

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2538 OF 2017

JUDGMENT:

The present Criminal Revision Case is preferred by the appellants - accused Nos.1 and 2 under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code'), challenging the conviction recorded under Section 248 (2) of the Code for the charges under Sections 325 and 341 read with Section 34 IPC and sentence of rigorous imprisonment of one year and fine of Rs.1,000/- each with default sentence to undergo simple imprisonment for one month for the charge under Section 325 read with 34 IPC and also simple imprisonment for one month each for the charge punishable under Section 341 read with 34 IPC inflicted by the learned II Additional Judicial Magistrate of First Class, Machilipatnam, by her judgment, dated 28.10.2016, in C.C. No.297 of 2015, as affirmed by the learned Special Sessions Judge - cum - X Additional Sessions Judge, Krishna District at Machilipatnam, by his judgment, dated 06.09.2017, in Criminal Appeal No.281 of 2016.

2. Heard Smt. K. Talasi Durgamba, learned counsel for the revision petitioners - accused Nos.1 and 2, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

3. The prosecution case, in brief, is that PW.1 - *de facto* complainant was eking out her livelihood by doing coolie work living with her two children near Lakshmi Talkies Center, Machavaram, Machilipatnam. On 04.06.2015 at about 7.00 p.m., when PW.3 - Kagitha Krishna Teja and PW.1's sister-in-law together left the house for delivering buffalo milk at milk center, and while they were going, both the accused, who are natural brothers, restrained them and asked them to stop at Mallaiah's Sweet house and they replied that they would return after delivering the milk at milk center and having delivered milk, PW.3 returned home and left the house stating that he would come back soon. Ten minutes later, PW.3 came back home with injuries on his person as he was beaten by accused Nos.1 and 2 uttering that he did not stop the vehicle and as to why he was so serious about the issue relating to his sister-in-law eloping with one Ravi, and even accused No.2 slapped on the jaw of PW.1, who has fallen down on the road and both of them fisted and kicked. They kept silent without reporting the said incident. However, accused Nos.1 to 3 in the morning of 07.06.2015 at 10.00 a.m., went to their house armed with cricket stick and threatened that they would kill. That made PW.1 to lodge a complaint with the Station House Officer, Chilakalapudi Police Station, on which, crime was registered as Crime No.105 of 2015 for the offences under Sections 341, 447, 326 and 506 read with 34 IPC against accused Nos.1 to 3. Having recorded the statements of relevant witnesses, charge sheet was laid.

4. Since all the accused denied the charge, the prosecution examined PWs.1 to 9 to prove the charges under Sections 341, 447, 326 and 506 read with 34 IPC and marked Exs.P-1 to P-8.

5. The learned Magistrate extracting the penal provisions of Sections 341, 427, 326 and 506 IPC, analyzed the evidence and believed the evidence of PW.3, who is the direct witness being injured as to the complicity of the accused persons, holding that the evidence of PW.3 cannot be brushed aside and the evidence of PW.4 to some extent corroborates the evidence of PW.3. In fact, medical officer is also examined as PW.5, who has spoken to the injuries sustained by PW.3 and exhibiting the wound certificate. The learned Magistrate finding that the medical evidence corroborates the evidence of ocular evidence and discarding the defence put forth by the accused holding that non-examination of one Bolla Siva, who accompanied PW.3 at the time of occurrence and non-seizure of weapon, like Cricket Stick, would not in any way tilt the case of the prosecution, convicted the petitioners - accused Nos.1 and 2 under Section 248 (2) of the Code for the charges under Sections 325 and 341 read with 34 IPC, while acquitting them along with accused No.3 under Section 248 (1) of the Code for the charges under Section 447 and 506 read with 34 IPC. Thus, the accused Nos.1 and 2 were inflicted the aforesaid sentences of imprisonment and imposed the fine amounts.

6. When the revision petitioners preferred Criminal Appeal No.281 of 2016, the learned Special Sessions Judge, on independent analysis of the evidence on record, arrived at the conclusion that the evidence of PW.3 would prove the charges punishable under Sections 325 and 341 read with 34 IPC. The details of overt acts as to accused Nos.1 and 2 beating him with hands and legs and kicking him, and when he fell down, accused No.2 fisting on his jaw made him to hold that the prosecution could prove the charges beyond all reasonable doubt. The learned Special Judge found the grievous injuries sustained by PW.3 in the hands of accused Nos.1 and 2, thus, not only confirmed the conviction recorded, but also the sentences of imprisonment inflicted on them by the learned Magistrate's Court.

7. Further aggrieved, the petitioners preferred the present Criminal Revision Case.

8. The learned counsel for the revision petitioners - accused Nos.1 and 2, would submit that there is no evidence of eye-witnesses and on account of non-examination of the said B. Siva when the first incident took place and that the report of Radiologist is not filed, nor the X-ray is filed to show that PW.3 sustained grievous injuries. The evidence of PW.5 in the absence of the Radiologist's report or the X-ray film cannot be considered. Her further submission is that there was three days delay in lodging the complaint.

9. When concurrent findings have been recorded by both the Courts below on independent assessment of the evidence on record, unless the revision petitioners establish that the findings recorded are manifestly illegal, certainly, no interference is warranted. In the present case, the injuries on the person of PW.3 were proved through the evidence of Medical Officer examined as PW.5 and he being the victim and direct witness and even asserting to the overt acts of accused Nos.1 and 2 in causing injuries, more particularly, when nothing is brought out in his cross-examination to show that he was actuated by any ill-will or false motive to implicate the petitioners, the findings recorded by the Courts below, holding that the prosecution could prove the charges against the petitioners beyond all reasonable doubt cannot be up set.

10. Turning to the submissions made by the learned counsel, it is not the case of the prosecution that there were other eye-witnesses to the incident. The non-examination of one B. Siva is no ground to hold that the material witnesses were not examined by the prosecution and to derive the presumption under Section 114 of the Indian Evidence Act, 1872 of non production of best evidence. The non-examination of the said B. Siva is not at all material as he was not a direct witness to the actual occurrence. When the evidence of PW.3 inspires confidence which is beyond reproach and cogent, there is no ground to disbelieve the evidence of PW.3. When the injuries are

corroborated through the medical evidence of PW.5 and the wound certificate, certainly, it cannot be said that the Courts below went wrong in recording the conviction.

11. Turning to the sentences of imprisonment, it is no doubt true, the learned Magistrate's Court sentenced both accused Nos.1 and 2 to suffer rigorous imprisonment for one year for the charge under Section 325 read with 34 IPC and payment of fine for the charge under Section 341 read with 34 IPC. The learned counsel would submit that the fine amounts have been paid and the petitioners have been serving out the sentence of imprisonment from the date of judgment passed by the learned Special Sessions Judge on 06.09.2017. Keeping in view, that the injuries are not on vital parts and, in fact, only on account of fisting and kicking, the injuries were caused to PW.3, the sentence of rigorous imprisonment from one year and the simple imprisonment is converted to that of the period already undergone by the petitioners - accused Nos.1 and 2 till date. Since fine amounts are paid, they are directed to be released forthwith.

12. In the result, the Criminal Revision Case is dismissed at the admission stage itself, confirming the conviction recorded and fine imposed by the learned II Additional Judicial Magistrate of First Class, Machilipatnam, by judgment, dated 28.10.2016, in C.C. No.297 of 2015, as affirmed by the learned Special Sessions Judge -

cum - X Additional Sessions Judge, Krishna District at Machilipatnam, by judgment, dated 06.09.2017, in Criminal Appeal No.281 of 2016. However, the sentence of rigorous imprisonment for one year inflicted on the revision petitioners - accused Nos.1 and 2 by the learned Magistrate Court as affirmed by the learned Special Sessions Judge, is reduced to that of the period already undergone by them till date. Both the sentences of imprisonment shall run concurrently. The petitioners - accused Nos.1 and 2 shall be released forthwith, in case they are not required in any other cases.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the criminal revision case, stand closed.

December 08, 2017.
Mgr

A. SHANKAR NARAYANA, J

