

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.272 of 2008

JUDGMENT:

Petitioner/P.W.1 filed this criminal revision case by invoking the provisions under Sections 397 & 401 of the Criminal Procedure Code, being aggrieved by the judgment, dated 14.06.2007, rendered in Criminal Appeal No.27 of 2006 by the III Additional Sessions Judge, Guntur, whereby and whereunder the conviction and sentence of A-1 to undergo Rigorous Imprisonment for a period of six (6) months and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for a period of one (1) month for the offence punishable under Section 323 read with 34 IPC; conviction and sentence of A-1 to undergo Rigorous Imprisonment for a period of one (1) year and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for a period of one (1) month for the offence punishable under Section 506 IPC; conviction and sentence of A-1 to undergo Rigorous Imprisonment for a period of three (3) years and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for a period of two (2) months for the offence punishable under Section 325 IPC; the conviction and sentence of A-1 to undergo Rigorous Imprisonment for a period of five (5) years and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for a period of two (2) months for the offence punishable under Section 354 IPC and to run the sentences concurrently and the conviction and sentence of A-2 to undergo Rigorous Imprisonment for a period of six (6) months and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for a period of one (1) month for the offence under Section 323 read with

34 IPC; the conviction and sentence to undergo Rigorous Imprisonment for a period of one (1) year and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for a period of one (1) month for the offence punishable under Section 506 IPC and to run the sentences concurrently, recorded in judgment, dated 20.01.2006, in S.C.No.390 of 2004, by the I Additional Assistant Sessions Judge, Guntur, was set aside and the Crl.A.No.27 of 2006 was allowed and A-1 and A-2 were acquitted from all the charges.

2. The brief facts, that are necessary for the disposal of the present Criminal Revision Case, may be stated as follows:

A-1 and A-2 are husband and wife. A-1 and P.W.3 are brothers. P.W.1 and P.W.3 are wife and husband. There were some disputes between A-1 and P.W.3 regarding some agricultural land and vacant site, due to which P.W.3 had filed the suit in O.S.No.2043 of 1994 before the Court of I Additional Junior Civil Judge, Guntur, which was eventually decreed in his favour. It was against this back drop that both the accused tried to interfere with the property belonging to P.Ws.1 and 3 by putting some stones in front of their house around 7.00 a.m. on 12.03.2003. When P.W.1 raised an objection regarding this, A-1 along with A-2 hurled and abused her and physically assaulted her by catching hold of her hair and pulling her down to the ground and A-1 kicking her in the groin, pressing her head to the ground and hitting her right foot with a big stone. While A-1 and A-2 were beating P.W.1, P.W.4 and others came to her rescue and then the accused left her and went away. P.W.1 informed the same to P.W.3 on his return from the fields in the afternoon and thereupon, P.W.3 had taken P.W.1 to

the Government General Hospital, Guntur, for treatment. A day thereafter, at about 7.00 p.m. on 13.03.2003, P.W.1 had lodged a complaint with the police at Vatticherukuru Police Station and P.W.5 took up investigation and during the course of his investigation, P.W.5 examined P.Ws.1, 3 and 4 and prepared a rough sketch of the scene of offence. P.W.2 – the Chief Medical Officer of Government General Hospital, Guntur, who treated P.W.1 issued wound certificate. P.W.6, who is the Assistant Professor of Radio Diagnosis in Government General Hospital, Guntur, opined that there is a fracture in the third Meta tarsal bone on the right foot of P.W.1. The accused were arrested on 18.03.2003 and were sent for remand. After completion of investigation, P.W.5 filed the charge sheet against the accused to the effect that A-1 is liable for punishment under Section 326 IPC and A-1 and A-2 are liable for punishment under Sections 323 and 506 read with 34 IPC.

3. After filing of the charge sheet before the VI Additional Munsif Magistrate, Guntur, a petition in Crl.M.P.No.2117 of 2003 was filed by the learned Additional Public Prosecutor praying for conversion of the case into PRC as it attracts the provisions of Section 354 IPC as well and the same was allowed.

4. The VI Additional Munsif Magistrate, Guntur, had taken cognizance of the case and took the same on file as P.R.C.No.15 of 2004. However, as the case is triable exclusively by the Sessions Court, it was committed to the District and Sessions Court, Guntur, wherein it was numbered as S.C.No.390 of 2004 and made over the same to the trial Court for disposal according to law.

5. On appearance of the accused before the trial Court, the charges under Sections 326, 354, 506 and 323 read with 34 IPC against A-1 and charges under Sections 354, 506, 323, 326 read with 34 IPC against A-2 were framed, read over and explained to them in Telugu, for which, they pleaded not guilty and claimed for trial.

6. To substantiate its case, the prosecution got examined PWs.1 to 6 and marked Exs.P-1 to P-5. On behalf of defence, D.Ws.1 to 3 were examined and Exs.D-1 and D-2 were marked.

7. After appreciating the oral and documentary evidence available on record and believing the evidence of P.W.1 – victim and P.W.4 – eye witness, the trial Court found A-1 guilty of the offences punishable under Sections 323 read with 34, 506, 325 IPC, and A-2 was found guilty of the offences punishable under Sections 323 read with 34 and 506 IPC and accordingly, convicted and sentenced them as stated above. A-2 was acquitted for the offences punishable under Sections 354, 326 read with 34 IPC. Aggrieved by the said conviction order, the accused filed Crl.A.No.27 of 2006. The lower appellate Court allowed the criminal appeal and set aside the judgment, dated 20.01.2006, in S.C.No.390 of 2004 and the accused were acquitted from all charges. Challenging the same, the present revision case is filed by P.W.1.

