

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.925 of 2005

ORDER:

This Revision, under Sections 397 and 401 Cr.P.C. is filed by the petitioner/A.1 in C.C.No.85 of 1999 on the file of Judl. Magistrate of First Class at Jadcherla, whereby the Court found the petitioner guilty for the offence under Section 326 IPC along with other accused, convicted and sentenced him to undergo SI for one year and to pay a fine of Rs.100/- and further directed to pay Rs.5000/- to Pw.2.

The conviction imposed by the trial Court was confirmed by the Appellate Court in Criminal Appeal No.208 of 2000, but the substantive sentence was reduced to one month while enhancing compensation of Rs.5,000/- to Rs.10,000/- to Pw.2.

Aggrieved by the conviction and sentence passed by the Additional Sessions Judge at Mahabubnagar i.e., Appellate Court, the present Revision is filed on various grounds. The main ground urged before this Court is that the prosecution did not make out any case against the accused for the offence punishable under Section 326 IPC and the evidence of PW.2 is self contradictory and therefore based on such wholly unreliable witness, the Court ought not to have convicted the accused for the offence punishable under Section 326 IPC. Therefore, the evidence on record is insufficient to record conviction against the present accused for the offence punishable under Section 326 IPC and prayed to set aside the conviction and sentence imposed by the Appellate Court while acquitting this petitioner by allowing this Revision.

It is the consistent case of the prosecution from the beginning that due to disputes with regard to partition, the petitioner, along with

other accused, bet Pw.2, who is no other than his brother's wife, with a wooden plank and caused injury on her cheek and thereby the incident was reported to the police, which was registered as a case in Cr.No.9/99 for the offence punishable under Section 326 IPC. During investigation, the injured was referred to the hospital and on examination, the Doctor opined that the injury sustained by the petitioner is grievous in nature and issued a Certificate vide Ex. P.6. After completion of investigation, the police filed charge sheet before the concerned Magistrate, who inturn took cognizance against both the accused for the offence punishable under Section 326 r/w 34 IPC.

Upon securing the presence of the accused, the trial Court framed a charge under Section 326 r/w 34 IPC against the accused, read and explained to them in Telugu, they pleaded not guilty and claimed to be tried.

During trial, on behalf of prosecution, Pws.1 to 8 were examined and Exs. P.1 to P.8 and Mo.1 was marked. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. explaining the incriminating material that appeared in the evidence of prosecution witnesses, they denied the same and reported no defence.

Upon hearing argument of the learned counsel for the petitioner and Assistant Public Prosecutor, the trial Court found both the accused guilty for the offence punishable under Section 326 r/w 34 IPC and accordingly, convicted and sentenced as stated above. But in the Appeal, the Appellate Court found Accused No.2 not guilty while finding the petitioner/A.1 guilty for the offence punishable under Section 326 IPC, confirmed the conviction against A.1 and reduced substantive sentence of imprisonment from one year to one month

while enhancing compensation of Rs.5,000/- to 10,000/- payable to Pw.2.

During hearing, learned counsel for the petitioner mainly contended that except the evidence of Pw.2, no other witness supported the prosecution case. Even Pw.2 also turned hostile during cross examination and, therefore, there is absolutely no evidence on record to rope this petitioner with the offence punishable under Section 326 IPC and both the Courts committed an error in finding the petitioner guilty for the offence punishable under Section 326 IPC and prayed to set aside the same. Finally, he contended that there is possibility of sustaining such injury as suggested to PW6-Dr. G. Hymayathi, CAS, and the same is supported by Pw.2 in her cross examination. Therefore, there is absolutely nothing on record to establish the guilt of the petitioner herein for the offence punishable under Section 326 IPC, but the Courts below on wrong appreciation of evidence, committed a grave error in finding the Accused guilty for the offence punishable under Section 326 IPC.

The jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is Limited. Section 401 Cr.P.C confers a kind of paternal and supervisory jurisdiction on the high Court, over all other criminal Courts established in the state in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or apparent harshness of treatment which has on the other hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this Section is discretionary power, has to be exercised in the aid of justice and this Court will not exercise jurisdiction under this Section if there has been no failure of justice even though the proceedings of the lower Court

suffer from irregularity or impropriety as held by Apex Court in *State of West Bengal v. Tulsidas*¹. The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of relieving persons who have not had a fair trial or whose convictions have been arrived at by non observance of material provisions of the law or by such mis-directions as must have occasioned a failure of justice, as held in *Prahlad v. Emporer*². Further, the High Court can, in exercise of its revisional powers, either *suo motu* on the basis of its own knowledge derived from any source whatsoever, or on an application by a complainant, exercise the powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;

Secondly, it cannot convert a finding of acquittal into one of conviction;

Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

Thus, the powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the Courts below. As a general rule, the High Court will not in revision interfere with a finding of fact and this is specially so, where there are concurrent findings of facts of the lower Courts. But in special and exceptional circumstances, the High Court is entitled to go into questions of fact and do justice, though the power should be rarely

¹ (1964) 1 Cr.L.J.443 (SC)

² 48, Cr.L.J.173,174(pat)

exercised as held by the Apex Court in *S.P.S.Jayam and Company V. Nehrusadan*³.

