

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

CRIMINAL REVISION CASE No.833 of 2007

ORDER:

The Criminal Revision Case is filed against the Judgment dated 20.06.2007 in Criminal Appeal No.51 of 2006 on the file of the II Additional Sessions Judge (Fast Track Court), Adilabad, by and under which the conviction and sentence imposed against the petitioners/A1 & A2 by the trial Court was modified.

2. Heard the learned counsel appearing for the petitioners/A1 & A2 and the learned Additional Public Prosecutor, representing the State.

3. The case of the prosecution in brief is that on 20.03.2004 at about 9 a.m. while PW 1 was fetching water from his neighbour's house, A1 abused him in filthy language unnecessarily and later A2 had pelted stones on PW 1 and on his wife-PW 2. PWs 1 and 2 escaped from there and went into their house, thereby all the accused A1 to A5 had joined together and trespassed into the house of PW 1 and beat PW 1 and his wife PW 2 with stones and sticks and caused bleeding injuries on the head of PWs 1 and 2. On the complaint lodged by PW 1, the police registered a case against the accused and basing on the confession of A1 and A2, MOs.1 and 2 sticks were seized from the possession of the accused.

4. Before the trial Court, A1 to A5 were examined and charges under sections 448, 326, 504 r/w.34 IPC were framed against the accused, for which they pleaded not guilty.

5. During the course of trial, the prosecution examined PWs 1 to 11 and marked Exs.P1 to P13 and M.Os.1 and 2. The accused denied the evidence on record and on their behalf no defence was produced.

6. On appreciation of oral and documentary evidence, the trial

Court found A1 to A5 guilty of the offences under Sections 504, 448 and 326 r/w.34 IPC, convicted and sentenced them as under:

- i) A1 to A5 are sentenced to undergo rigorous imprisonment for six months for the offence under Section 504 IPC;
- ii) A1 to A5 are further sentenced to undergo rigorous imprisonment for six months for the offence under section 448 IPC; and
- iii) A1 to A5 are further sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- each for the offence under section 326 r/w.34 IPC, in default to suffer simple imprisonment for one month each;
- iv) It is ordered that all the sentences shall run concurrently;

7. Challenging the conviction and sentence passed by the trial Court, the A1 to A5 preferred appeal CrI.A.51/2006 before the appellate Court. The learned Sessions Judge on re-appreciation of oral and documentary evidence available on record, modified the conviction and sentence recorded by the trial court as under:

- i) A2 to A5 are acquitted for the offence under Section 504 IPC;
- ii) A3 to A5 are acquitted for the offence under Section 326 r/w.34 IPC;
- iii) The sentence imposed against A1 to A5 for the offence under section 448 IPC is modified and they are sentenced to pay a fine of Rs.1,000/- each in default to suffer simple imprisonment for one month;
- iv) The sentence imposed against A1 for the offence under Section 504 IPC is modified and A1 is sentenced to pay fine of Rs.1000/- in default to suffer simple imprisonment for one month.

- v) The sentence imposed against A1 & A2 for the offence under Section 326 r/w.34 IPC by the trial Court is confirmed.

8. Aggrieved by the same the petitioners/A1 & A2 filed the present criminal revision case.

9. The point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioners/A1 & A2 is sustainable, or whether it needs interference.

Point:

10. It is a case of assault in view of certain disputes between the families of the prosecution witnesses namely PWs.1, 2 and 4 and the accused persons. A.1 and A.2 are husband and wife and they are the petitioners herein. Their relations namely the non-petitioners/A.3 to A.5 were also tried along with the petitioners but no revision is preferred by them since certain fine amount was imposed against them. Even though, the petitioners and the non-petitioners were charged with the offences punishable under Sections 504, 448 and 326 r/w 34 IPC., ultimately the appellate Court has convicted A.1 and A.2 for the offences punishable under Sections 504 and 326 r/w 34 IPC., only. The learned appellate Court has acquitted the non-petitioners/A.3 to A.5 of the charge punishable under Section 326 read with 34 IPC. Even though it is in the evidence of the material witnesses that while A.1 and A.2 beat PWs.1 and 2 with sticks and caused grievous injuries, it is A.3 to A.5 who caught hold of PW.1 preventing him from going out, the appellate Court accepted the evidence of PWs.1 and 2 to the extent that they were beaten by A.1 and A.2 but did not accept their claim that it is A.3 to A.5 who caught hold PW.1 when A.1 and A.2 beat him, though A3 to A5 are convicted for the offence under Section 448 IPC.

11. The material witnesses of the prosecution are PWs.1, 2 and 4. The incident took place on 20-03-2004 at about 09.00 a.m., and there are said to be several eye witnesses. Out of them, the prosecution examined PWs.3, 4, 8 and 9 and out of them, excepting for PW.4, the remaining eye witnesses namely PWs.3, 8 and 9 turned hostile and stoutly denied that any incident has taken place.

