of 307 I.P.C and sentenced him to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.1,000/-, and in default of payment, to undergo Simple Imprisonment for a period of one month. For the second charge i.e., offence punishable under Section 324 I.P.C, the accused is sentenced to pay a fine of Rs.3,000/-, and in default of payment, to undergo Simple Imprisonment for a period of three months.

7. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.133 of 2007 before the Principal Sessions Judge, Eluru, where the appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the finding of the trial Court, held that the prosecution brought home the guilt of the accused for the offence punishable under Section 324 I.P.C for two counts; that there are no justifiable grounds to warrant interference by the appellate Court and dismissed the appeal by confirming the conviction and sentence passed by the trial Court.

8. Being aggrieved by the concurrent finding of both the Courts below, passed in Criminal Appeal No.133 of 2007 and Sessions Case No.248 of 2001, accused preferred the present revision case.

9. The learned counsel appearing for the revision petitioner/ accused argued that the evidence of PW.1 is contrary to the earlier statement-Ex.P1 given to the police; that the evidence of PWs.2 to 4 is interested one as they are closely related to PW.1 being the daughters and son-in-law and therefore their evidence cannot be accepted; that PW.1 in his evidence stated that on the date of incident PW.3 went to get water, whereas PW.3 not stated that he went to get water; that PWs.6 & 7 are planted witnesses as PW.1 did not stated the presence of PWs.6 & 7 at the time of incident; that PW.8 has not supported the case of prosecution and turned hostile; that the mediators were not examined in this case; that the accused is the resident of Padamata Veedhi and not Santhinagar and therefore the presence of accused on the date of incident cannot be believed; that PW.1 gave two different statements and his evidence is not corroborating with other witnesses and also Ex.P1; that PW.1's wife was residing with him, but strangely the prosecution has not examined her, which gave doubt about the alleged offence; that recovery of MO.1 was not proved and there is no evidence that MO.1 was received from the place of incident; that when PWs.1 & 3 quarrelled against each other, he might have received those injuries and their evidence is inconsistent; that both the Courts below not appreciated the evidence properly and prayed the Court to take a lenient view as the witnesses received only simple injuries and as the incident is of the year 2000 and finally prayed the Court to allow the revision case.

10. 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 regarding the manner of injuries received by PWs.1 to 3 in the hands of the accused; that the evidence has supported the ocular evidence of PWs.1 to 3 and wound certificates Exs.P2 to P4; that the trial Court as well as the appellate Court after considering the evidence produced by the prosecution rightly held that accused committed the offence punishable under Section 324 I.P.C under two counts; that all the independent witnesses supported the evidence of PWs.1 to 3 and accused has not made out any case to prove his innocence; that even to take a lenient view, the accused working as a police constable has taken law into his hands and therefore the concurrent finding of the trial Court as well as the appellate Court needs no interference and prayed the Court to dismiss the revision case.

11. 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 offence punishable under Section 324 I.P.C under two counts, as prayed for or not?

12. **P O I N T:** A perusal of the evidence of PW.1 shows that on the date of incident at about 11:00 am when he came out of the house, just spit there and was going into his house, at that time the accused all of a sudden came with MO.1 stick and hit him on his left thigh, left shoulder, on head, on right shoulder and on right thigh. Due to the said attack, he suffered a bleeding injury and fell down. The accused also abused him in filthy language as *"lanjakodaka I want to kill you and I would not allow you to live here"*. Thereafter, PW.1 was shifted to hospital, where he was treated by PW.5-Civil Assistant Surgeon, Government Hospital, Eluru. On the same day, the police examined him and he gave a complaint-Ex.P1 to the Head Constable at outpost police Station. After recording the statement by LW.12, the same was registered as a case in Cr.No.227 of 2000 for the offence punishable under Section 307 & 324 I.P.C and issued First Information Report under Ex.P10. A perusal of Ex.P1 shows that PW.1 categorically stated that accused attacked him with a casurina stick and beat him on his head and other parts of the body and caused bleeding injuries. Therefore, the evidence of PW.1 is corroborated with Ex.P1 and there is no inconsistency in the version of PW.1 and Ex.P1.

13. PW.2 is the daughter of PW.1. She stated that on the date of incident she heard cries of her father, came out of the house and saw him with bleeding injuries. When she questioned the accused why he was hitting his father, the accused also beat her with the same stick on her upper arm and in that scuffle she sustained a scratch injury below her left elbow and suffered bleeding injury. PW.3 is the son-in-law of PW.1 and husband of PW.4. According to him, on the date of incident after hearing the cries of PW.1, he came out of the house along with his wife and found the accused with a casurina stick hitting on the head of PW.1 and causing bleeding injuries. He stated that when he tried to rescue his father-in-law, the accused beat him and he tried to ward it off with his hands and sustained a bleeding injury on the right hand. He also stated that the accused beat him with the same stick on his right upper arm and on both thighs. He was also treated by PW.5 in the Government Hospital, Eluru. PW.4 is the daughter of PW.1 and wife of PW.3. She also supported the evidence of PWs.1 to 3.

