

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.174 of 2007

ORDER:

Heard the learned counsel for the petitioner-defacto complainant and the learned Assistant Public Prosecutor for the respondent-State. There is no representation for the respondent-accused. It is an old matter of the year 2007. It can be disposed of on merits.

2. This Criminal Revision Case under Sections 397 and 401 Cr.P.C. is directed against the judgment dated 14.09.2006 in C.C. No.770 of 2003 on the file of the Judicial Magistrate of First Class, Chennur, Adilabad district, whereby the respondent-accused was found not guilty of the offence punishable under Section 326 IPC and accordingly acquitted of the same.

3. Case of the prosecution is that on 05.10.2003 at about 6.00 PM, the accused and one Chandraiah were quarrelling with each other, and when P.W.2 went there, the accused pushed him, due to which, he fell on a stone and sustained fracture of his right leg. On the report lodged by P.W.1, who is brother of P.W.2, police registered a case in crime No.114 of 2003 of Chennur police station. The Medical Officer, Government Hospital, Chennur referred P.W.2-injured to a private hospital, Mancheriah where he was treated, and the Doctor opined that the injuries sustained by P.W.2 are grievous in nature. After receipt of relevant documents and completion of investigation, police laid charge sheet.

4. After taking cognizance, the learned Magistrate examined the accused under Section 239 Cr.P.C., and a charge for the offence punishable under Section 326 IPC was

framed, read over and explained to the accused, he pleaded not guilty and claimed to be tried. During trial, P.Ws.1 and 2 were examined and Ex.P1-report was got marked, on behalf of the prosecution. As the prosecution failed to produce other witnesses even after giving number of opportunities, the learned Magistrate closed the evidence on prosecution side. Thereafter, the accused was examined under Section 313 Cr.P.C. to explain the incriminating evidence appearing against him in the evidence of prosecution witnesses. He denied the same. No oral or documentary evidence was adduced on behalf of defence.

5. Learned counsel for the petitioner would submit that there is specific evidence of P.Ws.1 and 2 with regard to P.W.2 sustaining fracture of his right leg when he was pushed by the accused; that there is also medical record to substantiate the same; that the learned Magistrate did not appreciate the direct ocular evidence and acquitted the accused erroneously; that there is miscarriage of justice, and ultimately, prays set aside the impugned judgment and convict the accused.

6. On the other hand, learned Assistant Public Prosecutor would submit that the investigating officer and the Doctor were not examined in the case.

7. In view of the submissions made, the point that arises for determination is whether the acquittal recorded in judgment dated 14.09.2006 in C.C. No.770 of 2003 on the file of the Judicial Magistrate of First Class, Chennur, Adilabad district is legal, proper and correct ?

8. Revisional jurisdiction of this Court under Section 401 Cr.P.C. is a truncated one. Unless the findings are perverse, or that admissible evidence was not taken into consideration in acquitting the accused or that admissible evidence was

overlooked, normally the revisional powers cannot be exercised to disturb the findings of the courts below.

9. The evidence of P.W.1 reveals that 3 years prior to his giving evidence, at about 5.30 PM, the accused and one Chandraiah were quarrelling in their village; mean while, his elder brother P.W.2 went there; the accused pushed his elder brother P.W.2 aside, due to which P.W.2 fell down on a stone and suffered fracture to his right leg. P.W.1 further deposed that at that time, he was on the back side of his brother, took the injured to police station and lodged Ex.P1-report. In cross-examination, P.W.1 stated that there were 20 persons at the scene of offence. He denied a suggestion that P.W.2 fell down under intoxicated condition and suffered injury.

10. P.W.2 is the injured witness. He deposed that about 2 ½ years prior to his giving evidence, the accused and one Chandraiah were quarrelling with each other in his village, and when he went there, the accused pushed him aside as a result, he fell down on a stone and sustained fracture in his right leg. It is his further evidence that his brother P.W.1 took him to Government Hospital, Chennur, and the Doctor referred him to Government Hospital, Mancherial.

11. In the instant case, the Doctor and the investigating officer were not examined by the prosecution.

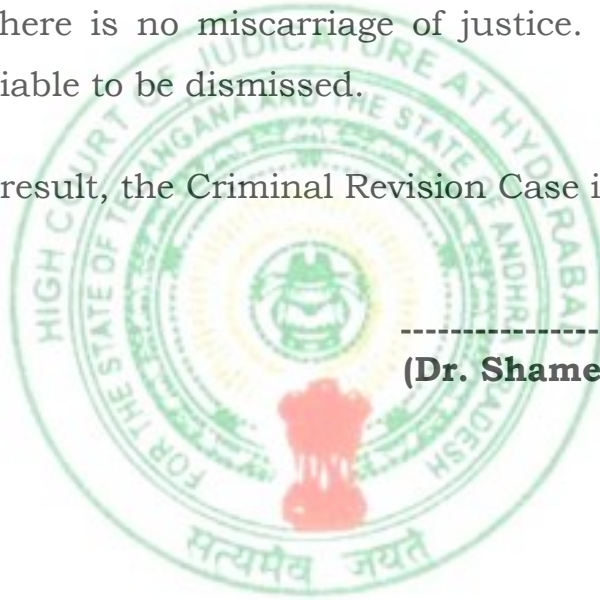
12. P.W.2 did not state in his evidence presence of his brother P.W.1 at the scene of offence at the time of the incident. In cross-examination, he stated that he did not observe the gathering at the scene of offence. But, as per P.W.1, 20 persons gathered at the scene of offence. None of the independent witnesses was examined in this case to support the prosecution case. Further, the investigating officer and the Doctor were not examined. First Information Report is also not marked as exhibit. It is also relevant to

state that wound certificate of P.W.2 is also not on record. As per the evidence on record, no bleeding injury is suffered by P.W.2. There is no mention of any motive for the accused to push P.W.2. The story set up by the prosecution appears to be doubtful. So, in the absence of evidence of the Doctor and the investigating officer, and when material documents are not marked, an implicit reliance cannot be placed on the testimonies of P.W.1 and P.W.2. The requirements to punish the accused for the offence punishable under Section 326 IPC are not established beyond all reasonable doubt. The prosecution failed to establish the guilt of the accused beyond all reasonable doubt. The trial Court rightly acquitted the accused. There is no miscarriage of justice. The revision fails and is liable to be dismissed.

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

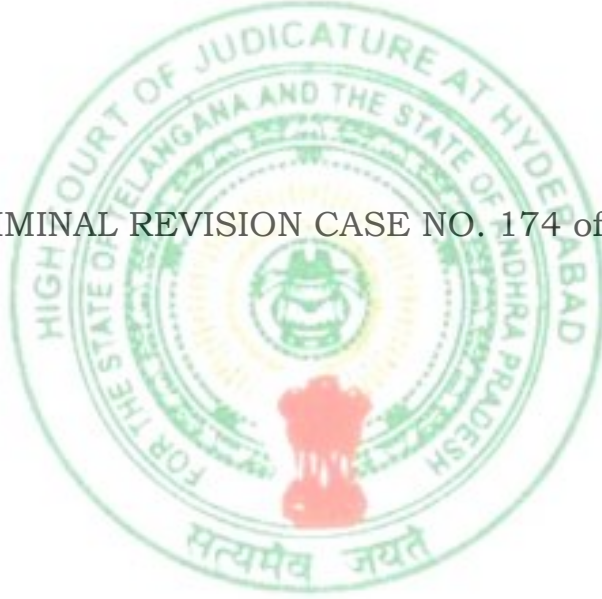
25.04.2018
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(Dr. Shameem Akther, J)



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25.4.2018