

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

CRL.RC.No.469 of 2007

Oral Order:

The revision is filed by the accused challenging the judgment of the learned Special Sessions Judge-cum-IV Additional Sessions Judge, Tirupati in Crl.A.No.91 of 2006 dated 30-3-2007 confirming the conviction and sentence passed by the learned Assistant Sessions Judge, Puttur in S.C.No.394 of 2004 dated 17.5.2006, whereby and whereunder the learned Assistant Sessions Judge convicted and sentenced the accused to undergo rigorous imprisonment for five years and to pay fine of Rs.1500/-, in default to suffer S.I. for 8 months, for the offence punishable under Section 326 IPC, while acquitting the accused of the offence punishable under Section 307 IPC.

Heard the learned counsel for the petitioner and the learned Public Prosecutor.

According to the prosecution, P.W.2 was manufacturing bricks in his lands and also doing cultivation. There was a quarrel between the accused and the P.W.2 one month prior to the date of incident in respect of encroachment of lands. The village elders intervened and pacified the dispute. P.W.2 was having pipeline under the fields of accused for supply of

water. Accused asked P.W.2 to allow him to take water to his lands on account of scarcity of water but P.W.2 refused to allow him to take water through his pipe lines. Therefore the accused damaged the pipeline running through his lands and there was a quarrel between them in that connection. The accused threatened P.W.2 in the presence of village elders to kill him one day or other.

P.W.2 used to sleep in the lands to watch the brick kiln. On 8.7.2004 at about 11.30 p.m. accused went to P.W.2's fields armed with a billhook and hacked on his neck with an intention to kill him. P.W.2 sustained cut injury on the neck and jaw and he woke up and identified the accused under the light of kerosene bottle lamp. P.W.2 to save himself raised his hands and the accused again hacked P.W.2 twice and caused cut injuries over the neck and right jaw. The accused ran away thinking that P.W.2 died. P.W.2 with great difficulty reached his home and informed the incident to the family members and other villagers and became unconscious. P.W.2 was initially shifted to SVRRGG, Hospital, Tirupathi and from there to C.M.C. Vellore for treatment.

P.W.1-T.Venkatesu Reddy, son-in-law of P.W.2 gave Ex.P.1 report to Station House Officer, Narayanavanam

Police Station and the Sub Inspector of Police,-P.W.6 visited the scene of offence and seized the broken teeth of P.W.2, blood stained clothes at C.M.C. Vellore and arrested the accused in the presence of mediators.

In support of its case the prosecution examined P.Ws.1 to 8 and got marked Exs.P.1 to P.9 and M.Os.1 to 7. During the course of cross examination of P.W.s 1 to 3, Exs.D.1 to D.3 were marked.

The learned Assistant Sessions Judge, Puttur relying on the evidence of P.W.2 found the accused guilty of offence under section 326 IPC and found not guilty of the offence punishable under section 307 IPC and acquitted the accused of the offence under section 307 IPC.

On appeal, the lower appellate Court confirmed the order passed by the trial Court. Hence, this revision petition by the petitioner-accused.

Learned counsel for the petitioner vehemently contended that the learned Sessions Judge erred in placing reliance on the testimony of P.Ws.1 to 3 which is highly interested and discrepant in material particulars and that there was abnormal and unexplained delay of 12 ½ hours in lodging the Ex.P.4 report to the police station and that after due deliberations and consultations the petitioner was

implicated in the case out of suspicion in view of earlier rivalry between the parties; that the learned Sessions Judge having acquitted the accused for the offence punishable under Section 307 IPC erred in convicting and sentencing the accused under section 326 IPC, the same was confirmed in appeal by the lower appellate Court, therefore the order under revision requires interference of this Court.

The point for consideration is as to whether the judgment of the courts below is based on legally acceptable evidence or whether it needs interference ?

According to the prosecution, the motive for the offence is P.W.2's refusal of the request of the accused to take water through P.W.2's pipeline. As rightly observed by the trial Court, P.Ws.1 and 3 are not eye witnesses to the incident. P.W.1 is the son-in-law of P.W.2. who gave Ex.P.1 report on the ground that P.W.2 became unconscious, however in his evidence he stated that he has seen the accused running away from the scene of offence. P.W.3-Sarpach of the village who has taken P.W.2 along with P.W.1 and other villagers to the hospital and he is also not an eye witness to the incident. P.W.4 is one of mediators when the Sub-Inspector of Police P.W.6 inspected the scene of offence on 9.7.2004, P.W.5 is the another mediator when P.W.6 arrested the accused and

seized M.O1 under cover of Ex.P.3 mediators report on 13.7.2004, P.W.6 is the Sub Inspector of Police, who did entire investigation and arrested the accused, P.Ws.7 and 8 are the doctors at C.M.C. Hospital, Vellore. In the above circumstances what remains crucial is the testimony of P.W.2 who is injured in the incident.