12. It is also on record that the accused and the prosecution witnesses are neighbouring residents. PW.4 is having Kirana shop and in front of that A.1 and A.2 are also having a Kirana shop. There were certain disputes between them and a criminal case was also filed by A.1 and A.2 against PW.4 in the past. Insofar as PWs.1 and 2 are concerned, it is admitted that in between them and the accused there are long standing disputes with regard to vacant land near their houses.

13. In view of the above, what is manifest is that the witnesses of the prosecution namely PWs.1, 2 and 4, on the basis of which the accused are found guilty of the offences are interested witnesses and they are having every reason for implicating the accused. When the material prosecution witnesses have a grouse against the accused persons, it is not that the evidence of such witnesses should be discarded *in limini* but what is required to be done is that their evidence has to be scrutinized with utmost care and caution. Discrepancies at times trivial may not affect the case of the prosecution if there are no long standing disputes or groups between the parties, but when there are rivalries amongst the prosecution witnesses and the accused, such discrepancies need to be addressed with meticulous care and consideration.

14. As noticed above, the incident proper is that on the date of the incident at about 09.00 a.m., when PW.1 was fetching water from the house of PW.4, A.1 commented that he is carrying water like a

woman and thereupon PW.1 is said to have gone to A.1 and questioned as to why he made such comments and thereafter a quarrel ensued and A.2 being the wife of A.1 joined him and along with the non-petitioners/A.3 to A.5 they all chased PW.1 into his house and beat him with sticks and stones and when the wife of PW.1 viz., PW.2 intervened, the accused are alleged to have beat her also with sticks and stones. The incident is said to have taken place at about 09.00 a.m., and it is the consistent evidence of the prosecution witnesses including the Investigating Officer that after the incident PWs.1 and 2 went to the police station which is at a distance of about 2 KMs., and got the complaint drafted which took about half an hour and lodged the complaint with PW.10 – the SHO at about 10.30 a.m., and on the basis of that complaint, a case was registered and the F.I.R., was issued. It is also in the evidence of PWs.1, 2 and the Investigating Officer – PW.10 that thereafter the Police Officers sent the injured – PWs.1 and 2 to Government Hospital for treatment. If that be so, PWs.1 and 2 would not have reached the hospital before 11.00 a.m. However, the Medical Officer – PW.11 who examined PWs.1 and 2 asserts on oath, which fact is also substantiated by the Wound Certificates – Exs.P.12 and P.13 that the Medical Officer – PW.11 treated the two injured– PWs.1 and 2 at 8.30 a.m., and 8.45 a.m., on the same day.

15. It is manifest from the above that the claim of PWs.1 and 2 is that the incident itself commenced at 09.00 a.m., and lasted till about 09.30 a.m., and thereafter they went to Police Station and lodged Ex.P.1 at 10.30 a.m., and thereupon PWs.1 and 2 were sent to the hospital will get adversely affected in view of the medical evidence on record that the treatment of the injured commenced at 08.30 a.m., itself i.e., long prior to lodging of the complaint etc. Before the Medical Officer – PW.11 both PWs.1 and 2 claim to have sustained injuries in the early hours of 20.03.2004. It is not as though that PWs.1 and 2

were too rustic so as to confuse the timings. It is on record that PW.1 is working as a Watchman at the District Jail where construction was going on and he categorically speaks about the timings of his duty, his being relieved from the duty etc. It is in his evidence that his duty commences at 08.00 p.m., in the night and ends at 08.00 a.m., next morning. Thereafter it will take about half an hour for him to reach his house from the place of working even according to PW.1. This material inconsistency in the evidence of injured, the eye witnesses and the Medical Officer gives rise to suspicion as to whether PWs.1 and 2 have really sustained the injuries at the hands of the accused as claimed by them after 09.00 a.m.

16. That apart, what is noticed is that it is the specific case of the prosecution witnesses that as many as five persons have chased them, beat them with sticks and stones. If that be so, PWs.1 and 2 would have certainly sustained several injuries. Significantly, the Medical Officer – PW.11 found the following injuries on PWs.1 and 2. On PW.1, the Medical Officer found lacerated injuries on the left parietal region and a swelling on left lower leg, which according to the Doctor is grievous. Insofar as PW.2 is concerned, the wound certificate Ex.P.13 shows that she sustained only a lacerated injury on the upper central part of occipital region of the head. The C.T. scan shows no abnormality.

17. Further more, according to PW.2, she was beaten by the accused both on head and waist with a stick. The Medical Officer did not find any sign of injury on any part of the body other than the wound referred to above.

