

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No.1032 OF 2007

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner-accused seeking to set aside the conviction recorded against him under Section 248(2) Cr.P.C. and the sentence of imprisonment to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months for the offence punishable under Section 326 I.P.C., *vide* judgment dated 13.02.2006 passed in C.C. No.486 of 2004 on the file of the Judicial Magistrate of First Class, Special Mobile Court, Nalgonda, (for short, 'the trial Court'). The said conviction recorded by the trial Court was confirmed by the learned Principal Sessions Judge, Nalgonda (for short, 'the Sessions Judge') in Criminal Appeal No.59 of 2006 on 19.07.2007 by reducing the sentence of imprisonment from two years to one year while maintaining the payment of fine amount.

2. Heard the learned counsel for the petitioner-accused, learned Assistant Public Prosecutor representing the respondent-State and perused the record.

3. Learned counsel for the petitioner-accused would submit that the P.Ws.1 to 3 are the interested witnesses; recovery of M.O.1-Axe is not proved; the petitioner-accused lodged a report against the son of P.Ws.1 and 2 and in order to wreck vengeance against the petitioner-accused, this case was foisted falsely; there is no legally acceptable evidence to convict and sentence the petitioner-accused for the offence under Section 326 I.P.C.; and ultimately, prayed to set aside the conviction and sentence recorded against the petitioner-accused.

4. On the other hand, learned Assistant Public Prosecutor would submit that there is ample evidence connecting the petitioner-accused to the alleged offence under Section 326 I.P.C.; both the Courts below have rightly recorded conviction and sentence against the petitioner-accused basing on the entire material on record; and ultimately, prayed to dismiss the criminal revision case.

5. Revisional jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is a truncated one. Unless the findings are based upon no evidence or perverse, or that inadmissible evidence was taken into consideration in convicting the accused or that admissible evidence was overlooked, normally the revisional powers cannot be exercised to disturb the concurrent findings of the two Courts below. To know whether the findings are based on proper appreciation of the evidence on record, it is necessary to look into the evidence on record.

6. In view of the contentions raised on behalf of both sides, the point for determination is, whether the conviction and sentence recorded against the petitioner-accused are liable to be set aside?

7. P.W.1-Tarini Vijayalaxmi is wife of P.W.2-Tarine Venkatachary. P.W.3-T.Chandra Sekhar is their son and eyewitness to the alleged incident. P.W.4-A.Anthaiah Goud is also an eyewitness to the alleged incident. P.W.5-Bathini Mattaiah is panch witness for confession and seizure of M.O.1-Axe. P.W.1-wife of P.W.2 deposed that on 02.07.2003 at about 7-30 a.m., when they were fetching water from water tanker, the petitioner-accused came there and attached her husband-P.W.2 on his left shoulder, due to his her husband sustained fracture and was hanging to below the shoulder. The evidence of P.W.2-victim is that on 02.07.2003 at about 7-30 a.m., when he along with his children went to

fetch water from the tanker, while his children were handing over the pots and he was dumping in the house, at that time the petitioner-accused came there and abused him in filthy language and attacked him with M.O.1-Axe on his neck, to escape raised his hand, his hand was cut off, the bones and nerves were also cut off. P.W.2 suffered grievous injury. P.W.3-son of P.Ws.1 and 2 deposed that on 02.07.2003 at about 7-30 a.m., a water tanker came to their locality, he and his father were fetching water at RB Function Hall, suddenly, the petitioner-accused came there and abused his father in filthy language and objected stating that they alone were fetching water without giving any chance to others, thereafter the accused attacked his father-P.W.2 with M.O.1-Axe on his neck, when his father tried to avoid by keeping his left hand, his father's left hand was severely cut with bleeding injuries. P.W.3 identified the axe as the weapon used by the accused in commission of the offence, which was marked as M.O.1. P.W.2-victim also identified M.O.1-Axe. P.W.4-A.Anthaiah Goud also corroborated the evidence of P.Ws.1 to 3. P.W.4 also spoke about his fetching of water at the time of incident and commission of offence. There is specific evidence of P.W.4 that he heard cries made by P.W.1 saying that '*Narikaru Narikaru*', immediately he found the accused going away from that place with the axe in his hand. P.W.2 suffered bleeding injury on his shoulder and P.W.2's hand was hanging. Though P.Ws.1 to 4 were subjected to lengthy cross-examination, nothing was elicited to discard their evidence. Ex.P.1 is the report given by P.W.1 and Ex.P.2 is the confession leading to recovery of M.O.1-Axe.

8. P.W.6-Dr.P.Nagaveni, Civil Assistant Surgeon, deposed that P.W.2 suffered incised wound 6" x 1" bone deep on the middle of left arm with fracture shaft left humerus. Ex.P.3 is the medical certificate which corroborates the evidence of P.W.6-doctor. The evidence of P.W.7-

A.Satyanarayana, Assistant Sub Inspector of Police, reveals that on receipt of Ex.P.1-report by P.W.1, he registered the subject crime. P.W.8-K.Krishna is the investigating officer. He deposed the conduct of investigation in this case and seizure of M.O.1-Axe pursuant to the confession made by the accused in the presence of P.W.5-Bathini Mattaiah and L.W.7-Madagoni Saidulu and Ex.P.2 is the panchanama. There is no reason for P.W.8 to prepare a false case under Ex.P.8. There is also evidence of P.W.6-doctor about P.W.2 suffering grievous injury and the treatment given to him. There is ample evidence to prove that the injury sustained by P.W.2 is grievous one. It fulfils the requirements of Section 326 I.P.C. As seen from the entire material on record, there are no inconsistencies or omissions in the evidence of prosecution witnesses. There is cogent, convincing and legally acceptable evidence proving the guilt of the petitioner-accused for the offence under Section 326 I.P.C. Though P.Ws.1 and 3 are the wife and son of P.W.2-victim, since the offence took place in front of the house, they are natural witnesses. Their testimony cannot be discarded. As seen from the entire evidence on record, the manner in which the alleged offence was committed by the petitioner-accused with an axe, the circumstances do warrant stringent punishment. Both the Courts below acted upon oral, as well as documentary evidence and were pleased to convict and sentence the petitioner-accused of the offence under Section 326 I.P.C. Those findings are based on evidence on record. There is nothing to take a different view.

9. Learned counsel for the petitioner-accused urged to reduce the sentence of imprisonment by taking a lenient view. The learned Magistrate convicted the petitioner-accused for the offence punishable under Section 326 I.P.C. and sentenced to undergo rigorous imprisonment

for two years and to pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of six months. The Court of Session reduced the sentence of imprisonment from two years to one year, while confirming the payment of fine amount. The Court of Session had already taken a lenient view by reducing the sentence of imprisonment from two years to one year. There is nothing to interfere with the sentence of imprisonment. There is no miscarriage of justice. The Criminal Revision Case is devoid of merit and it is liable to be dismissed.

10. Accordingly, the Criminal Revision Case is dismissed. The trial Court shall take appropriate steps against the petitioner-accused to implement the impugned judgment. Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

Date: 17-04-2018

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Dr. SHAMEEM AKTHER, J

