

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No.1305 OF 2012

ORDER:

This criminal revision case is filed by the petitioner/accused aggrieved by the judgement dated 31.07.2012 in criminal appeal No.96 of 2011 passed by the learned III Additional District and Sessions Judge (I FTC), Nalgonda, dismissing the appeal by confirming the judgment dated 26.07.2011 in C.C.No.676 of 2007 passed by learned Additional Judicial Magistrate of First Class, Bhongir, convicting the accused for the offence under Section 325 IPC and sentencing him to undergo imprisonment for six months and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for 10 days.

2. (a) The brief facts of the charge sheet are that on 01.08.2007, P.W.1 lodged complaint with Aleru Police Station stating that on 01.08.2007 at 06.00 p.m., the accused was trying to tether his cattle beside the house of the complainant, which was objected by him stating that if the cattle were tethered there, mosquitos would be brooded causing inconvenience and on that, the accused picked up quarrel with him and caused bleeding injuries to him. A case in Crime No.87 of 2007 was registered under Section 324 IPC and investigated into. The doctor, who examined P.W.1, opined that the injuries sustained by him were grievous in

nature, as such, the police filed charge sheet against the accused for the offence under Section 325 IPC.

(b) The learned Additional Judicial First Class Magistrate, Bhongir, framed charge under Section 325 IPC and conducted trial. During the trial, P.Ws.1 to 8 were examined and Exs.P1 to P8 were marked on behalf of prosecution. The trial court basing mainly on the evidence of P.Ws.1 and 2, who are alleged eye witnesses and P.W.8 - the doctor, who treated P.W.1 and issued Ex.P7 wound certificate on the strength of Ex.P8 - X-ray report, held that P.W.1 suffered fracture injury in the hands of accused i.e., fracture shaft of left 3rd metacarpal bone and thus, found accused guilty of the charge under Section 325 I.P.C. and accordingly, convicted and sentenced the accused as stated supra.

(c) Aggrieved, the accused preferred criminal appeal No.96 of 2011 before the III Additional District and Sessions Judge (I FTC) at Nalgonda and the lower appellate court, on appreciation of the facts and evidence, confirmed the judgment of the trial court by dismissing the appeal.

Hence, the instant criminal revision case.

3. Heard learned counsel for petitioner and learned Assistant Public Prosecutor representing for State.

4. Learned counsel for petitioner strenuously argued that the prosecution could not establish its case beyond

reasonable doubt as P.Ws.1 and 2, who are the husband and wife are interested witnesses and the independent witness i.e., P.W.3 did not support the prosecution case and therefore, the trial court ought not to have convicted the accused on the strength of the interested testimony of P.Ws.1 and 2. Learned counsel would further submit that the charge under Section 325 IPC was not established by the prosecution, in as much as, Ex.P8 – X-ray report issued by the Radiologist of Gandhi Hospital, Secunderabad, did not contain the seal of the said hospital and therefore, P.W.7 – the doctor, who issued wound certificate should not have relied upon Ex.P8. He, thus, prayed to allow the revision and set aside the impugned judgment.

5. Per contra, learned Assistant Public Prosecutor, while supporting the judgment of the appellate court, would submit that P.W.1 is the injured victim in this case and nothing is brought on record to impeach the credibility of the said witness. The accused could not bring anything on record during cross-examination to show that the accused and P.W.1 had any enmity prior to this incident to implicate the accused in a false case. He would thus argue that the evidence of P.W.1 cannot be brushed aside. So far P.W.2 is concerned, he would argue she is the wife of P.W.1 and as the incident was occurred by the side of their house, she was a natural witness for the incident and therefore, her evidence

cannot be suspected. He would thus argued that in spite of the fact that P.W.3, for the reasons best known to him, turned hostile, still, the evidence of P.Ws.1 and 2 can be believed to record the conviction. Their oral testimony was sufficiently corroborated by P.W.8 – the doctor, who examined P.W.1 and issued Ex.P.7– wound certificate. Learned public prosecutor would submit that though the stamp of the hospital was not there, still the signature of the Radiologist was there on Ex.P.8 and therefore, P.W.8 had rightly accepted the same and basing on the said report, he issued wound certificate stating that P.W.1 suffered one simple injury and one grievous injury i.e., fracture shaft of left 3rd metacarpal bone. He would further submit that the site of injuries correspond to the evidence of P.Ws.1 and 2 and therefore, the trial court and lower appellate court relying upon the clinching evidence produced by the prosecution had rightly held that the accused has caused injuries to P.W.1 and accordingly, convicted him for the offence under Section 325 IPC. He thus argued there was no illegality or perversity in the judgment of the courts below and prayed to dismiss the criminal revision case.

