

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Revision Case No.728 of 2007

Between :-

Yasani Sayanna and others .. Petitioners

and

The State of A.P.

Rep.by its Public Prosecutor,

High Court, Hyderabad .. Respondent

DATE OF JUDGMENT PRONOUNCED: 31st July, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local Newspapers

may be allowed to see the Judgment? Yes/No

2. Whether the copies of Judgment may be
marked to Law Reporters/Journals Yes/No

3. Whether His Lordship wish to see
the fair copy of the Judgment? Yes/No

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.728 OF 2007

ORDER:-

The revision is filed against the Judgment of the learned IV-Additional Sessions Judge (FTC), Mahabubnagar, in Criminal Appeal No.63 of 2001, dated 28-05-2007.

2. The petitioners were tried in C.C.No.147 of 1998 by the Judicial Magistrate of First Class, Achampet, and were convicted for the offence punishable under Section 326 I.P.C., and each one of them were sentenced to undergo imprisonment for one year and also to pay a fine of Rs.1,200/- each. The petitioner/A.2 was further convicted and sentenced to pay a fine of Rs.1,000/- for the offence punishable under Section 324 I.P.C.

3. In appeal, the learned Sessions Judge has confirmed the conviction of the petitioners/accused but modified it to be an offence punishable under Section 325 read with 34 I.P.C., and confirmed the sentence of one year rigorous imprisonment and fine of Rs.1,200/-. The separate conviction of the petitioner/A.2 and sentence for Section 324 I.P.C., was set aside.

4. The case of the prosecution in brief is as under:-

The *de facto* complainant – PW.1 is the own brother of A.1 and A.2. PW.2 is the son

of PW.1. The petitioners/A.3 and A.4 are their relatives. There were some disputes between the family in the matter of sharing water in the fields. According to PW.1, on 28-02-1998, in the morning hours, when himself and his son PW.2 were washing their mouths in front of their houses, the four accused along with six others attacked them by sprinkling chilly powder. They are alleged to beat PWs.1, 2, 3, 7 and 8. It was alleged that the accused persons beat them with sticks and axes and caused the injuries. The incident was witnessed by PW.4. Complaint was filed, which was registered as Cr.No.11 of 1998. The injured were referred to hospital and after completing the investigation, charge-sheet was filed only against the petitioners/A.1 to A.4 by deleting the names of six others mentioned in the complaint.

5. The accused denied the charges and prosecution examined PWs.1 to 10 and produced Exs.P.1 to P.10 and M.Os.1 and 2 in support of their case. The accused denied the evidence on record. Exs.D.1 to D.3 were marked in defence.

6. After hearing the arguments of both sides and after perusing the material on record, by Judgment, dated 11-05-2001, the learned Judicial Magistrate of First Class, Achampet, found the petitioners/accused guilty and sentenced them as stated above. The petitioners/accused preferred Criminal Appeal in which the conviction and sentence were modified as stated above.

7. Aggrieved by the same, the present revision is filed contending that both the Courts below have erred in believing the interested and discrepant testimony of the injured witnesses even though the independent witnesses did not support the case of the prosecution. It is further contended that there was abnormal delay in the F.I.R. being lodged and the same being received by the Court which gives rise to suspicion that taking advantage of the injuries sustained accidentally, the prosecution witnesses who are all members of the same family and were having disputes in the matter of sharing the water, have falsely implicated the accused. Learned Counsel further submits that the incident took place as long back as on 28-02-1998 and thereafter the family members are living amicably without any further disputes.

8. On the other hand, learned Public Prosecutor submits that the evidence on record is properly appreciated, that the Judgments are based on the evidence of the injured witnesses, which is corroborated by the medical evidence and that therefore there are no grounds in the revision and the same is liable to be dismissed.

9. The point for consideration is as to whether the prosecution could prove its case beyond reasonable doubt so as to sustain the conviction and sentence as imposed by both the Courts below or whether the Judgments rendered by the trial Court and the first appellate Court suffer from any material illegality or irregularity warranting interference by the revisional Court?

10. **Point:-** PWs.1, A.1 and A.2 are own brothers. Other petitioners/accused and the injured witnesses are the other family members who are related to them. They are having lands adjacent to each other. There were some differences in between them in the matter of sharing of the water. Due to that, it is alleged that on 28-02-1998 at about 06.00 a.m., when PWs.1 and 2 were washing their mouths in front of their house, A.1 and A.2 along with eight others came and attacked them and also beat the other prosecution witnesses. The learned appellate Court upon appreciating the evidence on record has held that the prosecution proved that A.1 to A.4 beat PWs.1, 2 and 3 only with sticks and therefore found the accused guilty of the offence punishable under Section 325 I.P.C., read with 34 I.P.C. The allegation that the accused persons beat the injured witnesses with axe was not found proved.

11. What is therefore required to be seen is as to whether the evidence of the injured witnesses and eye-witnesses is cogent and consistent and convincing so as to uphold their conviction and sentence.

