

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

Criminal Revision Case No.887 of 2007

JUDGMENT:

This Criminal Revision Case is directed against the judgment of the learned II-Additional Sessions Judge, Nalgonda at Suryapet, in CrI.A.No.85 of 2006 dated 28.06.2007, confirming the conviction and sentence of rigorous imprisonment for a period of three years, for the offence under Section 324 I.P.C. imposed against the revision petitioner-accused by the learned Assistant Sessions Judge, Suryapet, in S.C.No.570 of 2004 dated 12.04.2006.

2. The accused and the injured-Pingali Narsaiah, are own brothers. It is the case of the prosecution that when the injured quarreled with his wife P.Kanakamma on 14.04.2004, she took shelter in the house of the accused, for which, the injured quarreled and abused the accused and pelted stones on the house of the accused. Due to which the accused bore grudge against the injured. On 30.04.2004 at about 11 a.m., when the injured was getting the water from bore pump situated behind his house, the accused went there armed with an axe and axed the victim on his left leg with an intention to kill him. As a result, the injured sustained grievous bleeding cut injury on his left leg and the said leg hanged down due to fracture of bone. In the meantime, the neighbours, who witnessed the incident, reached the place and on seeing them, the accused ran away. The injured was shifted to a private hospital of Dr.Maddineni Laxmi Prasad and thereafter, reported the matter to the police on 09.05.2004, who registered it as Cr.No.65 of 2004 for the offence under Section 307 IPC against the accused. The accused was tried for the offence punishable under Section 307 I.P.C.

3. The prosecution has examined P.Ws.1 to 13 and got marked

Exs.P1 to P10 and MO.1, to prove the guilt of the accused. On a perusal of the entire evidence, both oral and documentary, the trial Court, found the revision petitioner-accused guilty of the offence under Section 324 I.P.C. instead of 307 IPC and accordingly convicted and sentenced him as stated supra. Questioning the said conviction and sentence, the revision petitioner-accused preferred an appeal i.e., Crl.A.No.85 of 2006 and the learned II Additional Sessions Judge, Nalgonda at Suryapet by judgment dated 28.06.2007, dismissed the appeal confirming the conviction and sentence recorded by the trial Court. Aggrieved by the same, the revision petitioner-accused preferred the present criminal revision case.

4. Learned Counsel for the revision petitioner submits that the Courts below have not appreciated the evidence on record in proper perspective and have erroneously found the revision petitioner-accused guilty of the offence under Section 324 I.P.C. He further submits that the courts below failed to see that there was no corroboration to the allegations made by PW.1-injured, against the revision petitioner, more so when the so called eye witnesses i.e., PWs.2,3 and 12 and the circumstantial witness PW.4, have not supported him with respect to the offence alleged. He further submits that the courts below failed to appreciate that there is an inordinate delay of 9 days in lodging the complaint to the police and there was no proper explanation for the said delay. He further submits that the court below failed to appreciate that even though there was no evidence from the Medical Officer that PW.1 was unconscious for a period of 9 days, the courts below erred in coming to the conclusion that the said delay did not affect the case of the prosecution. In fact, the medical record Ex.P.7 also does not show that PW.1 was unconscious right from sustaining injury till lodging Ex.P.1 and in the absence of proper explanation, the delay of 9 days in lodging the complaint is fatal to the case of the prosecution.

5 .The point that arises for consideration is whether the conviction and sentence recorded by the trial Court as well as the appellate Court needs interference by this court?

6. Admittedly, the revision petitioner and PW.1 are own brothers. According to the prosecution, PW.1 and his wife were having some disputes. On 14.04.2004 when PW.1 quarreled with his wife, the accused said to have gone to the rescue of wife of PW.1 and she took shelter in the house of the accused, for which PW.1 quarreled with the accused and abused him. On 30.04.2004 at about 11 a.m. when PW.1 went to the bore well to get water, the accused armed with an axe went there, attacked PW.1 on the left leg and caused injury, which was found to be grievous in nature. Immediately after the attack, PW.1 was attended to by a local medical practicer (RMP), who was examined as PW.4. It is also on record that PW.5-Mogilicherla Sreenu, has gone to the rescue of PW.1 and both PWs.4 and 5 have shifted PW.1-injured to the Mother Theresa Hospital, Kodad for treatment, where PW.7 said to have treated the injured for about nine days.