8. Heard and perused the entire material available on record.

9. In the evidence of P.W.1, she states that there are property disputes between her family and the accused, more particularly in respect of the vacant site located in front of P.W.1's

house since 1994 and that a civil suit was filed by her husband – P.W.3 in respect of the same. Ever since the said civil suit was decreed in favour of P.W.3, the accused began to abuse P.W.1's family members and caused obstruction to their enjoyment of the vacant site. On 12.03.2003 at about 7.00 a.m., when P.W.1 was in her house, she noticed that A-1 and A-2 were arranging stones in the vacant site and she raised an objection against the same. Enraged by this, the accused abused her saying "Ekkade Neeku Chotundi, Eeroju Ato Ito Telchukundam" and pushed her on to the ground and beat her up indiscriminately. P.W.1 specifically states that A-1 kicked her in her private parts, caught hold of her hair and pushed her head to the ground and also picked up a stone and laid it on her right foot. On hearing the cries raised by P.W.1, P.W.4 and some others came on to the scene and saved her from the onslaught of the accused. Both P.Ws.3 and 4 corroborate the evidence of P.W.1.

10. P.W.2, who is working as Chief Medical Officer, Government General Hospital, Guntur, and who examined P.W.1 on 12.03.2003, states that P.W.1 had suffered a lacerated wound on her right foot and that she had pain and tenderness all over her body. P.W.2 had advised P.W.1 to get an x-ray of her right foot and referred her to the Orthopedic Department. Though P.W.2 had given an initial opinion that the injury sustained by P.W.1 was simple in nature, the X-ray report showed that P.W.1 sustained a fracture which was grievous in nature.

11. P.W.6, who is working as Assistant Professor of Radio Diagnosis in Government General Hospital, Guntur, states that Ex.P-5 – X-ray report, which shows lateral view of the right foot of

P.W.1, indicates that there was a fracture in the third meta tarsal bone, P.W.6 has also expressed the opinion that the injury suffered by P.W.1 was grievous in nature and that the injury could quite possibly have been caused by a stone.

12. As per the evidence of P.W.5 – Mr. K.V. Narayana, on 13.03.2003 at 7.00 p.m., P.W.1 came to the police station and gave Ex.P-1 report, on which he registered a case in Crime No.14 of 2003 under Sections 324, 506 read with 34 IPC. He sent the original FIR to the VI Additional Munsif Magistrate, Guntur. P.W.5 further stated that during his investigation, he recorded the statements of P.W.1 and P.W.3, who was away from the house at the time of alleged offence. Then he secured the presence of P.W.4 and recorded his statement and he searched for some more witnesses, but in vain.

13. This Court, without perusing the judgments of the trial Court as well as the lower appellate Court, intend to proceed by perusal of the evidence adduced independently to decide the issue.

14. The grievance of the petitioner is that even though she stated regarding the occurrence and the manner in which she was subjected to assault and her modesty was outraged by the accused concerned in the evidence of P.W.1, which was supported by the evidence of P.W.4 and also the evidence of P.W.2 - doctor, the lower appellate Court would not have acquitted the accused.

15. On perusal of the evidence adduced, it is evident that there is an inordinate delay of 36 hours in lodging the complaint. It is true that the delay itself is not fatal to the case of the prosecution and the unexplained delay is normally fatal to the case

of the prosecution. The delay explained by P.W.1 was that her husband returned home only in the evening and she could not be able to lodge a complaint immediately, but the fact remains that even after the arrival of her husband, she went to the hospital by 5.30 p.m., and she has not chosen to lodge a complaint on the same day, but on the next day at 7.00 p.m., P.Ws.1 & 3 lodged the complaint.

16. When the allegations are so serious in nature, that too alleging that the accused caused grievous injury and also outraged the modesty of P.W.1, then necessarily the immediate act of the persons concerned will be to lodge a complaint against the accused, But whereas the petitioner/*de facto* complainant has chosen to lodge a complaint only after receiving swelling in her right foot due to the injury sustained, which creates a doubt about the case of the prosecution and the version of P.W.1 and the possibility of sustaining injury after the said time of occurrence cannot be ruled out in view of the evidence adduced by P.W.2 - doctor. According to him, when he treated P.W.1 at 5.30 p.m., he opined that the injury will be six hours prior to the treatment, whereas it is the case of the petitioner/P.W.1 that the occurrence took place on 12.03.2003 at 7 a.m. Even though the said occurrence took place in the village, it is the case of P.W.1 that none of the villagers gathered there and witnessed the occurrence, which is highly improbable and unbelievable. The evidence of P.W.1 coupled with the evidence of P.W.4 is improbable and unbelievable. The appellate Court has also observed the same in its order. Hence, this Court is of the view that the judgment of the lower appellate Court is in accordance with law and it does not

suffer from any illegality or perversity necessitating interference by this Court. Hence, the criminal revision case fails and is liable to be dismissed.

17. The Criminal Revision Case is, accordingly, dismissed. Consequently, the Miscellaneous Petitions pending, if any, shall stand closed.

RAJA ELANGO, J

Date: 9th August, 2016

KL



HONOURABLE SRI JUSTICE RAJA ELANGO



CRIMINAL REVISION CASE No.272 of 2008

Date: 9th August, 2016

KL