

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1084 OF 2012

ORDER:

_____ This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the judgment dated 06.07.2012 in Criminal Appeal No.256 of 2010 on the file of the Court of the

III Additional District and Sessions Judge, Kakindada, wherein and whereby modified the conviction and sentence imposed against petitioner No.2 (A.3) in C.C.No.57 of 2009 on the file of the Court of the IV Additional Judicial Magistrate of First Class, Kakinada to the extent that petitioner No.2 (A.3) was found guilty for the offence punishable under Section 323 I.P.C. on two counts for causing injuries to PWs.3 and 4 and he was sentenced to pay a fine of Rs.1,000/- each, in default to suffer simple imprisonment for one month each, while confirming the conviction and sentence imposed against petitioner Nos.1 and 3.

2. _____ The facts leading to filing of the present criminal revision case are briefly as follows:

_____ Basing on the complaint of PW.1, the Station House Officer, Samalkota Police Station registered a case in Crime No.103 of 2006 against A.1 to A.4 for the offence punishable under Section 324 read with 34 I.P.C. After completion of the investigation, the investigating officer laid charge sheet before the IV Additional Judicial Magistrate of First Class, Kakinada, who in turn taken the cognizance of offence against the petitioners and another for the offence punishable under Section 324 read with 34 I.P.C.

3. _____ In order to prove the guilt of the accused, on behalf of the prosecution, PWs.1 to 8 were examined and Exs.P.1 to P5 were marked.

4. _____ Basing on the oral, documentary evidence and other material

available on record, the trial Court arrived at a conclusion that the petitioners herein along with A.2 committed an offence punishable under Section 324 I.P.C. convicted and sentenced them to undergo rigorous imprisonment for a period of three months each. The trial Court released A.2 by applying the provisions of the Probation of Offenders Act. Feeling aggrieved by the conviction and sentence imposed against them, the petitioners herein, who are accused Nos.1, 3 and 4 preferred Criminal Appeal No.256 of 2010 on the file of the Court of the III Additional District and Sessions Judge, Kakinada. The learned III Additional District and Sessions Judge, after reappraising the oral and documentary evidence available on record, arrived at a conclusion that petitioner No.2 (A.3) was found guilty for the offence punishable under Section 323 I.P.C. on two counts for causing injuries to PWs.3 and 4 and he was sentenced to pay a fine of Rs.1,000/- each, in default to suffer simple imprisonment for one month each , while confirming the conviction and sentence imposed against petitioner Nos.1 and 3. Hence, the revision.

5. The contention of the learned counsel for the petitioners (accused Nos.1,3 and 4) is that the appellate Court ought not to have convicted A.3 for the offence punishable under Section 323 I.P.C. in the appeal filed by the accused. He further submitted that the Courts below failed to consider that in order to convict a person under Section 324 I.P.C., recovery of the material object is essential. He also submitted that the Courts below have convicted and sentenced the petitioners on assumptions and presumptions. Hence, the same is liable to be set aside.

6. *Per contra*, the learned Public Prosecutor submitted that the oral testimony of PWs.1 to 4 is fully supported by the oral testimony of PW.7 and recitals of Exs.P.2 and P.3. He further submitted that the Courts below have considered the material available on record in right perspective and arrived at a conclusion that the petitioners were found

guilty for the offence punishable under Section 324 I.P.C. and sentenced them accordingly.

7. Whether the Courts below have committed any error while convicting the accused for the offences punishable under Sections 323 and 324 I.P.C. or not?

8. The investigating officer laid charge sheet against the petitioners herein and A.2 under Section 324 read with 34 I.P.C. However, both the Courts below convicted and sentenced the petitioners herein under Section 324 I.P.C. only but not under Section 324 read with 34 I.P.C. The trial Court has not convicted A.3 for the offence punishable under Section 323 I.P.C. for causing injury to PW.4. The fact remains that the trial Court has not framed the charge against A.3 for the offence punishable under Section 323 I.P.C. If the charge is framed for a higher offence and ultimately the accused is found guilty for the lesser offence, the Court can convict the person without framing a charge for lesser offence as no prejudice will be caused to the accused. The predominant contention of the learned counsel for the petitioners is that the appellate Court ought not to have convicted A.3 for the offence punishable under Section 323 I.P.C. in the absence of specific charge moreover in the appeal filed by the accused. The fact remains that the prosecution has not preferred any appeal challenging the conviction and sentence imposed against the petitioners. The appellate Court in paragraph No.11 of its judgment gave a finding that even in the absence of framing of the charge, the appellate Court can convict a person under Section 323 I.P.C. The appellate Court failed to consider that the appeal is filed by the accused and not the prosecution. If the prosecution filed an appeal, then the appellate Court certainly justified in convicting A.3 for the offence under Section 323 I.P.C.

