

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.1034 OF 2011

ORDER:

Heard the learned counsel for the petitioner and learned Public Prosecutor appearing for the respondent-State.

The present Criminal Revision Case is filed challenging the judgment passed in CrI.A.No.1 of 2010 dated 31.01.2011 on the file of the Court of IX Additional District & Sessions Judge (Fast Track Court), Visakhapatnam confirming the judgment in S.C.No.203 of 2008, dated 04.01.2010 on the file of the Court of Assistant Sessions Judge, Chodavaram, Visakhapatnam District, convicting the petitioner for the offence under Section 333 I.P.C. and sentencing him to undergo rigorous imprisonment for a period of five years and also to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for four months.

The facts, in brief, are that on 11.03.2007 one U.Suribabu-P.W.1, who is working as a driver in A.P.S.R.T.C., while plying the bus in route No.333 from Visakhapatnam to Devarapalli and Conductor of the bus i.e. P.W.5 were assaulted by the petitioner-accused, leading to lodging of Ex.P.1-complaint. According to him, his duty started at 7.45 a.m. Evening trip was started at 6.00 p.m. from RTC complex to Devarapalli. When the bus reached Anandapuram junction, some passengers got down and some other passengers boarded the bus including the petitioner herein. P.W.5 being the conductor of the bus requested the petitioner to purchase ticket for his journey, but the petitioner put a deaf ear and hit him with his head, as a result of which, P.W.5 fell down.

P.W.1 advised the petitioner to purchase the ticket, whereupon the petitioner approached the driver seat and hit P.W.1 with his head but he turned aside. Then the petitioner caught hold of the right hand of P.W.1, twisted and caused fracture to the elbow bone and also pushed him out of the bus as a result, P.W.1 fell down from the bus in a ditch situated nearby the side of the road. Immediately, P.W.5 and other passengers lifted P.W.1. Meanwhile, another bus bearing No.AP 9Z 6034 driven by Peda Raju-P.W.2 came to the spot and came to know about the incident and shifted P.W.1 to Devarapalli P.H.C. where the injured got first aid. Later, P.W.1 went to A.Koduru Police Station and lodged Ex.P.1 report, on the basis of which, a case in Crime No.5 of 2007 under Section 332 I.P.C. was registered. P.W.1 was sent to King George Hospital for better treatment. Consequent to the registration of the crime, S.I. of Police, A.Koduru Police Station took up investigation, arrested the accused on 13.03.2007 and remanded him to judicial custody. After completion of investigation, charge sheet was filed for the offence under Section 333 I.P.C. against the petitioner before the Judicial Magistrate of First Class, Chodavaram. The learned Magistrate registered the charge sheet as P.R.C.No.21 of 2007 and served the copies of the charge sheet and other documents on the petitioner and subsequently, committed the case to the Sessions Court, Visakhapatnam as it is exclusively triable by Court of Sessions. On committal, the case was made over for trial to the Court of Assistant Sessions Judge, Chodavaram. On appearance, the petitioner was examined under Section 228 of Cr.P.C. and a charge under Section 333 I.P.C. was framed. The petitioner, in response

to the said charge, stated that he was in a drunken state and pleaded not guilty for the said offence.

The prosecution, in order to bring home the guilt of the accused-petitioner, examined P.Ws.1 to 8 and marked Exs.P.1 to P.9. After closure of the prosecution evidence, the petitioner was examined under Section 313 of Cr.P.C. explaining the incriminating evidence brought on record. However, he denied the entire prosecution case and claimed to be tried.

The learned Assistant Sessions Judge, after hearing both the parties and on appreciation of evidence brought on record, by judgment dated 04.01.2010 convicted the petitioner and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.3,000/-, in default, to suffer simple imprisonment for four months. Aggrieved by the said judgment, the petitioner filed CrI.A.No.1 of 2010 on the file of the Court of IX Additional District & Sessions Judge (Fast Track Court), Visakhapatnam. The lower appellate Court, after hearing the parties, by judgment dated 31.01.2011 dismissed the appeal confirming the judgment of the trial Court. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioner contended that the lower appellate Court erred in convicting the petitioner for the offence under Section 333 I.P.C. The Courts below ought not to have placed reliance on the highly interested testimony of P.Ws.1 and 5. Both the Courts below failed to appreciate the fact that there was an unexplained delay in lodging the F.I.R. The learned counsel further contended that Exs.P.4 and P.5 are not

properly proved. There is no independent reliable and acceptable evidence against the petitioner to convict him for the offence under Section 333 I.P.C. It is also contended that the petitioner also sustained injuries in the incident and the prosecution failed to explain the reasons therefor.