12. The material witnesses in the case are the five injured witnesses (P.Ws.1, 2, 3, 7 and 8) and the eye-witness (PW.8). According to PW.1, when himself and his son-PW.2 were washing the faces in front of the house, A.1 to A.4 came there, that A.1 to A.3 were armed with axes and A.4 was armed with a stick, that it is A.2 and A.4 who beat him with a stick on head, that when A.1 tried to beat him with axe on head, he received the injury on the upper part of the right eye and that A.3 beat him with a stick on both knee bones and thighs. He further deposed that thereafter, the accused fled away. He admits about there being disputes in between himself and his brothers – A.1 and A.2. According to him, the incident was witnessed by Gunti Venkataiah and Nirmalaiah-PW.4. In the cross-examination, he however changed his version and stated that it is A.2 and A.4 who beat his son-PW.2 but not him as deposed by him in the chief-examination. The witness identified M.Os.1 and 2 which are the sticks recovered but the axe with which the accused are said to have beaten him has not been recovered.

13. PW.2 is the son of PW.1. He deposed that on the date of the incident, when he along with his father – PW.1 were washing the faces, A.1 to A.4 came there. According to him, A.1, A.2 and A.4 were armed with axe whereas A.3 was armed with a stick. He further deposed that A.2 and A.4 beat him with stick on head whereas A.1 beat PW.1 with axe on his head. A.3 beat PW.1 with cart-peg on his legs above the knee. When PW.1 deposed that it is A.1 to A.3 who were armed with axes in the hands, according to PW.2, it is A.1, A.2 and A.4 who were armed with axes. When PW.1 stated that it is A.2 and A.4 who beat him with axes, according to his son PW.2, it is A.1 who beat PW.1 with axe whereas A.3 beat PW.1 with a cart-peg.

14. It is also noticed from the evidence of PWs.1 and 2 that according to PW.1, after the accused beat him and his son, the accused fled away. He does not speak about the accused having beat any other person. Similar is the evidence of PW.2.

15. According to these material injured witnesses, it is A.1 to A.4 who were armed with deadly weapons such as axes and sticks and each of the four accused gave blows to PWs.1 and 2. The medical evidence on this aspect is to the effect that the Doctor-PW.9 who treated PW.1 found a laceration over the right of the head and a swelling over the right knee patella fracture. The Medical Officer did not find any cut injury or incised injury even though according to PW.1, two of the accused beat him with axes. The Doctor did not find any injuries on PW.1 on head as claimed by PW.1. Ex.P.4 is the wound certificate issued by the Doctor. With regard to the injuries on PW.2, when PW.2 claimed that he was beaten by A.2 and A.4 with axes on head, the Medical Officer found the injuries on head which were sutured. Who has treated these injuries to PW.1 and put the sutures on the wound is not on record. Ex.P.5 is the wound certificate of PW.2.

16. The other injured is PW.3. It is in her evidence that A.2 and A.4 beat PW.2 with axes and A.1 and A.3 beat PW.1 with axe. A.3 also beat PW.1 with a cart-peg on thighs. According to her, it is A.2 who beat with a stick on her right wrist. This claim of PW.3 is not spoken to by the other injured PWs.1 and 2. The Medical Officer PW.9 found only a simple swelling injury on the right hand as evidenced by Ex.P.6-Wound certificate.

17. The other injured is PW.7. According to him, he is the younger brother of PW.1. He claims that A.1 to A.4 beat PW.1, himself and one Shanthamma (PW.8).

According to him, initially A.2 beat PW.8 in the fields and then he went there and when he was questioning A.2 as to why he beat PW.8, A.1 came there and both A.1 and A.2 beat him on his back with their hands and torn clothes. Thereafter, himself, PW.8 and PW.1 went to Police Station and gave a report. Three days thereafter, A.2 along with A.1, A.3 and A.4 came to his house in the morning and A.1 beat him with a stick on backside and when he caught hold A.1, all the accused beat him indiscriminately with hands and sticks. Thereafter, the accused went to the house of PW.1 and beat him and his son.

18. The evidence of this witness is quite contrary to the evidence of the other injured witnesses and also the case of the prosecution. According to him, the incident took place at three stages. The incident of assault on PWs.7 and 8 took place three days prior to the incident now in question. In the said incident, according to him, the accused first beat him with sticks and hands and thereafter, they went to the house of PWs.1 and 2 and beat them. In Ex.P.1, which is the complaint, it is alleged that on the date of the incident, the accused went to the house of his brother PW.7 and sprinkled chilly powder on them and thereafter beat them. Be that as it may, according to PW.7, he was beaten by A.1 and A.2 with hands and the clothes were torn. The Medical Officer PW.9 who examined PW.7 did not find any injuries on the person of PW.7. The clothes said to have been torn were not seized. That apart, according to PW.7, when A.2 beat PW.8 with a stick in the fields, he questioned and thereafter, A.1 and A.2 beat him and for that incident, himself along with PW.8 and PW.1 went to the Police Station and reported the matter. Three days after the said incident, the present incident is said to have taken place. That complaint is not before the Court which is said to be the main starting point for the quarrel and assault that is said to have taken place on 28-02-1998.

