

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.1004 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 18.07.2007, passed by the II Additional Sessions Judge, Kadapa at Proddatur, in Criminal Appeal No.25 of 2003, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Sections 326 of the Indian Penal Code (for short, 'I.P.C') vide the judgment dated 28.01.2003 in S.C.No.140 of 2001 by the Assistant Sessions Judge, Proddatur, was confirmed.

2. The revision petitioner herein is the accused, whereas respondent is the State in S.C.No.140 of 2001 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the S.C. before the trial Court.

3. The brief facts of the case are that prior to 27.12.2000, there were disputes between the accused and PW.1 with regard to elections. On 27.12.2000 at about 5:00 p.m, PW.1 sat on a pial on the eastern side of the Beedi Bunk of Shaik Hajeepeera along with PWs.2 & 3. In the meanwhile, accused came near PW.1 with a hunting sickle and questioned him why he beat him on the previous occasion with a chappel. Thereafter, the accused hacked PW.1 with the hunting sickle on the right side of his head with an intent to kill him. After receiving the injury, PW.1 escaped from the clutches of the accused and ran away to Tadipatri road and sat there. Again, accused came there and hacked with sickle on the left side of his head and caused bleeding injuries. PWs.2 & 3 rescued PW.1 from the accused and tried to catch him. Then, the accused ran away from the scene of offence. PWs.2 &

3 brought PW.1 to the police station, where he preferred a complaint before the Investigating Officer and he was sent to Government Hospital. The Investigating Officer seized the material objects under police proceedings and after receiving the wound certificate and after completion of investigation, filed the charge sheet into the Court against the accused for the offences punishable under Sections 326 & 307 of I.P.C.

4. On appearance of the Accused, the Judicial Magistrate of First Class, Jammalamadugu, took cognizance of the case and as the case is exclusively triable by the court of Session, he committed the case to the District & Sessions Judge, Cuddapah, who in turn made over the case to Assistant Sessions Judge, Proddatur, for disposal according to law.

5. On appearance of the accused, the Assistant Sessions Judge, framed charges for the offences punishable under Sections 326 & 307 of I.P.C against the accused. During trial, to prove the case of prosecution, PWs.1 to 6 were examined and Exs.P1 to P8 and Mos.1 to 5 were got marked. Exs.D1 to D9 were got marked during the cross-examination of PWs.1 to 3.

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

7. The trial Court, after hearing the arguments and after perusing the record, convicted the accused and sentenced him to undergo Rigorous Imprisonment for a period of four years and to pay a fine of Rs.3,000/-, and in default of payment, to undergo Simple Imprisonment for a period of one year for the offence punishable under Section 307

I.P.C; and to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.2,000/-, and in default of payment, to undergo Simple Imprisonment for a period of six months for the offence punishable under Section 326 I.P.C.

8. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.25 of 2003 before the II Additional Sessions Judge, Kadapa at Proddatur, where the Appellate Court after considering the oral and documentary evidence and after hearing both sides held that the evidence produced by the prosecution is consistent and it is proved that accused hacked PW.1 and caused head injury and the guilt of the accused under Section 326 I.P.C is proved beyond reasonable doubt and confirmed the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 326 I.P.C, while setting aside the conviction and sentence for the offence punishable under Section 307 I.P.C.

9. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.25 of 2003, the accused preferred the present revision case.

10. The learned counsel appearing for the revision petitioner/ accused argued that the evidence of prosecution witnesses is inconsistent, but both the Courts gave a concurrent finding that accused has committed the offence punishable under Section 326 I.P.C, and therefore, as the accused was already in jail for about 90 days and he is an agriculturist aged more than 60 years, prayed the Court to reduce the sentence to the period already undergone by the accused.

11. On the other hand, the learned Public Prosecutor appearing for the State argued that the prosecution is able to prove that the accused has committed the offence punishable under Section 326 I.P.C and the

findings of both the Courts below are concurrent and therefore, prayed the Court to dismiss the revision case.

12. Now, the point for determination is --

Whether the prosecution could bring home the guilt of the accused for the offence punishable under Section 326 of I.P.C, with which he is charged?

13. **P O I N T**: A perusal of the oral and documentary evidence available on record shows that it is stated by PWs.1 to 6 that when the *de facto* complainant was sitting at Beedi bunk of Hajeepeera, accused came behind the bunk and questioned as to why he beat him in the public and hacked PW.1 on his left and right sides of the head and P.W.1 received bleeding injuries. The incident was witnessed by PWs.2 & 3, who categorically stated about the incident and supported the evidence of PW.1 in all aspects. PWs.4 & 5 are the doctors who treated PW.1. PW5 issued wound certificate-Ex.P4 opining that PW.1 received grievous injuries. After receiving the complaint from the *de facto* complainant, PW.5 Investigating Officer registered the same as a case in Cr.No.161 of 1996, conducted the investigation and filed charge sheet into the Court.

14. The evidence of PWs.1 to 6 is consistent and corroborated with each other. Further, the evidence of PWs.4 & 5 i.e., medical evidence supports the ocular evidence of PWs.1 to 3. Therefore, both the Courts have concurrently held that the prosecution could able to establish the guilt of the accused for the offence punishable under Section 326 I.P.C and awarded punishment as stated above.

15. The only contention of the learned counsel for the revision petitioner/accused is that the accused is aged about 60 years and he was in jail for about 90 days and he is an agriculturist. He prayed the

Court to order the accused to pay enhanced fine amount to the *de facto* complainant by reducing the punishment to the period already undergone by him.

16. The evidence of PWs.1 to 6 has proved the guilt of the accused beyond all reasonable doubt. There are no grounds to interfere with the concurrent findings of both the Courts. As the learned counsel for revision petitioner submitted that accused was in jail for about a considerable time and as it is due to previous enmity with regard to elections and PW.1 once beat the accused with a chappel in the village, the accused developed grudge and the accused in a spur of moment committed the offence, this Court is of the view that a lenient view shall be taken in favour of the accused by disposing of the revision as under.

17. The conviction recorded against the revision petitioner/accused by the Assistant Sessions Judge, Proddatur in S.C.No.140 of 2001 for the offence punishable under Section 326 I.P.C as confirmed by II Additional Sessions Judge, Kadapa at Proddatur in CrI.A.No.25 of 2003 is hereby confirmed. But, the sentence of imprisonment of three years imposed by the Appellate Court is hereby modified and reduced to three months by enhancing the fine amount imposed against the accused from Rs.2,000/- to Rs.10,000/- payable to PW.1-*de facto* complainant. The period of imprisonment already suffered by the revision petitioner/accused is directed to be given set off.

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

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

ANIS, J

Date: 04.02.2015

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