

THURSDAY THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVENTEEN

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

Between:

Chintakunta Ramana ... Petitioner/Accused

 $V/s.$

State of Andhra Pradesh
Represented by Station House Officer,
Chinnachowk Police Station,
Kadapa district
Through Public Prosecutor,
High Court, Hyderabad. ... Respondent

Counsel for the Petitioner : Sri Misha Sarma [legal-aid]

Counsel for the Respondent : Public Prosecutor [AP]

The court made the following: [order follows]

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 226 OF 2005

ORDER :

This Criminal Revision Case is filed under section 397 and 401 of Cr.P.C., questioning the propriety and legality of the judgment dated 24/01/2005 in Criminal Appeal No. 322 of 2002 on the file of the Court of III-Additional Sessions Judge and Fast Track Court, Kadapa, confirming the conviction and sentence passed by the II-Additional Judicial Magistrate of First Class, Kadapa, finding the petitioner guilty for the offence punishable under section 326 of IPC, sentencing him to undergo Rigorous Imprisonment for a period of two years and further sentenced to pay a fine of Rs.5,000/- [Rs. Five Thousand only] in default to suffer simple imprisonment for nine months.

2. The case of prosecution in brief is that the accused is a barber by profession and PW-1 is maintaining a bakery shop known as “Vishnu Sweets”. Two months prior to the incident the accused demanded PW-1 to give Rs.300/- as hand loan but the defacto complainant refused to

advance Rs.300/- as hand loan. Thereupon the accused grew wild, and therefore, they were not on talking terms. On 02/07/2002 the accused consumed alcohol and demanded hand loan and threatened the complainant but the complainant did not accede to the demand and thereupon, after some time the accused came to the bakery holding a stick, at about 10:10 p.m. while PW-1 was proceeding to his house on the way, the accused attacked PW-1, caused injury to his left hand and a fracture to his left hand. The accused again beat PW-1 on his head. Thereupon he raised cries and then the accused fled away from the scene of offence and thrown away the stick. PW-2 witnessed the incident and rescued PW-1 and in the meanwhile PW-3, who is the wife of PW-1 came there and shifted PW-1 to the Government Hospital in an auto for treatment. HC-697 recorded the statement of PW-1 and forwarded the same to Chinna Chowk Police Station on the point of jurisdiction, where HC-661/PW-9 received the same and registered a case against the accused in Crime No. 115 of 2002 for the offence punishable under section 324 and 326 of IPC issued FIR Ex.P-8 and investigated into.

During the course of investigation, PW-9 seized blood stained clothes of PW-1 and also the stick used by the accused in the presence of mediators and Ex.P-9 rough sketch of the scene was prepared. On 09/07/2002, PW-10 Sub-Inspector of Police arrested the accused and sent him to remand for judicial custody. PW-6, who is Civil Assistant Surgeon, Government Hospital, treated PW-1/injured issued Ex.P-4 wound certificate of PW-1/injured. Exs.P-5 and P6 are the x-ray film with opinion cover. After completion of investigation, PW-10 the Sub-Inspector of Police filed charge sheet before the II-Additional Judicial Magistrate of First Class, Kadapa, who took cognizance of the offence punishable under section 324 and 326 of IPC against the petitioner/accused.

3. Upon securing the presence of the petitioner/accused, the trial court framed a charge against the petitioner/accused for the offence under section 326 of I.P.C., was read over and explained to him in Telugu, for which the petitioner/accused pleaded not guilty and claimed to be tried.

4. To substantiate the case, the prosecution examined PWs. 1 to 10 and marked Exs.P-1 to P-9 and MOs. 1 and 2. After closure of the prosecution evidence, the petitioner/accused was examined under section 313 Cr.P.C., explaining the incriminating evidence appearing against him. He denied the same and reported no defence evidence.

5. Upon hearing argument of both sides, the trial court found the petitioner/accused guilty of the offence punishable under section 326 of I.P.C., sentenced him to suffer Rigorous Imprisonment for a period of two years and to pay a fine of Rs.5,000/- [Rs. Five Thousand] with a direction to pay Rs.2,000/- to PW-1 towards compensation under section 357 Cr.P.C.

