

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

CRIMINAL REVISION CASE No.1907 of 2007

ORDER:

The Criminal Revision Case is filed against the Judgment dated 14.12.2007 in Criminal Appeal No.138 of 2006 on the file of the IV Additional Sessions Judge (Fast Track Court), Nellore, by and under which the conviction and sentence imposed against the petitioner/accused by the learned Assistant Sessions Judge, Kovvur in SC.No.174/2005, dated 19.10.2006 for the offence under Section 307 IPC was set aside and convicted the accused under Section 326 IPC and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for six months.

Heard the learned counsel appearing for the petitioner/accused and the learned Additional Public Prosecutor, representing the State.

The case of the prosecution in brief is that the petitioner/accused and PW 1 are husband and wife and their marriage was solemnized about 10 years back from the date of incident. Two months prior to the incident, the petitioner/accused was not looking after the welfare of his wife PW 1 properly and suspecting her fidelity. With an evil intention, on 17.09.2004 the petitioner/accused brought his wife PW 1 to their relatives house at Kovvur and on the same day at 10 p.m. when PW 2 was arranging hot water for his bath, the petitioner/accused poured acid on PW 1, due to which, PW 1 sustained burn injuries on her neck, chest and backside. PW 1 gave report to the police, basing on which, a case in Cr.No.123/2004 of Kovvur P.S.was registered initially under section 324 IPC, and subsequently, the section of law was altered to Section 323 and 307 IPC and after completion of investigation, the police filed charge

sheet. The learned jurisdictional Magistrate committed the case to the Court of Session, Nellore Division, which in turn made over to the learned Assistant Sessions Judge, Kovvur.

Before the trial Court, the accused was examined and charges under section 324 and 307 IPC were framed against the accused, for which he pleaded not guilty.

During the course of trial, the prosecution examined PWs 1 to 9 and marked Exs.P1 to P6. The accused denied the evidence on record and on his behalf Exs.D1 to D3 were marked.

On appreciation of oral and documentary evidence, the trial Court while observing that the offence under Section 307 IPC is more grievous offence than the offence under Section 324 IPC, found the petitioner/accused guilty of the offences under Section 307 IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of 7 (seven) years and to pay a fine of Rs.1000/-, in default to suffer simple imprisonment for a period of six months.

Challenging the conviction and sentence passed by the trial Court, the petitioner/accused preferred appeal CrI.A.138/2006 before the appellate Court. The learned Sessions Judge on re-appreciation of oral and documentary evidence available on record, set aside the conviction and sentence recorded under section 307 IPC, however, convicted the accused under Section 326 IPC and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for six months. Aggrieved by the same the petitioner/accused filed the present criminal revision case.

The point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioner/accused is sustainable, or whether it needs interference.

Mylapuri Lata/PW.1 was married to the petitioner/accused in or

around 1994. Even otherwise, PW.1 and the accused were related to each other. PW.3 – Subbamma is the maternal grandmother of PW.1 and the paternal grandmother of the accused. The accused and PW.1 had a son and daughter. The accused was a tailor by profession.

According to PW.1, the accused was a man of suspicious nature and used to frequently abuse and quarrel with her. Several times they had disputes. The accused used to quarrel with her and used to send her away to her parents' house.

On 17-09-2004, PW.1 was living with her parents. The accused requested her through PW.2 who is the junior paternal aunt of the accused requesting PW.1 and the children to come over to the house of PW.2 so that he wants to spend sometime with the children. PW.1 and the children came over to the house of PW.2 in the afternoon. The accused came there. Spent time with the children and played with them. Took out the children and brought some eatables. The accused also purchased some clothes for the children. PW.1 wanted to go back to her parents' house but the accused prevailed upon PW.1 through PW.2 to stay over for the night since the next day happened to be Vinajaka Chavithi. At about 10.00 p.m., in the night, PWs.1 to 3 and the children were in the house. PW.1 was watching television by lying down. The accused came and the allegation is that he brought acid in a glass and poured on PW.1, due to which she sustained burn injuries on different parts of the body such as chest, right arm, back of neck, left arm, wrist and left and right side of face. PW.1 caught hold PW.2 out of burning sensations and PW.2 also sustained simple burn injuries. The cause for this alleged act of the accused, according to PW.1 is that on that day in the afternoon one Madhu, who was the brother of Sujata, a childhood friend of PW.1, happened to meet her and she took him inside the house for talking and in the meantime the accused came and having seen the said Madhu in the house, questioned PW.1 as to who he is. Keeping this incident in mind, the accused is alleged to

have poured acid on PW.1.

