

HON'BLE SMT. JUSTICE ANIS
CRIMINAL REVISION CASE No. 1347 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 01.10.2007, passed by the learned Principal Sessions Judge, East Godavari at Rajahmundry, in Criminal Appeal No.144 of 2007, whereunder and whereby the sentence passed against the revision petitioner herein for the offence punishable under Section 326 of the Indian Penal Code, 1860 (for short 'IPC'), vide judgment dated 07.05.2007 in S.C.No.442 of 2006 by the Principal Assistant Sessions Judge, Rajahmundry, was modified.

2. The revision petitioner herein is the accused and respondent herein is the complainant in S.C.No.442 of 2006 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 case of the prosecution is brief is that PW1 and PW5 are the mother and son, and they were cultivating Ac.2.00 of land on sub-lease from the accused. Soon after the death of husband of PW1, the accused was frequently visiting her house, for that PW5 objected due to differences of opinion. On 21.12.2003 at about 5.00 p.m., PW1 and PW5 were working in their field and sometime thereafter, PW5 went to the coconut garden located by the side of the said field, the accused who was available in the garden armed with a curved grip knife, picked up quarrel with PW5 making comment that he is responsible for the loss of coconuts in the said garden. In that connection, altercation was taken place in between both of them and accused hacked PW5 with curved knife on the left side portion of PW5 resulting in bleeding injury. When PW5 was running away, the accused chased him and

again hacked him with the knife on the right side shoulder and right side neck of PW5. After hearing the hue and cry, PW1 rushed to the garden and intervened to rescue her son, but the accused hacked her also with the knife on her left arm resulting in bleeding injury. The neighbouring persons rushed to the spot after hearing the cries. After seeing them, the accused ran away from the scene of offence with the knife. Immediately, PWs 1 and 5 were shifted to the police station and from there to the hospital. On the strength of the statement given by PW1, a case in Crime No.16 of 2003 was registered for the offences punishable under Sections 307, 324 IPC.

During the course of investigation, on 22.12.2003 at 8.00 a.m., the Investigating Officer – PW8 made the observation of the scene of offence in the fields at coconut garden in the presence of PWs 4 and 9 and seized the blood-stained earth and controlled earth as well a pair of chappals. PW8 prepared the panchanama of scene of offence, got photographed the scene of offence and prepared the rough sketch of the scene of offence. On 23.12.2003 at 8.00 a.m., PW8 arrested the accused and recovered the knife under the cover of panchanama in the presence of mediators. Thereafter, the accused was sent for judicial remand. The blood stained clothes and the blood-stained earth and controlled earth were sent to the FSL. After receiving the report from the FSL and wound certificate from the Government hospital, and after completion of investigation, the Investigating Officer filed the charge sheet.

4. The learned Sessions Division, Rajahmundry made over the case to the Principal Assistant Sessions Judge on receipt of committal record from the Judicial First Class Magistrate, Addatheegala. The learned Principal Assistant Sessions Judge framed charges for the offences punishable under Sections 307 and 326 IPC against the accused. During trial, on behalf of the complainant, PWs 1 to 10 were

examined and Exs.P.1 to P.24 and MOs 1 to 5 got marked. On behalf of the defence, Ex.D.1 was marked.

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

6. The trial Court after hearing the arguments and after perusing the record, convicted the accused and sentenced him to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.3,000/-, in default to suffer Simple Imprisonment for three months for the offence punishable under Section 326 IPC, while acquitting for the offence punishable under Section 307 IPC. The trial Court also directed that out of the fine amount of Rs.3,000/-, Rs.2,000/- shall be paid to PW5 and Rs.500/- shall be paid to PW1 as compensation.

7. Aggrieved by the conviction and sentence passed by the trial Court, the accused preferred Criminal Appeal No.144 of 2007 before the Principal Sessions Judge, East Godavari at Rajahmundry. After considering the oral and documentary evidence and after hearing both the sides, the appellate Court confirmed the conviction of the trial Court, but modified the sentence to six months rigorous imprisonment keeping the fine and compensation in tact.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.144 of 2007, the accused preferred the present revision case.

