

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.1044 of 2007

ORDER:

This Criminal Revision Case is directed against the judgment dated 20.07.2007, passed in Crl.A.No.46 of 2003, by the learned II Additional Sessions Judge, Kadapa at Proddatur, confirming the conviction, and sentencing to pay a

of fine of Rs.400/- each, in so far as accused Nos.1, 2, 4 to 10 are concerned, for an offence under Section 148 I.P.C and to undergo rigorous imprisonment for a period of two and half years in so far as accused Nos.1, 2, 4 to 10 are concerned, for an offence under Section 326 r/w 149 IPC.

For convenience sake, the parties hereinafter referred to as they were arrayed before the Trial Court.

The case of the prosecution is that, on 18.12.2000, PWs.1 to 4 went to bring tender leaves to their lambs and while they were returning to the village from the fields and when they reached Bogademma Thopu situated near Obulesu Konda, the accused, formed into unlawful assembly and with a common object to kill them, attacked from bushes with sticks, hunting sickles, dagger etc. A.1 axed on the left side head of PW.3 causing bleeding injury; A.3 beat PW.2 with a stick on the right fore-arm causing swelling; A.4 beat PW.3 with a stick on the left eye-brow causing injury; A.5 beat PW.3 with a stick on left knee causing bleeding injury; A.6 beat PW.3 with a stick on his back causing swelling injury; A.7 hacked PW.2 with a hunting sickle on the left side of the head causing bleeding injury; and when PW.1 intervened to rescue PWs.2 and 3, A.9 hacked on the right foot of PW.1 with axe causing bleeding injury. PWs.5 to 7 came to the scene of offence on the cries of PW.4. On the basis of the statement of PW.1, crime was registered, and the injured were referred to Government Hospital, Kadapa. Later, the police filed charge sheet before the learned Judicial Magistrate of First Class, Kamalapuram who committed the case to the Court of Sessions and the case was made over to Assistant Sessions Judge, Proddatur for Trial. The accused pleaded not guilty for the offences under Sections 148, 324, 326 read with 149 307 read with 149 IPC and claimed to be tried.

During the course of trial, the prosecution examined PWs.1 to 7 and got marked Exs.P.1 to P.6 and M.Os.1 to 4. On behalf of the defence, Ex.D.1 to D.8 were marked.

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

On a perusal of the entire evidence, both oral and documentary, the Trial Court found the accused guilty for the offences under Sections 148, 324, 326 read with 149 IPC and convicted and sentenced to pay a fine of Rs.600/- each for the offence under Section 148 IPC in default to undergo simple imprisonment for six months, and to undergo rigorous imprisonment for a period of three years each and to pay a fine of Rs.400/- each, in default to undergo simple imprisonment for a period of six months each for the offence under Section 326 read with 149 IPC.

In an appeal preferred by the revision petitioners-accused against the said conviction and sentence, the learned II Additional Sessions Judge, Kadapa at Proddatur, in CrI.A.No.46 of 2003 dated 20.07.2007, confirmed the conviction, but the sentence to pay a fine of Rs.600/- each for accused Nos.1 to 10, for an offence under Section 148 I.P.C, in default to undergo simple imprisonment for a period of six months, was modified to that of imposition of fine of Rs.400/- each for accused Nos.1, 2, 4 to 10; to undergo rigorous imprisonment for a period of three years for the offence under Section 326 r/w 149 IPC and to pay a fine of Rs.400/- each for accused Nos.1 to 10 in default to undergo simple imprisonment for a period of six months each was modified to that of rigorous imprisonment for a period of two and half years in so far as accused Nos.1, 2, 4 to 10 are concerned; and A.3 was directed to be released under Section 360 Cr.P.C. Aggrieved by the same, the revision petitioners – accused Nos.1, 2, 4 to 10 preferred this criminal revision.

Learned Counsel for the revision petitioners, though fairly conceded that concurrent finding was recorded by both the Courts below, contended that, in so far as A.1 is concerned, the prosecution proved the ingredients under Section 326 IPC that A.1 attacked PW.3 and caused bleeding injury, and the

doctor, PW.6, opined that the said injury was grievous in nature, whereas the injuries inflicted by the other accused, and received by PWs.1 to 3, are simple in nature. He, therefore, prayed to take a lenient view. He also placed reliance on **Bishan Singh v. State** to contend that the sentence of imprisonment may be reduced to that of the period already undergone.