PWs.2, 3 and others have shifted PW.1 to Jayabharath Nursing Home, where she was treated.

As against the above, the specific defence of the accused is that the marriage in between PW.1 and the accused was not to the liking of PW.1 since beginning and therefore she used to frequently quarrel with him, that in the past they have changed their residence on as many as 12 occasions and that the intention of PW.1 was to somehow get rid of the accused. It is further his defence that on the date of the incident, when PW.1 was cleaning the bath room with the help of acid, the acid fell on her and taking advantage of the injuries sustained, she implicated the accused falsely.

As already stated, both the Courts below believed the version of the prosecution witnesses and when the trial Court has convicted the accused under Section 307 I.P.C., and sentenced him to undergo R.I. for a period of seven years with fine, the appellate Court has come to conclusion that the offence that is attracted falls within the ambit of Section 326 I.P.C., and accordingly reduced the sentence from seven years imprisonment to three years imprisonment while sustaining the sentence of fine.

Learned Counsel appearing for the petitioner/accused submits that both the Courts below have not appreciated the evidence on record in proper perspective and have erroneously found the accused guilty of the charges. It is further submitted that there are several suspicious circumstances in the case which goes to show that the prosecution witnesses have not come forward with a true version. Learned Counsel submits that when the incident took place in the night, PW.1 was taken to Jaya Bharath Nursing Home, a private hospital, even though the Government hospital is just 200 metres away from the place of incident. It is further submitted that at the time of the incident, son of PW.5 was also said to be present but he has not been

examined. Similarly, statements of the two children of PW.1, who were also said to be present in the house, have not been recorded. Learned Counsel further submits that if acid is brought in a glass and poured on the body, PW.1 would not have sustained injuries on different parts of the body as noticed.

On the other hand, learned Public Prosecutor submits that the evidence of the prosecution witnesses, more particularly, PWs.2 and 3, who are as close a relative to PW.1 as that to the accused, would not have implicated the accused falsely if really it is not he who has committed the offence. Learned Public Prosecutor submits that the discrepancies that are highlighted by the learned Counsel appearing for the petitioner/accused are too trivial in nature which do not, in any way, affect the vital fabric of the case of the prosecution. Learned Public Prosecutor submits that it is not necessary that all the witnesses to the incident should be examined and as is well settled, the evidence is to be weighed but not counted.

PW.1 who is the victim in the case has consistently deposed about the incident and the nature of the relationship in the past. She is very categorical that on the date of the incident, when she was in the house of PW.2, the accused came with acid in a glass and poured on her when she was lying down watching television. She also speaks about the suspicious nature of the accused and particularly about the incident which is said to have taken place on the date of the incident namely PW.1 talking to one Madhu, who is the brother of her childhood friend Sujata and who are the neighbouring residents of the parents of PW.1. PW.1 was elaborately and searchingly cross-examined. Nothing concrete is elicited from her for disbelieving her evidence which is cogent and inspiring the confidence of the Court. The evidence of PW.1 is substantially corroborated by the medical evidence on record namely the Doctor-PW.8 and the Wound Certificates – Exs.P.2 to P.4. The Medical Officer who treated the

injured in the mid-night at about 12 O' clock found acid burns over front of the chest, right arm, over back of the neck, over left arm, wrist and over left and right side of the face. Ex.P.4 is the intimation of accidents and injuries sent by Jaya Bharath Nursing Home to the jurisdictional police. This was prepared at about 11.20 p.m., on 17.09.2004 i.e., within about one and a half hours after the alleged incident. The medical intimation clearly states that PW.1 claimed that she sustained the burn injuries since her husband has thrown acid on her. On the basis of the medical intimation – Ex.P.4, the Police Officer went to the hospital and recorded the statement and commenced the investigation after registering the same as a crime.