In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly perverse or patently erroneous in view of the law declared by the Apex Court in *Bansilal v. Laxman*⁴.

When both the Courts recorded a concurrent fact finding, this Court cannot interfere, except, where the findings are manifestly perverse or apparently erroneous on the face of the record. Here, the contention of the learned counsel for the petitioner/accused is that, PW.2, who is no other than brother's wife, allegedly received the injury. Receipt of injury is not in dispute and the evidence of Pw.2 and PW.6 coupled with Exs. P.1 and P.6 established that Pw.2 sustained a grievous injury. In the cross examination of Pw.2, she changed her earlier version in the examination in chief due to passage of time and that too they are closely related to one another and she is the wife of the brother of the petitioner. Therefore, due to passage of time between examination in chief and cross examination, conveniently, she turned hostile. In such case, the Court has no other option except to appreciate the evidence of the witnesses recorded in chief examination. The trial Court based on the judgment in *Narayana @ Sathaiah v. State(1994 (2) APLJ-52(SN))* concluded that earlier part of evidence of Pw.2 alone shall be taken into consideration when Pw.2, conveniently, turned hostile to the prosecution case. In the facts of the above judgment, this Court held that there is a gap between first part and second part of the evidence and when the witness turns hostile while deposing second part of the evidence i.e.,

³ 1977 SC 1621

⁴ (1986) 3 SCC 445

cross examination, first part of the evidence i.e., examination in chief, is to be accepted. If this principle is applied to the present facts of the case, the conclusion arrived by the trial Court finding the accused guilty for the offence punishable under Section 326 IPC based on the examination in chief of PW.2, is in accordance with law. This Court cannot re-appropriate the evidence of the witnesses since the jurisdiction of this Court is limited to legal issues while exercising power under Sections 397 and 401 Cr.P.C., but when this Court find manifest perversity or apparent error in the findings of the courts below, this Court can verify the evidence to come to a conclusion.

Undisputedly, due to relationship between the parties to the proceedings, there was a possibility of turning hostile by the prosecution witnesses on account of gap between examination in chief and cross examination and obtaining time to cross examination itself is an indication to turn Pw.2 hostile conveniently to support the defense case. Due to close relationship between the parties, Pw.2 might have turned hostile to support the defense version. Therefore, on account of such evidence, the prosecution case cannot be thrown overhead believing defense case.

Admittedly, Pw.2 sustained such grievous injury, which is supported by PW.6-Doctor vide Ex.P.6, by a dangerous weapon, and causing such injury would not fall under Clause (8) of Section 320 IPC since minimum requirement to attract Clause (8) of 320 IPC is sufferance for 20 days with severe bodily pain, or unable to follow his ordinary pursuits. But, it would fall under Clause (7) of Section 320 IPC. Therefore, causing such grievous injury with a wooden plank, which is marked as Mo.1, is suffice to conclude that the petitioner/A.1 caused such grievous injury. But, the trial Court did not record any finding whether Mo.1 is a dangerous weapon or not, however, it

depends upon the size, weight and length of the weapon. In the absence of any specific finding regarding size, weight and length of Mo.1, it is difficult to conclude that the petitioner caused grievous hurt voluntarily with a dangerous weapon. In such case, the petitioner is liable to be convicted for the offence under Section 325 IPC. Even for this offence, maximum sentence of imprisonment is 7 years and also liable for payment of fine or both imprisonment and fine shall be imposed. Therefore, taking into consideration the fact situation including relationship between the parties, the sentence of imprisonment imposed by the Appellate Court cannot be reduced to minimum extent though the sentence of imprisonment imposed by the trial Court is one year. For different reasons, the appellate Court reduced it to a minimum period of one month and it would amount to a flea bite sentence to frustrate the object of administration of Criminal Justice. The policy of sentencing is that the punishment to be imposed always commensurate with the gravity and seriousness of the offence by taking into consideration the mitigating and aggravating circumstances. The Appellate Court, taking into consideration the relationship between the parties and other attending circumstances, imposed a minimum sentence. Therefore, I am not in a position to reduce the sentence of imprisonment further. Hence, I find no ground to interfere with the findings recorded by both the Courts including the conviction and sentence passed by the trial Court. Consequently, the Revision is liable to be dismissed as it devoid of merit.

Accordingly, this Criminal Revision Case is dismissed.

Consequently, miscellaneous applications pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:14.09.2017
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CrI.R.C. No.925 of 2005
Dt. 14-09-2017

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