Per contra, the learned Public Prosecutor appearing for the respondent-State supported the impugned judgment and submitted that the evidence brought on record by the prosecution clinchingly established the commission of offence by the petitioner.

Having heard both the counsel and from the perusal of the material on record, the issue that crops up for consideration is:-

‘Whether or not the prosecution has proved the guilt of the petitioner for the offence under Section 333 I.P.C.?’

P.W.1, who is the injured and de facto complainant, categorically deposed the sequence of events that transpired on the fateful day. He deposed that when the petitioner was refusing to purchase the ticket, he advised him to purchase the ticket even by borrowing money from the co-passengers, for which, the petitioner approached his seat, hit him with his head and twisted his right hand resulting fracture of elbow bone and pushed him out of the bus. The said evidence has been corroborated by the evidence of P.W.5, who is the conductor of the bus as well as P.W.3, who is a co-passenger travelling in the bus. He deposed that he boarded the bus at Anandapuram junction along with other passengers. When the bus started, the conductor i.e. P.W.5 demanded the passengers to purchase tickets including the petitioner. Then the petitioner hit P.W.5 with his head on his face and in the process,

P.W.5 fell down and he asked P.W.1 to stop the bus. Meanwhile, P.W.1 advised the petitioner to purchase the ticket. Then the petitioner assaulted P.W.1 also. In fact, another witness examined by the prosecution as P.W.2 also deposed that he is the APSRTC driver of another bus and according to him, on receipt of message from the Depot Manager that P.W.1 received injuries and P.Ws.1 and 5 were at Deverapalli Police Station, he reached the spot and from there, he took P.Ws.1 and 5 to A.Koduru Police Station, where P.W.1 gave Ex.P.1 report to police. That apart, the evidence of P.W.4, who is the doctor examined P.W.1, also deposed regarding the injuries sustained by P.W.1 and his evidence is also corroborated with Ex.P.2-wound certificate.

To bring home the guilt of the accused, the ingredients of Section 333 I.P.C. have to be proved. As per Section 333 I.P.C., the following ingredients have to be satisfied:

- “(1) victim must be public servant;
- (2) That the accused voluntarily caused grievous hurt to the public servant;
- (3) Accused must have caused the said injury with an intend to alter or deter that person from discharging his duties.”

In the case on hand, the evidence of P.Ws.1,3 and 5 clearly established that the petitioner caused the injuries to P.Ws.1 and 5. The nature of injuries sustained by P.W.1 are tallying with the wound certificate-Ex.P.2 issued by P.W.4. P.Ws.6 and 7, who are Assistant Sub-Inspector of Police and Sub-Inspector of Police of A.Koduru Police Station, respectively, deposed the registration of crime, examination of witnesses, recording of statements and the receipt of the certificates leading to filing of the charge sheet. In

fact, their evidence also corroborates with the evidence of P.Ws.1, 3 and 5. Further when the petitioner was examined under Section 313 of Cr.P.C. at the time of framing of charge, he deposed that he was in a drunken state and some incident was happened, but pleaded not guilty. Even the said version of the petitioner also supports the case of the prosecution. As such viewed from any angle, the prosecution has proved the guilt of the petitioner beyond all reasonable doubt. Therefore, this Court is of the opinion that there is no irregularity or illegality in the judgments passed by both the Courts below and there are no merits in the Criminal Revision Case.

Accordingly, the Criminal Revision Case is dismissed. The learned Assistant Sessions Judge, Chodavaram, Visakhapatnam District is directed to take steps to see that the petitioner-accused shall serve the remaining sentence of imprisonment.

Pending miscellaneous petitions, if any, shall also stand closed.

P.KESHA VA RAO,J

11th OCTOBER 2018.
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