The evidence of PW.1 is corroborated by several witnesses more particularly the other womenfolk who were present at that time. PW.2 is the junior paternal aunt of the accused and also the maternal aunt of PW.1. It is to her house PW.1 came on the date of the incident. The incident took place in her house. She spoke about the incident as stated above. Her evidence fully corroborates the testimony of PW.1.

PW.3 is another lady, who as stated above is the grandmother of both PW.1 and the accused. While the accused is the son of the son of PW.3, PW.1 is the daughter's daughter. She also corroborated the evidence of PW.1 on all material aspects.

PW.4 is a neighbouring resident who claims that she rushed into the house of PW.2 on hearing cries loudly and found PW.1 with burn injuries and she was weeping and told her that it is her husband who poured acid on her. She accompanied the injured PW.1 to the hospital.

PW.5 is a cousin brother of the accused. He also speaks about PW.1 having sustained burn injuries in view of acid being poured on her. He also speaks about PW.1 being shifted to Jaya Bharath Hospital for treatment.

PW.6 is the father and PW.7 is the mother of PW.1. Both of them

came to the house after the incident and they claim that they came to know about the incident.

A careful perusal of all the above evidence of the witnesses gives no room for doubt that it is the accused who poured acid on his wife PW.1 at about 10.00 p.m., on 17.09.2004, even though the accused was maintaining very cordial relations and was exhibiting utmost affection towards his children, the provocation for the offence is said to be suspicious character of PW.1. All the witnesses are elaborately cross-examined and all of them stood to their version that it is the accused who committed the crime. There are absolutely no reasons for them to speak falsely against the accused more particularly in view of the fact that both the accused and his wife PW.1 are equally related to all of them. They would have been the last persons to implicate the accused falsely at the instance of PW.1.

The contention of the learned Counsel appearing for the petitioner/accused that the burn injuries on different parts of the body would not have been sustained had the acid been thrown with the help of a glass do not appear to be well founded for the reason that the seat of the injuries is front chest, right arm, over back of the neck, left arm wrist and on both sides of the face. Acid being a liquid substance is bound to slip over the body and wherever it comes into contact with the skin, there were bound to be injuries. That is the reason why the burn injuries are also found on the back of the neck along with the burn injuries on both sides of the face.

Non-examination of the children of PW.1 cannot at all be taken as fatal for the reason that both of them were of tender age and when the evidence of other eye-witnesses is available, it is not obligatory on the part of the prosecution to produce all the witnesses including the child witnesses.

There is also no force in the submission of the learned Counsel appearing for the petitioner/accused that acid might have fallen on the

body of PW.1 when she was cleaning bath room. If that be the case, the burn injuries should have been on the lower part of the body but not on the upper part of the body. Even if the acid is kept in bottle on a higher pedestal in the bath room and if it accidentally falls, PW.1 would not have sustained injuries at the places where the injuries are found. It is a clear case of throwing acid from a little distance, which, in fact, is specifically spoken to by the victim-PW.1 and all the eye-witnesses.

Both the Courts below have properly appreciated the evidence on record in proper perspective and have found the accused guilty of the charge punishable under Section 326 I.P.C.

With regard to the quantum of sentence, learned Counsel appearing for the petitioner/accused submits that the incident having taken place in the year 2004 and in view of the future of the son and daughter of both PW.1 and the accused, a lenient view may be taken so that the future life of the children is not affected. Learned Counsel submits that sentencing the accused to undergo imprisonment for a period of three years is disproportionate to the gravity of the crime. Learned Counsel submits that the accused had been in jail for more than two months during the pendency of the case.

Taking into consideration the totality of the facts and circumstances of the case, the nature of relationship between the parties and the future of the children and also the matrimonial life of the husband and wife namely the accused and PW.1, I feel that the ends of justice will be met if the petitioner is sentenced to undergo rigorous imprisonment for a period of six months. The sentence of fine is liable to be sustained.

In the result, the Criminal Revision Case is dismissed, confirming the conviction recorded by the Courts against the petitioner/accused, however, the sentence of imprisonment recorded by the Court below for the offence under Section 326 IPC is reduced

from three years rigorous imprisonment to six months rigorous imprisonment. Rest of the sentence of fine shall stand sustained. The trial Court shall take steps, in accordance with law, for apprehending the revision petitioner/accused for serving the sentence.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 03.02.2016

Dsr/Smr