6. Aggrieved by the conviction and sentenced passed by the II-Additional Judicial Magistrate of First Class, Kadapa, in CC.No. 185 of 2002, the petitioner/accused preferred Criminal Appeal No. 322 of 2002 on the file of III-Additional Sessions Judge, Kadapa.

7. On re-appreciation of oral and documentary evidence placed on record, III-Additional Sessions Judge, Kadapa, dismissed Criminal

Appeal No. 322 of 2002 vide judgment dated 24/01/2005, confirming the conviction and sentence recorded by the court below.

8. Aggrieved by the concurrent findings of both the courts below, the present Criminal Revision is filed on various grounds.

9. In the memorandum of revision, it is contended that both the lower courts have relied upon the sole evidence of PW-1 and for want of corroboration lower courts ought to have rejected the evidence of PW-1. Both courts failed to appreciate the material contradictions in the evidence of PWs. 1 and 2 with regard to the scene of offence, which goes to the root of the case against the prosecution. The lower courts ought to have given the benefit of doubt in favour of the petitioner by relying on the evidence of PW-2, who is sole independent witness. The lower courts failed to appreciate the contradiction in the evidence with regard to the seizure of MO-2 stick. It is further contended that as per the evidence of PW-6 Dr. Srinivasulu, the injuries caused to PW-1 is due to fall and in the circumstances of the case such probability is possible

due to fall but the lower courts found the petitioner/accused guilty for the offence under section 326 of I.P.C.

10. When the matter is posted for hearing on 31/07/2017, the counsel for the petitioner did not represent the matter and thereafter this matter is posted to today and the counsel for the petitioner did not turn up today to advance arguments but this Court cannot dismiss the revision case and without waiting for the petitioner's counsel this Court heard the arguments of legal-aid counsel.

11. It is the case of the prosecution that the petitioner/accused is a barber and PW-1 is running a bakery shop near to the shop of the petitioner/accused. The petitioner/accused demanded Rs.300/- as hand loan but PW-1 refused to lend the amount. Thereupon the petitioner/accused grew wild and waiting for an opportunity wreck vengeance. On 02/7/2002 afternoon the petitioner/accused came to the shop of PW-1 and demanded to give loan and threatened PW-1 and thereafter he went away with a stick and on the same day in the night at 10:10 p.m., while PW-1 was proceeding to his house after closing shop

and on the way the petitioner attacked PW-1 at the flourmill and asked him to stop and beat him on his left hand and caused fracture and again he beat on the head, for which PW-1 raised cries and the petitioner thrown the stick and fled away. PW-2 is the eye-witness who witnessed the quarrel between the petitioner and PW-1 with regard to declining the request of the petitioner to advance Rs.300/- as hand loan and caused injury on PW-1's left hand with a stick. PW-6 Dr.Sreenivasulu, Civil Assistant Surgeon, Government Hospital, Kadapa, who examined PW-1 and found lacerated injury on the centre of the scalp which is bleeding, deformity of left elbow joint and contusion with abrasion on dorsal region of right fore-arm. Ex.P-4 is the wound certificate issued by him. PW-7 Dr.P.Srirami Reddy, Civil Assistant Surgeon, Kadapa, stated that on 03/7/2002 the X-ray of PW-1 was taken. Exs.P-5 and P-6 are the x-ray films and he opined that x-ray of left elbow including left fore-arm revealed fracture of upper end of ulna. Exs.P-5 and P-6 are the x-ray films. According to the evidence of PW-6 and PW-7, PW-1 sustained simple and grievous injuries. Thus, the evidence of PW-1, PW-6 and