6. I have given my anxious consideration to the above respective arguments and perused the judgments of both the courts below. It is the categorical case of P.W.1 that on 01.08.2007 at about 06.00 p.m., while he was at his house,

the accused tried to tether cattle near his house. He requested the accused not to do so as his father was not keeping good health and if the cattle were tied near to his house, the mosquitos may breed. The accused did not heed him and questioned him as to who P.W.1 was to prevent him. And bet P.W.1 with stick on his head. When P.W.1 tried to avert the blow, he received fracture injury on his left hand. P.W.1 further stated that the accused bet him also on his back. He further stated that galata was witnessed by P.Ws.2 to 4. He further stated that he went to the police station and lodged Ex.P1 report. The cross-examination of this witness would reveal that as rightly pointed out by the learned Assistant Public Prosecutor, except giving the denial suggestion that the injuries were received by P.W.1 elsewhere, nothing concrete could be brought forth to disbelieve the version of P.W.1. No prior enmity between P.W.1 and accused could be established or even suggested to hold that P.W.1 created a false story to implicate the accused in this case.

7. The version of P.W.1 is corroborated by P.W.2, who is his wife. She too stated that on 01.08.2007 at about 06.00 p.m., when accused tried to tether cattle near their house, P.W.1 advised him not to do so as that may ensue breeding of mosquitos. The accused did not heed him and started abusing P.W.1 and also bet P.W.1 on head causing bleeding injury. She further stated that the accused also bet P.W.1 on

the left hand when he tried to put his hand on his head to prevent the blow. In that process, he sustained fracture. She stated that P.Ws.3 and 4 also witnessed the incident and later herself and P.W.1 went to Aleru police station, where P.W.1 lodged Ex.P1 complaint and police referred P.W.1 to the Government Area Hospital, Bhongir and from there, they were referred to Gandhi Hospital, Secunderabad.

8. It is needless to emphasize that the evidence of P.W.2 touts in the line of P.W.1. It is true, P.W.2 is the wife of P.W.1, however, on that count alone, her evidence cannot be disregarded. As rightly argued by learned Assistant Public Prosecutor, the incident was occurred by the side of the house and therefore, P.W.2 can be termed as a natural witness to see the incident. Her evidence corroborates P.W.1 on the material particulars and further, the evidence of P.Ws.1 and 2 is corroborated by P.W.8 – the doctor, who examined P.W.1 and issued Ex.P7 – wound certificate, after obtaining Ex.P8- Radiologist report. Ex.P8, of course, do not contain the seal of Gandhi Hospital, however, it contains the signature of the Radiologist. It shows that, no bony injury was noted in the skull on lateral view examination. However, fracture shaft of left 3rd metacarpal was found. Basing on Ex.P8, P.W.8 has issued Ex.P7 – wound certificate stating that first injury was a simple and second injury was a grievous one. The doctor's evidence could not be impeached

in any manner. So at the outset, the oral and documentary evidence produced by the prosecution is beyond the pale of doubt or suspicion and the said evidence clearly established that the P.W.1 sustained bony injury to his left hand due to the highhanded act of accused. The trial court and first appellate court, it must be said, right in relying upon their evidence and convicting the accused. I find no substantial ground to set aside the judgments of the courts below.

9. Accordingly, this criminal revision case is dismissed confirming the judgment dated 31.07.2012 in criminal appeal No.96 of 2011 passed by the III Additional District and Sessions Judge (I FTC), Nalgonda.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

03.12.2018
SS

U.DURGA PRASAD RAO, J