18. Another circumstance to be noted is that when the Investigating Officer has registered the crime at about 10.30 a.m., on 20.03.2004, which is a Saturday, the F.I.R., in the crime Ex.P.10 was received by the jurisdictional Magistrate on 21.03.2004 at about 01.30

p.m. in the afternoon, that too through an ASI of Police and a Police Constable. Both the police station and the Court is situated in the same place namely Adilabad proper. Why the FIR was sent more than 24 hours after its registration has not been explained. This delay in normal circumstances would not affect the credibility of the case of the prosecution but in view of what is stated above it gains significance.

19. It is the specific case of the investigating agency that the blood stained clothes of both the victims were seized in the presence of PW.5 under panchanama – Ex.P.3, but these have not been produced before the Court during the trial.

20. Be that as it may, the evidence of PWs.1, 2 and 4 needs to be perused for determining as to whether the testimony passes the acid test of it being truthful, cogent, convincing and inspiring the confidence of the Court in spite of what is stated supra.

21. A perusal of the evidence of these witnesses shows that there are material discrepancies and inconsistencies in their statements. According to PW.1, when he was fetching bucketful of water, A.1 has said that why he is carrying water like a lady. As against the above, PW.2 claims that A.1 has asked PW.1 as to why he is carrying water like a lady and further abused like *kolle lanja koduka*. According to PW.1, when he was questioning A.1, the accused Nos. 2 and 3 came there and they all abused him in filthy language and started pelting stones on him. After sustaining injuries with stones, he rushed into his house and all the accused chased him inside the house and beat him with sticks. He further claims that while A.1 and 2 beating him, A.3 to A.5 caught hold him preventing him from moving. It is further in his evidence that after this assault, when he was trying to go to the Police Station, then A.2 and A.3 beat his wife PW.2 with sticks on head and waist, due to which she also sustained injuries. According to PW.2, after having abused PW.1, PW.1 questioned A.1 and then all the accused which implies A.1 to A.5 beat PW.1 with

stones and immediately PW.1 came into the house and she also followed him. It means that PW.2 was present with her husband PW.1 when the incident outside the house took place. That is not the case of PW.1. PW.2 further claims that she also followed her husband inside the house and the accused chased them. She further says that all the accused have dragged PW.1 outside the house and A.1 and A.2 beat PW.1 with sticks. That is not the case of PW.1. It is further in the evidence of PW.2 that when A.1 and A.2 were beating PW.1, she raised cries, upon which, A.2 and A.3 beat her with sticks on head and waist. This is contrary to the claim of PW.1, according to whom, after the accused beat him he was preparing to go to Police Station and at that time all the accused came there and beat PW.2 with sticks. It is further in the evidence of PW.2 that when A.1 was abusing PW.1, none of the accused were present at that time and hearing the commotion outside, PW.2 went there and brought PW.1 inside the house and thereafter all the accused followed them and dragged them outside the house and beat PW.1 in the courtyard of their house.

22. As already stated, the incident is said to have been witnessed by several persons but none excepting PW.4 spoke anything against the accused. What is all that is spoken to by PW.1 is that on the date of the incident at about 09.00 a.m., there was a quarrel between the accused and PW.1, that PW.1 went inside his house and the accused followed PW.1 and the accused beat PWs.1 and 2. No further details are given by PW.4 as is spoken to by PWs.1 and 2.

23. In view of the above, the evidence of PWs.1, 2 and 4 cannot at all be said to be cogent, convincing and consistent. The discrepancies on vital aspects affect the case of the prosecution, more particularly, in view of the existence of the old disputes between the families with regard to open land near the houses and also the disputes between PW.4 and A.1 and A.2.

24. In view of the foregoing discussion finding that A.1 and A.2 have committed the crime cannot be sustained and both the Courts below have not appreciated the evidence on record in proper perspective and have erroneously found them guilty. As already stated, A.3 to A.5 who were charged with an offence punishable under Section 326 read with 34 IPC., have been acquitted on the basis of the same evidence, but A.1 and A.2 were found guilty of the offence punishable under Section 326 read with 34 IPC and further A1 is found guilty for the offence punishable under section 504 IPC. In view of the above, the revision is liable to be allowed.

25. For the reasons stated above, the Criminal Revision Case is allowed. Consequently, the judgment of the appellate Court dated 20.06.2007 in CrI.A.No.51 of 2006 as well as the judgment of the trial Court dated 20.07.2006 in C.C.No.268 of 2004 are set aside and the petitioners/A1 & A2 are acquitted of the offence for which they were found guilty and convicted. The bail bonds of the petitioners/A1 & A2 shall stand cancelled. The fine amount, if any paid, shall be refunded to the petitioners/A1 & A2.

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

M.S.K.JAISWAL,J

Date: 04.02.2016

Dsr/Smr