9. The crucial question that falls for consideration is whether any prejudice would be caused to petitioner No.2/A.3 or not?

10. While filing the appeal, A.3 might not have thought that he will be convicted for the offence punishable under Section 323 I.P.C. Normally the Court cannot convict the accused for the first time in the appeal, more particularly, in the appeal preferred by the accused. Viewed from any angle, I am unable to agree with the finding recorded by the appellate Court. I am fully agreeing with the submissions made by the learned counsel for the petitioners that the conviction and sentence imposed against petitioner No.2/A.3 under Section 323 I.P.C. is not sustainable. Hence, the conviction imposed against petitioner No.2/A.3 is hereby set aside.

11. The second question that falls for consideration is whether the prosecution has proved guilt of the petitioners for the offence punishable under Section 324 I.P.C or not?

12. PW.1 is the *de facto* complainant, who set the criminal law into motion. PW.2 is the daughter, PW.3 is the son and PW.4 is the grand son of PW.1. There is no delay in lodging the complaint. PWs.3 and 4 are the injured witnesses. The oral testimony of PW.7 coupled with Ex.P.2 reveals that PW.4 sustained simple injuries. The oral testimony of PW.7 coupled with Ex.P.3 reveals that PW.3 sustained simple injuries.

13. Now the third question that falls for consideration is whether the petitioners herein inflicted injuries on PWs.3 and 4 as set up by the prosecution or not?

14. The incident took place on 15.06.2006 at about 8:00 PM. One of the ground taken by the defence is that there is no possibility for PWs.1 to 4 to identify the accused herein. The material placed before this Court clinchingly establishes that PW.1 and accused Nos.1 to 4 are neighbours. As per the prosecution version, the accused encroached the vacant site of PW.1, which is the root cause. In such

circumstances, the possibility of identification of accused Nos.1 to 4 by PWs.1 to 4 is quite natural and probable.

15. As per the testimony of PWs.1 to 4, accused Nos.1 to 4 inflicted injuries on PW.4 with crowbar and sickle. I have carefully perused the wound certificate - Ex.P.2. As per the recitals of Ex.P.2, PW.4 sustained only simple injuries in the nature of contusion, swelling and abrasions. PW.4 has not sustained cut injuries or incised injuries. If the crowbar or sickle was being used by the accused, there is every possibility of sustaining incised wound by PW.4. The trial Court made an observation that the prosecution failed to recover the stick; in such circumstances, it may not be possible for it whether the stick is dangerous weapon or not. Of course, the trial court as well as the appellate Court might have applied the same principle as the prosecution has not seized the alleged crowbar or sickle. This Court is very much conscious that mere non-recovery of material objects by itself is not a valid ground to discard the prosecution version. In the instant case, by examining PWs.1 to 8 and marking Exs.P.1 to P.5, the prosecution clinchingly establishes that the petitioners herein along with A.2 caused simple injuries to PWs.3 and 4. In the absence of recovery of crowbar and sickle, it is not fair and just to convict the accused under Section 324 I.P.C. Having regard to the facts and circumstances of the case, I am of the considered view that the accused are found guilty for the offence punishable under Section 323 I.P.C. and set aside the conviction and sentence imposed against the petitioners herein by the Courts below under Section 324 I.P.C.

16. It is a settled principle of law that the sentence imposed shall commensurate with gravity of the offence committed by the accused. It is not uncommon in the villages to pick up quarrel with the neighbours. Unfortunately, in this case also accused Nos.1 to 4 inflicted simple injuries on PWs.3 and 4. It is not the case of the prosecution that the petitioners herein are habitual offenders. The

petitioners herein are eking out their livelihood by attending the agricultural work. The petitioners have been attending the Criminal Courts from 2006 onwards. The petitioners might have undergone a lot of mental agony. The Court has to take into consideration all these factors while imposing the sentence. Taking into consideration the facts and circumstances of the case, I am of the considered view that imposing of fine amount of Rs.1,000/- each to the petitioners would meet the ends of justice.

17. In the result, the Criminal Revision Case is allowed in part setting aside the conviction and sentence imposed against revision petitioner No.2/A.3 by the appellate Court. The finding of the trial Court that the petitioners were found guilty for the offence under Section 324 I.P.C. is hereby set aside. The petitioners, who are accused Nos.1, 3 and 4, are found guilty for the offence punishable under Section 323 I.P.C. and convicted and sentenced them to pay fine of Rs.1,000/- each, in default of payment of fine, the petitioners shall undergo imprisonment for a period of one month each.

18. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

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T.SUNIL CHOWDARY, J

Date: 15.07.2016

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