

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

CRIMINAL REVISION CASE No.1190 OF 2008

JUDGMENT:

This Criminal Revision Case is filed under Sections 397 & 401 of the Criminal Procedure Code, 1973 questioning the correctness of the judgment dated 05.08.2008 passed by the I Additional District & Sessions Judge, Vizianagaram, in CrI.A.No.173 of 2003, by and under which, the learned Sessions Judge has modified the conviction and sentence of the accused in C.C.No.187 of 2001 on the file of the Judicial Magistrate of First Class, Srungavarapukota, and ultimately, found the petitioners herein, who are A.1 and A.2, guilty of the offences punishable under Sections 326 and 324 IPC respectively and sentenced them to suffer rigorous imprisonment for one year and six months respectively and to pay a fine of Rs.500/- each, in default, to suffer simple imprisonment for one month each.

2. The contention of the learned counsel for the petitioners is that the evidence of P.Ws.1 and 2 is not consistent and corroborated and, therefore, both the Courts below have erred in convicting the petitioners.

3. *Per contra*, learned Additional Public Prosecutor submits that both the Courts below, after considering the entire material and evidence on record in proper perspective, have recorded a finding that the petitioners are found guilty of the offences and, therefore, the conviction and sentence as imposed by the Courts below against the petitioners/A.1 and A.2 do not warrant any interference from this Court and the revision is liable to be dismissed.

4. Originally, there were as many as eight accused. They were charge sheeted by Jami Police in Crime No.53 of 2001 alleging the offences punishable under Sections 147, 148, 326, 324, 323, 114 r/w 149 IPC. By judgment dated 09.12.2003, the learned Magistrate convicted all the accused and sentenced them to different terms of imprisonment. Aggrieved by that, an appeal was preferred and, as noticed above, the learned Sessions Judge has acquitted all the accused except A.1 and A.2/petitioners and sentenced them, as stated supra.

5. The brief case of the prosecution is that in between the prosecution witnesses and the accused, there are some disputes in the matter of a land, which belongs to one Jammanna who is undergoing imprisonment in connection with a crime wherein he is alleged to have killed his mother. Both the parties are claiming to be in possession of the said land. On 21.07.2001 at about 1.00 p.m. when the prosecution witnesses were attending to the agricultural operations, the accused persons came there and beat P.Ws.1 and 2 and others with rods, sticks and hands and thereby committed the offences.

6. During the course of trial before the Judicial Magistrate of First Class, Srungavarapukota, P.Ws.1 to 13 were examined and Exs.P.1 to P.7, Exs.D.1 to D.7 and M.Os.1 to 3 were marked.

7. The point for consideration is, whether the prosecution proved the case against the petitioners/A.1 and A.2 beyond all reasonable doubt or the conviction and sentence imposed against them by the Courts below needs to be modified or set aside?

8. As noticed above, even though as many as eight accused were charge sheeted, ultimately, the conviction against A.1 and A.2 was

only sustained which is the subject matter of the present revision. A.1 and A.2 are alleged to have beat P.Ws.1 and 2 on 21.07.2001. Ex.P.1 is the complaint lodged by P.W.1 immediately after the incident. In Ex.P.1, P.W.1 has specifically mentioned that it is A.1 who beat him with an iron rod on head and caused a serious injury and, when P.Ws.2 and 3 intervened, P.W.2 was beaten by A.2 to A.5 with hands and sticks. On similar lines, it is the evidence of P.W.1 with regard to the overt acts in so far as P.W.2 is concerned. Ex.P.3 is the wound certificate of P.W.1. The wound certificate also shows that there was one lacerated injury over the scalp which was opined to be grievous in nature and caused with a blunt object.

9. P.W.2 is another injured and, as per Ex.P.1, she is said to have been beaten by A.2 to A.5. Coming to her evidence as P.W.2, she deposed that it is A.2 who beat her with an iron rod and she was also beaten by A.3 with a stick on her right hand and leg, which was corroborated by the evidence of P.Ws.1 and 3. Ex.P.5 is the wound certificate of P.W.2. It shows that she sustained four injuries.

10. The evidence of P.Ws.1 and 2 is consistent and cogent and it is in accordance with the contents of Ex.P.1. Their evidence is also corroborated by medical evidence on record. That apart, P.Ws.4 and 5, who are independent witnesses, have categorically deposed that it is A.1 and A.2 who have beat P.Ws.1 and 2 and caused injuries as spoken to by them. The evidence of P.Ws.1, 2, 4 and 5 clearly shows that it is A.1 and A.2 who caused injuries on P.Ws.1 and 2. The evidence of the material witnesses, which have been properly appreciated by both the Courts below, is consistent and inspiring the confidence of the Court upon re-appreciation. Therefore, I do not see any reason to take a view other than that has been taken by the Courts below and the finding of the appellate Court that it is A.1 and A.2 who have committed the offences punishable under Sections 326 and 324 IPC respectively cannot be interfered with.

11. With regard to the quantum of sentence, the learned counsel for the petitioners submits that both the prosecution witnesses and the accused are residents of same village and, as a matter of fact, there was a counter case also, in which the prosecution witnesses herein are alleged to have beat the accused, but however, they have been acquitted by the Courts below for want of evidence. It is further submitted that the 1st petitioner/A.1 is aged about 55 years and the 2nd petitioner/A.2 is aged about 50 years and, therefore, a lenient view may be taken.

12. It is noticed from the record that it is A.1 who gave one blow with an iron rod on the head of P.W.1 which proved to be grievous in nature. Taking into consideration the facts and circumstances of the case and the incident took place as long back as in the year 2001 and as both the groups are residents of same village and they are depending upon agriculture, I feel that the sentence of imprisonment can be reduced in so far as the 1st petitioner/A.1 is concerned, and accordingly, the sentence of one year rigorous imprisonment for the offence punishable under Section 326 IPC is reduced to six (6) months rigorous imprisonment. The sentence of six months rigorous imprisonment imposed on the 2nd petitioner/A.2 for the offence punishable under Section 324 IPC and also the fine imposed on both the petitioners is sustained.

13. With the modification, the Criminal Revision Case is disposed of. Consequently, miscellaneous petitions, if any, pending shall stand dismissed.

M.S.K.JAISWAL,J

6th January, 2016
cbs

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

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