14. PW.5-doctor treated PWs.1 to 3 and issued wound certificates Exs.P2 to P5. PW.5 in his evidence stated that the injuries on PWs.1 to 3 are simple in nature. PWs.6 & 7 has not supported the case of prosecution and turned hostile. PW.8 is the witness to the seizure report. He has also not supported the prosecution case, but admitted that he scribed Ex.P8 seizure report. PW.10 is the neighbour to PWs.1 to 3. According to him, on the date of incident, he interfered and dis-armed the accused and relieved him from MO.1 and his evidence shows that the mother of accused purchased land from him and constructed a building and it was leased out to Bharathi School. PW.11 stated in his evidence about the seizure of MO.1 from the scene of offence under the cover of Ex.P8 seizure report. PWs.9 and 11 are the police officers, who registered the case after recording the statement of PW.1, completed investigation and filed the charge sheet into the Court. LW.12, who investigated the case in part, died during the pendency of the case. Therefore, non-examination of the Investigating Officer is not fatal to the prosecution case.

15. A perusal of the evidence produced by the prosecution shows that PW.1 is a retired Section Supervisor, Telecom Department, and he is aged about 70

years. PWs.2 & 4 are his daughters and PW.3 is his son-in-law. Each of the houses of these witnesses is situated adjacent to one another with a single compound wall. As per the evidence of PW.1, he gave his own site to his daughters, who respectively constructed their houses adjacent to his house and living in that house. Near the house of PWs.1 to 4, there is a school by name Bharathi School. As per the evidence of PW.10, he sold 180 Square Yards of land in the year 1985-1986 to the mother of accused and a building was constructed by her and leased out to Bharathi School. A perusal of the evidence of PW.1 shows that he does not know why the accused did all this to him. Ex.P1 shows that he came to know about the dispute earlier regarding the municipal tap between PW.3 and mother of the accused. This evidence of PW.1 is supported by the evidence of PW.2, who clearly stated that the incident at Municipal water tap is the cause for crime. This was supported by the evidence of PWs.3 & 4 also. Admittedly, PW.1 has not witnessed the incident happened between PW.3 and mother of the accused at the water tap and therefore, the contention of the learned counsel for revision petitioner that PW.1 did not speak about the incident at the water tap does not hold any merit.

16. The evidence of PWs.2 to 4 shows that on the date of incident, PW.3 collected water at the municipal tap and did not reconnected the water tube to the tap, as such the mother of the accused quarrelled with him. Thereafter, she might have informed the fact to the accused, who got enraged and committed the offence. A perusal of the evidence of prosecution witnesses also shows that the accused was making construction activities at Bharathi School, therefore the family of the accused are drawing water from the municipal tap. As the accused does not have a water tap, it is quite possible and probable that he might have drawn the water from the municipal tap through tube.

17. The learned Public Prosecutor contended that as the construction activities are going on at the site, there is every possibility of MO.1 available at the scene of offence. Per contra it is argued by the learned counsel for the revision petitioner/accused that the evidence of PWs.1 to 4 is highly interested one, therefore their evidence cannot be accepted. This contention of the learned counsel for revision petitioner/accused cannot be taken into consideration as their evidence is wholly reliable as they categorically stated about the attack made by the accused with MO.1 on PWs.1 to 3 and causing bleeding injuries.

Further, the evidence of PWs.1 to 3 also corroborated with the medical evidence of PW.5, who clearly stated that he found bleeding injuries and also those injuries are fresh in nature. According to him, those injuries are simple in nature. The other contention of the learned counsel for revision petitioner/accused is that at the time of incident, one Rahaman was the Circle Inspector and PW.1 is also a Muslim, as such they together conspired and foisted a false case against the revision petitioner/accused, who is a constable, working under the said Circle Inspector. As per the evidence of PWs.1 to 4, the revision petitioner/accused has not elicited anything regarding the dispute between him and the Circle Inspector at any time. The trial Court after considering the evidence rightly gave a finding that because the victim and Circle Inspector belong to one religion the defence is canvassing a false implication of the accused. Further, the trial Court also held that the accused has not produced any defence evidence to prove that there is a connection between PW.1 and the Circle Inspector during that period. Therefore, the trial Court as well as the appellate Court rightly negated the contention of the learned counsel for revision petitioner/accused. It is also argued by the learned counsel for revision petitioner/accused that PWs.1 & 3 are awful drunkards and because of inter-religious marriage of PW.4 with PW.3, there were always disputes among the family and in that fight among themselves they sustained injuries. PWs.1 to 4 in their evidence denied the said allegation and also denied about any dispute between them and also denied about drinking habit. It is also argued that there was a boundary dispute between the mother of accused and PW.10 therefore PW.10 supported the prosecution witnesses. This part of defence was not proved by cogent evidence and revision petitioner/accused failed to produce any evidence to accept the above theory suggested to the witnesses. It is also suggested to the witnesses that PWs.1 to 4 always used to create nuisance, as such the management of Bharathi School gave a complaint to the police and also to the accused, who is the owner of the building and PW.1 was suspecting that the criminal action would be initiated by the accused and to prevent such action, this false case is foisted. To prove this fact also, no person from Bharathi School was examined to show that at any point of time they gave a complaint to the police regarding the nuisance created by PWs.1 to 3. Accused also has not stated anything about giving complaint against the family of PW.1 in his 313 Cr.P.C examination. After considering the

entire evidence on record, the prosecution brought home the guilt of the accused for the offence punishable under Section 324 I.P.C under two counts and both the Courts below gave a concurrent finding that the accused has committed the offence punishable under Section 324 I.P.C under two counts. Further, the revision petitioner has also not made out any ground to interfere with the concurrent finding of both the Courts below. Therefore, in view of the evidence on record, I am of the view that the concurrent finding given by both the Courts below needs no interference and the revision is liable to be dismissed.

18. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 05.09.2007, passed by the Principal Sessions Judge, West Godavari, at Eluru, in Criminal Appeal No.133 of 2007.

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

ANIS, J

Date: 28.04.2015

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