According to P.W.2 he was sleeping on the cot at his fields on 8.7.2004 and taking advantage of loneliness of P.W.2 the accused attacked him at his field; that at the time when the accused attacked P.W.2 he raised his right hand to prevent another blow and received cut injury on his right hand fingers and again he raised his left hand to prevent another blow and received injury on his left hand fingers and on hearing cries P.W.1 came to him, that he lost his conscious and that P.W.2 was shifted to the SVRRGG Hospital, Tirupati and thereafter for better treatment to CMC Hospital, Vellore. He reached CMC Hospital on 9.7.2004 along with his son in law P.W.1, who lodged complaint to the police on the basis of which Crime No.144 of 2004 was registered and FIR was issued. However the FIR which was issued on 9.7.2004 was received by the Magistrate on 10.7.2004 at 12.00 noon, thus there is inordinate delay not only in lodging the complaint but also forwarding to the

Magistrate. No doubt it is true that delay in lodging the FIR or it is being received by the Magistrate need not necessarily be vital in each case, however in group fraction and rivalry, unexplained delay will affect the case of the prosecution. Further, no steps were taken to examine the officials of either Puttur Hospital or SVRRGG Hospital to ascertain as to whether P.W.2 taken to those hospitals. Be that as it may, let us examine as to whether the evidence of P.W.2 is cogent and convincing inspiring the confidence of the Court so as to convict the accused only on the basis of his testimony.

P.W.7 the Medical Officer at C.M.C. Medical College, Vellore who examined P.W.2 on 9.7.2004, found the following injuries.

- “ 1. Five fresh deep incised parallel wounds involving left side of face and scalp. 2 x 2 x 4 c.m wound involving the full thickness of lip, cheek extending from upper left going posteriorly fracturing mandible, transecting paratid, left ear helix, ear canal and fracturing mastoid bone exposing mastoid air cells.
2. 10 x 3 x 4 cms., wound parallel to first wound and involving full thickness of lip and cheek.
3. 8 x 1 x 3 cms., wound parallel to wound 2 and joining it in front of left ear lobe.
4. 10 x 3 x 4 cms., wound from chin to angle of left mandible exposing the traction, lower border of left body of mandible.
5. 6 x 2 x 1.5 cms., wound over the submental region.”

The doctor-P.W.7 opined that the above injuries are grievous in nature and can be caused with sharp object. Ex.P.8 is the wound certificate opining that injuries shown in Ex.P.8 can be possible with M.O.1. In the cross examination P.W.7 however denied that M.O. is not knife thereby implying that M.O 1 could not have been used by the accused for assaulting P.W.2. It is also deposed in his cross examination that the injuries noted in Ex.P.8 can be possible by fall on sharp edged instrument. It is further deposed by P.W.7 that he is not aware whether the hospital authorities informed about the case of P.W.2 to police and he did not notice any prior treatment before his examination of P.W.2. P.W.8 is a senior lecturer and Maxillo Facial Surgeon, CMC, Vellore and he conducted surgery on 9.7.2004 and according to him P.W.2 sustained the above five injuries and he testified Ex.P.9. Thus, P.Ws.7 and 8-doctors have not stated about the injuries to the hands of P.W.2.

It is also the case of the prosecution witnesses that immediately after the assault PW2 was taken to the Government Hospital at Potturu and thereafter he was taken to SVRRGG Hospital, Tirupati and thereafter he was taken to CMC Hospital at Vellore. The only medical evidence that is produced is that of two Doctors at CMC Hospital at Vellore.

Absolutely no oral or documentary evidence is produced with regard to the treatment of PW 2 at Government Hospital, Potturu and SVRRGG Hospital, Tirupati.

The evidence of P.W.2 was thus not corroborated by any other independent witness as to his sustaining injuries and as to identification of the accused by P.W.2 under the light of kerosene bottle lamp. That apart out of over anxiety his son-in-law P.W.1 also tried to support and improve the case but he seems to be unsuccessful. In view of the above facts and circumstances of the case, and taking into consideration the evidence on record, in my view, both the courts below have not appreciated the evidence on proper line while coming to the conclusion as to P.W.2 sustaining injuries in a dark night in the fields by the accused which is material aspect in view of pre-existence of enmity between P.W.2 and the accused. Even though P.W.2 claims that he sustained injuries to his both hands by the accused it is not at all in the medical evidence of the doctors who treated the injured. In the instant case there are several circumstances which makes it doubtful about the version of P.W.2 sustaining injuries in a dark night at the hands of the accused. As already stated there was abnormal delay not only in lodging the complaint but also dispatching of FIR to

the concerned Magistrate which has not been explained properly by the investigating agency. The alleged knife M.O.1 said to have been recovered from the house of the accused, but it is not in the evidence of any panch witnesses or stated by the investigating officer-P.W.6 that the said knife was seized or recovered in pursuance of any confessions said to have been made by the accused with which he caused injuries on P.W.2.

In view of the above foregoing discussion, it is noticed that the appreciation of the evidence has not been properly done by the both the Courts below. In view of the above circumstances, the accused is entitled for the benefit of doubt. The criminal petition is therefore allowed setting aside the judgments passed by the Courts below. The fine amount if any paid be returned to the petitioner-accused. Miscellaneous Petitions if any shall stand closed. No costs.

JUSTICE

M.S.K. JAISWAL

Dated: 8-2-2016

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

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