PW-7 coupled with the documents Exs.P-4 wound certificate, Ex.P-5 and Ex.P-6 x-ray films, established that PW-1 sustained lacerated injury on the centre of the scalp, deformity of left elbow joint, contusion with abrasion on dorsal region of right forearm, fracture of upper end of ulna, which are simple and grievous in nature. PW-2 P. Sudhakar Reddy, who is an independent witness corroborated and supported the evidence of PW-1 on all material particulars. The prosecution has to prove that a grievous injury was caused by dangerous weapon and by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal. Here this is a case where the petitioner/accused caused grievous hurt to PW-1 by means of dangerous weapon i.e., MO-2/stick which can cause death of a person. The evidence of PW-1 got probative value,

since his evidence is corroborated by medical evidence coupled with the evidence of Investigating Officer. Therefore, the trial court and appellate court have rightly convicted the petitioner/accused for the offence punishable under section 326 of IPC. The trial court also relied on a judgment in **RAMMI V/s. STATE OF MP** reported in 1999 [8] SC-649, where an eye-witness is examined at length, it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. Thus, the prosecution established that the petitioner/accused caused grievous hurt on the body of PW-1, as defined under section 320 of IPC.

320. Grievous hurt is defined as follows :— The following kinds of hurt only are designated as “ **grievous** ”:—

Firstly — *Emasculation.*

Secondly — *Permanent privation of the sight of either eye.*

Thirdly — *Permanent privation of the hearing of either ear.*

Fourthly — *Privation of any member or joint.*

Fifthly — *Destruction or permanent impairing of the powers of any member or joint.*

Sixthly — *Permanent disfiguration of the head or face.*

Seventhly — *Fracture or dislocation of a bone or tooth.*

Eighthly — *Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.*

12. The injuries caused by the petitioner/accused on the body of PW-1 is supported by the medical evidence and the ocular testimony of PW-1, 2 and medical evidence of PW-6 and PW-7 coupled with documentary evidence Ex.P-4/wound certificate, Exs.P-5 and P-6 are the x-ray films with opinion cover. Therefore, in this case the grievous hurt falls under section 320 [8] of I.P.C. i.e., any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits. Hence, the injuries caused on the body of PW-1 is grievous in nature by means of dangerous weapon i.e., MO-2 stick, therefore, the trial court and appellate court have rightly recorded the conviction of the petitioner/accused for the offence punishable under section 326 of IPC. Therefore, this Court cannot interfere with the concurrent fact findings recorded by the courts below while exercising the jurisdiction under section 395 and 401 of

Cr.P.C. I find no grounds to reverse the findings recorded by the courts below. Hence, the revision deserves to be dismissed, as it is devoid of merits.

13. In the result, the *Criminal Revision Case* is *dismissed*.

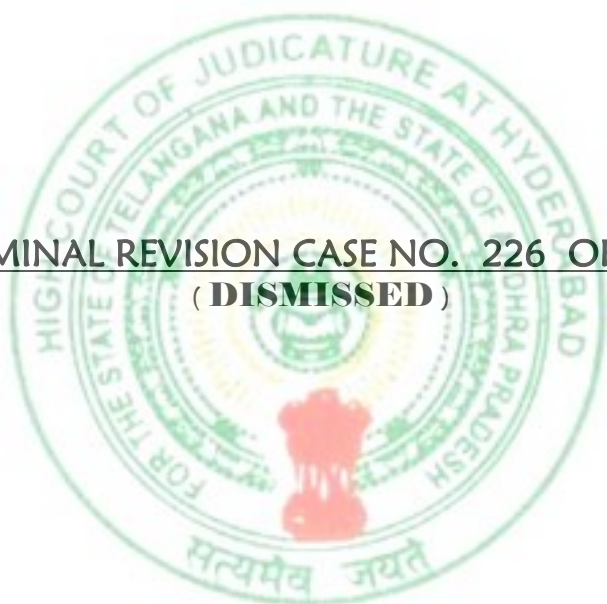
14. As a sequel, *miscellaneous petitions* if any, pending in this criminal revision case shall stand *dismissed*.



JUSTICE M. SATYANARAYANA MURTHY

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 226 OF 2005
(**DISMISSED**)



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