19. The other injured is PW.8. She is the person whom, according to PW.7, was beaten by the accused three days prior to the present incident. She deposed that she is the wife of PW.7. She deposed that at about 07.00 a.m., when she was taking water to the fields, A.2 beat her with hands and when PW.7 came to her rescue, both A.1 and A.2 beat her and also her husband PW.7. Thereafter, they went to PW.1 and to the Police Station and filed the case. Three days after that incident, the incident of 28-02-1998, is said to have taken place. The Medical Officer PW.9 who treated PW.8 has not found any injuries on her person. According to her, her husband PW.7

also married her own sister by name Pedda Padmamma. She denies that her sister Pedda Padmamma filed a case against their common husband PW.7. It is also in her evidence that she gave a report to the police alleging that all the accused along with her sister Pedda Padmamma came and beat them, which is nobody's case. Insofar as the incident of 28-02-1998 is concerned, PW.8 deposed that it is A.1 who beat PW.1 on head and A.3 beat PW.1 on legs. She also says that the accused also beat PW.2. She does not speak about the other accused having beaten PW.1 or PW.2. According to her, it is A.1 and A.3 who beat PW.1 and she does not say as to which of the accused beat PW.2. Her evidence is inconsistent with that of PWs.1 and 2. That apart, she does not say that it is A.1 and A.3 who beat PW.1 with axe as claimed by him.

20. The only independent witness that is examined by the prosecution is PW.4. According to him, it is A.1 who beat PW.1 with axe and A.3 beat PW.1 with sticks on his knees. He further deposed that A.3 and A.4 beat PW.2 with a stick on his head. According to the accused, he has not at all witnessed any incident and he is a planted witness. It is admitted by PW.4 that he is resident of Kothacheruvu Tanda and that he is not a resident of Ambatpalli, where the incident is said to have taken place. Except for saying that it is A.1 to A.4 who beat PWs.1 and 2, this witness does not speak anything about the assault wherein all the accused are alleged to have beaten PWs.1, 2, 3, 7 and 8. PWs.5 and 6 are the witnesses who are said to have acted as panch witnesses for the alleged confession and recovery of sticks and both of them turned hostile and denied that any panchanama was conducted in their presence.

21. As noticed above, there are as many as five injured and only one independent eye-witness. Their evidence is neither consistent nor cogent. The medical evidence on record also do not corroborate the claim of the injured witnesses. The prosecution has failed to place on record the other complaint said to have been filed by the prosecution party which was in continuation of the incident proper. As already stated, PWs.1 and 7 are the own brothers of A.1 and A.2. There are some disputes in the matter of sharing water. The specific contention of the accused is that the prosecution witnesses having sustained injuries due to fall have falsely implicated the accused due to the disputes. If the medical evidence is perused, this contention of the accused gains credence for the reason that none of the injured persons have received any cut or incised injuries even though it is alleged that as many as three

accused persons have beat PWs.1 and 2 with axes. That apart, the injuries found on PW.2 were also sutured when the Doctor PW.9 examined him immediately after the incident.

22. In a case of this nature, where there are trivial disputes in between the family members, delay if any in lodging the FIR or its reaching the Court will affect the credibility of the case of the prosecution. The contention of the accused is that a false case has been foisted by ante-dating the FIR so as to implicate the accused. The incident in question is said to have taken place at 06.00 a.m., on 28-02-1998. The complaint Ex.P.1 was received by the jurisdictional Police at 07.30 a.m., on 28-02-1998. The case was registered under Section 307 IPC., and therefore it was an express FIR which was required to be delivered to the Magistrate as expeditiously as possible. However, the record discloses that the original FIR was received by the jurisdictional Magistrate at 03.00 p.m., on 02-03-1998. Therefore, it is manifest that the FIR reached the Magistrate 55 hours after it was registered by the police. No explanation whatsoever is offered for this inordinate delay in the F.I.R., reaching the Court. If the evidence of the injured witnesses and the eye-witness is perused carefully and in view of the material inconsistencies, this delay in the F.I.R. reaching the Court affects the case of the prosecution.

23. It is also submitted by the learned Counsel that in the complaint-Ex.P.1, the persons named as assailants are the eight accused and two others. The investigating agency did not find any evidence against A.5 to A.8 and two others. Learned Counsel submits that itself shows the falsity of the complaint lodged by PW.1 and his anxiety to rope in as many of his relatives as possible.

24. Both the Courts below have not appreciated the evidence of the prosecution witnesses in proper perspective and have erroneously held the accused guilty and sentenced them as stated above. The conviction and sentence therefore cannot be sustained. The same are liable to be set aside. The point is accordingly answered.

25. In the result, the Criminal Revision Case is allowed setting aside the Judgments of both the Courts below. Consequently, the revision petitioners/accused are acquitted of the charges levelled against them. The bail bonds executed by them shall stand cancelled. The fine amount, if any, paid by them shall be refunded.

The miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

July, 2015

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