

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Appeal No.1822 of 2007

JUDGMENT:

This Criminal Appeal is preferred by the State aggrieved by the judgment dated 26.04.2006 in C.C.No.298 of 2000 on the file of Judicial Magistrate of First Class, Sompeta, whereunder the learned Judge acquitted Accused Nos.1 and 2 having found not guilty of the offences under Sections 332 and 506(2) IPC.

2) The factual matrix of the case which led to file this appeal can be stated thus:

a) On 25.04.2000 at about 12:30 pm, when PWs.1 and 3—police personnel tried to execute the NBW pending against A.1 issued by the Judicial Magistrate of First Class, Ichapuram in Crime No.43/1999 of Ichapuram Rural PS, A.1 abused and assaulted PW.1 and A.2 assaulted PW.3. Hence, PW1 lodged a complaint before PW8, who registered the same as Cr.No.37 of 2000 against the accused for the offences under Sections 332 and 506(2) IPC and after investigation filed charge sheet. The learned Magistrate took cognizance of the case and registered as C.C.No.298 of 2000.

b) During trial PWs.1 to 8 were examined and Exs.P1 to P7 were marked on behalf of prosecution. No oral or documentary evidence was adduced on behalf of defence.

c) The Trial Court after considering both oral and documentary evidence came to conclusion that the prosecution failed to substantiate the case by producing cogent evidence and accordingly acquitted Accused Nos.1 and 2.

Hence the instant appeal by State.

3) Heard arguments of learned Public Prosecutor for the State (Andhra Pradesh). None appeared for respondents.

4) The point for determination is:

“Whether the judgment of the Trial Court is factually and legally sustainable?”

5) **POINT:** The prime offence in this case is under Section 332 IPC.

It reads thus:

*“Section 332 - **Voluntarily causing hurt to deter public servant from his duty:** Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”*

Section 332 IPC has been incorporated in the statute book to punish the offender, who with intent to prevent or deter a public servant from discharging his duty as public servant, voluntarily causes hurt. Thus the ingredients of the offence under Section 332 IPC are:

- i) hurt caused to a public servant and
- ii) the said hurt has been caused
 - a) while such public servant was acting in the discharge of his duty as such or
 - b) in order to prevent or deter him from discharging his duty as a public servant or
 - c) in consequence of his having done or attempted to do anything in the lawful discharge of his duty as such a public servant.

Thus the essential element of the above ingredients is that the public servant must be discharging his duty as such public servant at the relevant time of the offence.

6) On a close scrutiny of the facts and evidence placed on record by the prosecution, it must be held, unfortunately, the prosecution failed to establish the essential ingredients to prove the offence under Section 332 IPC i.e. it miserably failed to establish that PWs.1 and 3 were indeed discharging their duties as public servants at the time of alleged offence. It is the case of the prosecution that PW.1—ASI of Police and PW.3—Constable, were working in Ichapuram Rural PS and a NBW in Crime No.43/1999 of Ichapuram Rural PS was issued by the Judicial Magistrate of First Class, Ichapuram against A.1 and the same was pending and in that connection, PWs.1 and 3 went to Sompeta on 25.04.2000 at about 12:00noon, on receiving information that A.1 was available at Sompeta,

in order to execute the NBW. The version of PW.1 is that they found Accused No.1 at RTC bus station, Sompeta. PW.1 appraised him about the pending NBW and tried to execute the warrant by arresting him. Then A.1 abused him in filthy language and caught-hold of his shirt and slapped him on his right cheek and also threatened PW.3 with dire consequences. Then A.2, who was present there, assaulted PW.3. Thereafter PWs.1 and 3 arrested A.1 and produced him before the Magistrate for remand and A.1 gave report to the Police of Sompeta PS. In the cross-examination it was specifically suggested to them that a false case was foisted by the police due to grudge against the accused and PW.1 has not tried to arrest the accused in connection with any warrant. Ofcourse PW.1 denied the said suggestion. However, he admitted in the cross-examination that he has not produced the copy of warrant before the police of Sompeta PS at the time of giving report under Ex.P.1. PW.3 also deposed in similar lines as that of PW.1.

a) From the above evidence of PWs.1 and 3 it is clear that they have not produced the NBW said to have been issued by the Judicial Magistrate of First Class, Ichapuram against A.1. Hence except the oral testimony of PWs.1 and 3, there is no authenticated document to hold that PWs.1 and 3 were discharging their duties as public servants at the relevant time of offence. Mere oral assertion in this regard is not suffice to conclude that they were discharging the duty as public servants. In

similar circumstances, in the judgment reported in *Raghubar and others v. Emperor*¹, the High Court of Oudh, observed thus:

“Para 6: x x x x*I am satisfied that the prosecution has failed to establish the necessary ingredients of the offence under Section 332, Penal Code. Section 332, Penal Code, requires that the public servant must be acting in the discharge of his duty as such public servant at the time of the assault. To my mind it is quite clear from the evidence that Basdeo cannot be said to have been acting in the discharge of his duty if he intended or wanted to arrest Jangali when he was beaten. The constable had no warrant of arrest in his possession at the time of the assault, nor had he been entrusted with the duty of arresting Jangali at the time when the assault was made upon him.*”

In the said judgment, the decision in *Kartik Chandra v. Emperor*², was relied upon. Wherein it was held thus:

“if a constable in effecting an arrest specifies a certain power which proves to be wanting, resistance to him or escape from his custody constitutes no offence. Where the constable purports to act under a warrant which is found to be invalid, and where there is no allegation by the constable in his deposition that he proceeded under S. 54(1), S. 54(1) does not apply.”

Ultimately, the High Court set aside the conviction under Section 332 r/w 149 IPC but however, convicted the accused therein for the offence under Section 147 IPC.

7) The above judgment applies in all its fours to the case on hand. In the instant case also, as already noted supra, except the oral testimony of PWs.1 and 3, they have not produced the warrant while presenting

¹ AIR 1941 Oudh 385 = MANU/OU/0249/1941

² AIR 1932 Pat 171

Ex.P.1—report to the SHO, Sompeta PS. It is pertinent to note that they have not mentioned before the Judicial Magistrate of First Class, Ichapuram while producing A.1 about the incident that has taken place. In the evidence of PW.1, he did not state that he showed NBW to A.1 before effecting his arrest. Above all, the NBW said to have been issued by the Judicial Magistrate of First Class, Ichapuram was not produced before the Trial Court also. Therefore, there was absolutely no material to hold that PWs.1 and 3 were discharging their duty as public servants at the relevant time of incident. In that view, the charge under Section 332 IPC is not sustainable. So far as the charge under Section 506(2) IPC is concerned, except the interested testimony of PWs.1 and 3, there is no other independent evidence in this regard. Though prosecution examined some independent witnesses, they did not support its case. So the Trial Court was right in acquitting the accused.

8) In the result, I find no merits in the Criminal Appeal and accordingly, the same is dismissed by confirming the judgment of the Trial Court.

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

U. DURGA PRASAD RAO, J

Date: 16.08.2018

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