

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE No.2314 of 2017

JUDGMENT:

This Criminal Revision Case is arising out of the Judgment dt. 16.01.2017 in Criminal Appeal No.46 of 2015 passed by the learned Principal Sessions Judge, