

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2704 of 2017

JUDGMENT:

When the learned V-Additional Sessions Judge, Tirupati, by his judgment dated 26.10.2017 in Criminal Appeal No.119 of 2016, confirmed the conviction recorded under Section 255 (2) of the Criminal Procedure Code inflicting the sentence of Simple Imprisonment for a period of three months for the offence under Section 338 I.P.C by the learned Judicial Magistrate of First Class, Sathyavedu, by his judgment, dated 28.03.2016, in C.C.No.79 of 2012 the petitioner herein got aggrieved and preferred the present Criminal Revision Case.

The learned Judicial Magistrate of First Class, Sathyavedu, having observed due formalities, taken cognizance for the offence punishable under Section 338 IPC and registered Calender Case in C.C.No.79 of 2012. Since the petitioner-accused pleaded not guilty when he was examined under Section 251 of the Code, the prosecution examined as many as seven witnesses and exhibited Exs.P1 to P5, amongst whom PWs.3 and 6 are cited as eye-witnesses, PW.1 is only a complainant, who has not witnessed the occurrence, but lodged the complaint on the information given by PW.3, PW.2 is the injured himself, PW.5 is the Investigating Officer and PW.7 is the Medical Officer. The learned Magistrate, finding that the evidence of PWs.2 and 6 is convincing and inspires confidence and also observing that PW.3, though, turned hostile, but to some extent, corroborated the evidence of PW.6, rejected the inconsistency basing on which the learned defence counsel prayed to

acquit the accused and, thereby, by judgment dated 28.03.2016, convicted the petitioner under Section 255 (2) of the Criminal Procedure Code (for brevity, the Code) and sentenced him to undergo Simple Imprisonment for a period of three months. Of course, no sentence of fine was imposed.

The said judgment of conviction and sentence of simple imprisonment were questioned in Criminal Appeal No.119 of 2016 on the file of V-Additional Sessions Judge, Tirupati. The same ground was agitated before the learned appellate Judge. The learned Sessions Judge, having referred to the evidence of PWs.1 to 7 again and finding that there was nothing brought out in the cross-examination of PW.6 to discredit his testimony and finding that the evidence of PWs.2 and 6 cannot be discarded, as their evidence is credit worthy, and also referring to the inconsistency once again argued before him between the evidence of PWs.3 and 6, discarding the evidence of PW.3 to the extent he disowned and also rejecting the ground that non-examination of radiologist is fatal to prove the case of the prosecution, affirmed the conviction and the sentence of imprisonment inflicted on the petitioner, having opined that it is not a fit case where the sentence of imprisonment has to be converted into fine. The same is now questioned in the present Criminal Revision Case by the petitioner.

Sri Prithvi Sreeramaneni, learned counsel for the petitioner, would once again bring out the so-called inconsistency between the evidence of PWs.3 and 6. One thing is clear. So long as the evidence of PW.2 stands

on record, which does not suffer from any blame, he being injured, and the evidence of PW.6 completely supporting the evidence of PW.2 as to the manner in which the accident occurred, certainly, it is not a case where just basing on the circumstance that PW.3 turned hostile, to reject the evidence of PW.6. When viewed so, certainly, it cannot be said that the courts below went wrong in recording a finding against the petitioner and convicting him. The said finding recorded by the courts below cannot be construed as perverse. Unless the findings recorded by the courts below suffer from utter perversity, no interference is warranted.

Now, the question is whether keeping in view, the injury sustained by PW.2, the simple imprisonment imposed for a period of three months for the offence punishable under Section 338 of the Code can be converted into that of a fine?

The learned counsel for the petitioner would submit that the petitioner has got three minor children and two of them are prosecuting their studies and, in case the petitioner is kept in prison, it would cause hardship to the children. It is also his submission that the petitioner is sent to prison to serve the sentence on 26.10.2017.

Since the petitioner has been served the sentence for three days, it would be desirable to convert the sentence of imprisonment to that of a fine. Hence, the petitioner is sentenced to pay a fine of Rs.1,000/-.

Learned Additional Public Prosecutor would submit that compensation be awarded to PW.2, as he sustained fracture below his right knee and, certainly, he would have been subjected to inconvenience

at least for a period of two to three months. Viewing the same, it is desirable to grant compensation to PW.2.

In the result, the Criminal Revision Case is disposed of confirming the conviction recorded under Section 255 (2) of the Code for the offence under Section 338 IPC. However, the sentence to undergo Simple Imprisonment for a period of three months imposed by the Courts below is converted to that of fine, directing to pay a fine of Rs.1,000/- (Rupees One thousand only) only and in default, to undergo Simple Imprisonment for a period of one month. Further, the petitioner is directed to pay a compensation of Rs.10,000/- (Rupees Ten thousand only) to PW.2 within a period of four weeks, and in default of payment of compensation, to suffer Simple Imprisonment for a period of one month.

Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

JUSTICE A.SHANKAR NARAYANA

30.10.2017

Note: Issue CC today

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