In **Bishan Singh** (1 supra), the Supreme Court held as under:

“While imposing punishment in a case of this nature, the court is required to take into consideration the factors which may weigh with the court for taking a lenient view in the matter. The incident is of 1984. 23 years have elapsed. Appellants had all along remained on bail. It is not stated that they had ever misused the privilege of bail. The incident does not reflect any cruelty on their part or any mental depravity. They had been in custody for more than five months. In a situation of this nature, we are of the opinion that it may not be proper for this Court to send the accused persons back to prison. However, the injured had suffered pains at the hands of the appellants. We are, therefore, of the opinion that while their substantive sentence may be reduced to the period undergone, they should pay a fine of Rs. 15,000/- (Rupees fifteen thousand) each; failing which they should undergo simple imprisonment for a period of one year each. If the aforementioned amount is realized, a sum of Rs. 25,000/- (Rupees twenty five thousand) out of the sum, may be paid to the informant.”

Per contra, learned Public Prosecutor appearing for the State contended that the Trial Court as well as the Appellate Court, after considering the evidence on record, rightly convicted the accused and, therefore, the concurrent findings recorded by both the Courts below needs no interference.

The point for consideration is whether the petitioners are entitled to set aside the judgment dated 20.07.2007 passed by the Appellate Court in CrI.A.No.46 of 2003 as well as the judgment of the Trial Court dated 24.02.2003 passed in S.C.No.47 of 2001?

Point:

The material available on record reveals that PWs.1 to 3 are injured, and PW.4, an eye-witness to the incident. Prior to the date of incident, there were some ill-feelings between the accused and injured with regards loan transaction and also on the ground that the sheep of PW.3 was done to death. On the date of incident, when PWs.1 to 3 went to bring tender leaves, the accused, formed into an unlawful assembly with a common object to kill PW.1, armed with

sticks, axes, hunting sickles and daggers, attacked PWs.1 to 3. PWs.1 to 4 is consistent regarding the manner of attack by the accused. PW.5, an independent witness, stated, in his evidence, that, on hearing the cries of PW.4, he, along with others, rushed to the scene of offence and found that the accused were beating PWs.1 to 3 and, on seeing them, all of them ran away; and that they intervened and separated PWs.1 to 3 from accused. PW.6, the doctor, who examined PW.1, opined that PW.1 received injury on right leg near ankle, which is simple in nature and issued Ex.P.2, wound certificate; that PW.6 examined PW.2 and issued Ex.P.4, wound certificate, opining that all the injuries are simple in nature; and that PW.6 examined PW.3 and issued Ex.P.3, wound certificate, stating that injury No.1 (viz. an incised wound on parietal area of scalp on left side of 6 c.m. X 2 c.m) was grievous in nature, and the other injuries are simple in nature.

The contention of the learned counsel for the petitioners that the alleged offence took place in the year 2000 and 15 years has elapsed since then; that the petitioners were in jail for nearly one month and obtained bail; and although they remained on bail, they had not misused the privilege of bail.

In **Bishan Singh** (1 supra), the Supreme Court, took a lenient view for the offences under Sections 323 and 325 IPC, and observed that it would not be proper to send the accused back to prison; that the injured had suffered pain at the hands of the accused; and that, while reducing the substantive sentence to the period undergone, imposed fine. Except one injury received by PW.3, the other injuries received by PW.3 and PWs.1 and 2 are simple in nature. Therefore, the conviction imposed by the Trial Court, and confirmed by the Appellate Court, is hereby confirmed. However, the sentence, in so far as accused Nos.1, 2 and 4 to 10 are concerned, is reduced to the period undergone and they shall pay a fine of Rs.1,000/- (Rupees One Thousand Only) each, in default they shall undergo simple imprisonment for a period of one year each. Out of the amount realized, Rs.2,000/- (Two Thousand Only) be payable to each of PWs.1 to 3, and the remaining amount of Rs.3,000/- (Rupees Three Thousand Only) shall be deposited before the Trial Court towards fine.

With this observation, the Criminal Revision Case stands disposed of. Miscellaneous petitions pending, if any, shall stand disposed of.

ANIS, J

Date:10.04.2015

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