9. The learned counsel appearing for the revision petitioner/ accused argued that the evidence of PWs 1 and 5 is interested as they were related to each other; that motive to attack by the accused is not established; that there is no corroborative evidence between two witnesses i.e. PWs 1 and 5 produced by the prosecution; that the

accused has no motive to attack PW1, as such the trial Court acquitted the accused for the charge under Section 307 IPC; that there is a discrepancy with regard to MO1 whether it is sickle or iron rod and the same was not explained by the prosecution; that due to sudden provocation, the accused might have been attacked PW1 and PW5, on the other hand he is taking care of them after the death of the husband of PW1, and finally prayed to take a lenient view in this matter.

10. On the other hand, the learned Public Prosecutor for the State of Andhra Pradesh argued that the evidence produced by the prosecution is consistent; that PWs 1 and 5 are the eyewitnesses and injured witnesses who received the injuries in the hands of the accused and their evidence is corroborated with each other; that as per the evidence of the doctor, both PW1 and PW5 received grievous injuries and the trial Court rightly convicted the revision petitioner under Section 326 IPC and further, after considering the evidence, the appellate Court also reduced the punishment of the accused and the findings of the appellate Court needs no interference, and finally prayed the Court to dismiss the revision case.

11. Now, the point for determination is --

Whether the prosecution could bring home the guilt of the petitioner for the offence punishable under Section 326 IPC?

12. **POINT:**

A perusal of the evidence shows that PW1 and PW5 are the mother and son, who were cultivating Ac.2.00 of land having taken on sub-lease from the accused. After death of the husband of PW1, the accused was taking care and he also sublet his land to them.

13. According to the prosecution, PW5 objected the accused who used to visit their house frequently. On the date of incident, on

21.12.2003 at about 5.00 p.m., PW1 and PW5 were working in their field, sometime thereafter, PW5 went to the coconut garden situated near their field and in that garden, the accused was also present. Then, the accused picked up the quarrel with PW5 on the ground that he is the responsible for loss of coconuts in the garden and there was an altercation between them and the accused who was holding a curved knife, attacked PW5 and caused bleeding injuries. After hearing the hue and cry of PW5, PW1 rushed there and when PW1 intervened, then the accused also attacked her with the knife and caused bleeding injuries. PWs 1 and 5 were taken to the Police Station and from there, they were shifted to the hospital.

14. The evidence of PW1 and Pw5 corroborated with each other regarding the manner of the attack of the accused on them and the injuries received by them. The evidence of PW2 to some extent is relevant i.e. he cautioned the accused while he was threatening PW5. This particular evidence is also corroborated with the evidence of PW1 and PW5.

15. A perusal of the medical evidence discloses that on 21.12.2003, PW6 examined PW1 and PW5 and issued wound certificates Exs.P.11 and P.12. As per the evidence of PW6, PWs 1 and 5 received grievous injuries. In the cross-examination of witness, it was tried to elicit that by means of rod, no cut injury would be caused, for that PW6 clearly stated the injuries on PW1 and PW5 are possible by means of knife. Thus, the evidence of PW6 is corroborated the evidence of PW1 and PW5 regarding the injuries.

16. The main contention of the accused is that with a malafide intention to grab the remaining land of the accused admeasuring Ac.8.00, this false case has been foisted. Admittedly, there is no basis to suggest PW5 in the cross-examination by the accused.

17. In this case, the direct evidence of PW1 and PW5 coupled with

the evidence of the doctor – PW6 and the Investigating Officer – PW8, the trial Court rightly held that the prosecution proved the offence punishable under Section 326 IPC and not under Section 307 IPC. In the appeal filed by the accused, the appellate Court reduced the quantum of sentence from one year to six months on the ground that at the time of incident, the accused was fully drunken and the accused got love and affection towards PWs 1 and 5 in helping them one way or other. The prosecution proved the necessary ingredients for the offence punishable under Section 326 IPC beyond all reasonable doubt and the appellate Court took a lenient view and reduced the sentence, and the said finding of the appellate Court needs no interference of this Court.

18. Accordingly, the Criminal Revision Case is dismissed, confirming the judgment dated 01.10.2007, passed in Criminal Appeal No.144 of 2007 on the file of the Principal Sessions Judge, East Godavari at Rajahmundry.

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

ANIS, J

Date: 02.02.2015

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