7. The material witnesses in the instant case, namely, the persons who are said to have attended on PW.1 and came to his rescue, have turned hostile and categorically denied that they have witnessed any incident of that nature. Even it is the evidence of PW.2 that he has seen PW.1 lying with injuries and that he did not know as to how PW.1 sustained injury. PW.3 deposed that he has seen some women-folk at the house of PW.1 and on enquiry, he came to know that PW.1 sustained some injuries. PW.4-RMP doctor deposed that on the date of incident when he was going in the village, he found PW.1 with injuries and he rendered first-aid and referred PW.1 to Mother Teresa Hospital, Kodad. It is also in his evidence that at that time PW.1 was conscious but PW.1 did not disclose to him as to who caused the said injuries. PW.5 is the person said to have gone to the rescue of PW.1. His evidence is only to the effect that about a year back, he

came to know that PW.1 sustained injuries, he went there and thereafter, he and PW.4 took the injured to Mother Teresa Hospital, Kodad, for treatment. He denied knowledge as to how PW.1 sustained injuries. Thus, all the material witnesses have categorically denied that they have seen or heard from the mouth of PW.1 that it was the accused, who beat him on the date of incident.

8. Admittedly, there is abnormal delay of 9 days in lodging the complaint. According to PW.1, he was unconscious for about 5 or 6 days and therefore, no complaint was lodged immediately after the incident. But according to PW.4, the private medical practitioner, who gave first-aid to the injured immediately after the incident and shifted him to the hospital of PW.7, has categorically stated that PW.1 was very much conscious and was speaking. PW.7 the Doctor at Mother Teresa Hospital, Kodad, stated that PW.1 was treated in the hospital for a period of nine days. PW.7 admits that he is well aware about the procedure while attending on the medico legal case, which requires that he should inform about the same to the local police. But he did not do so. Even after attending for nine days, no intimation was given to the police by PW.7 and thereafter, PW.1 was discharged. It is in the evidence of PW.1 that his wife and two sons were along with him during his hospitalization and even they did not give any complaint to the police about the incident. According to PW.1 his elder son was studying post-graduation and another son was studying Intermediate at that time. Even though the sons of PW.1 are educated, they have not gone to the police station for giving complaint, but kept quiet without giving any complaint, for the reasons best known to them. As stated above, there is no corroboration to the evidence of PW.1, who is injured person. Further, as already stated, the abnormal delay of 9 days in giving the complaint to the police, which virtually remains unexplained and in turn, it supports the version of the accused that the present case was fabricated against him. It is an admitted fact that

PW.1 and the accused, are own brothers and there were certain disputes between them. According to the accused, PW.1 fell down from the tractor while removing the thatched leaves and sustained injuries and taking advantage of the ill-feelings between them in the matter of accused supporting the wife of PW.1, PW.1 has falsely implicated the accused and this fact is spoken to by DW.1.

9. On the aspect of delay, the learned trial court as well as the first appellate court, brushed aside the same on the ground that it is not germane. The observations of the learned trial court that since PW.1 was injured, one could not expect to go to the police station and lodge a complaint is fallacious. Even otherwise, it is not PW.1 alone who was in the hospital and as many as nine to ten people were with him during the hospitalization of PW.1 in the hospital of PW.7.

10. According to PW.1, the accused attacked him with an axe on his left leg and caused injury when both were in standing posture. If really the accused attacked PW.1 with an intention to kill him, with an axe, the injury would have been on the upper part of the body, but not below the knees. Only one injury was found on the left leg and it was a fracture injury. There is no medical evidence to show that the injury was caused with a weapon such as axe. Further, by the time PW.1 was taken to the hospital, there was plaster around the injury and therefore, the Medical Officer, expressed his inability to say as to whether the said injury was caused with a weapon such as axe or not. In view of the uncorroborated testimony of PW.1, it cannot be held that it is the accused, who attacked and caused the injury to PW.1. In the facts and circumstances of the case, when doubt arises, as to whether it is the accused who really caused the injury or not, the benefit of doubt invariably shall be given to the accused.

11. For the aforementioned reasons, this Court is of the view that the Courts below erred in convicting the revision petitioner-

accused for the offence under Section 324 I.P.C. The point is answered accordingly.

12. The Criminal Revision Case is accordingly allowed. The conviction and sentence imposed by the trial Court as confirmed by the appellate Court for the offence under Section 324 I.P.C. is hereby set aside and the revision petitioner-accused is acquitted of the said charge. The bail bonds of the accused shall stand cancelled and he may be set at liberty, if he is not required in any other case. Miscellaneous petitions, if any, in this case shall stand closed.

M.S.K. JAISWAL, J

Date: 08.02.2016
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HON’BLE SRI JUSTICE M.S.K.JAISWAL

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Date: 08.02.2016

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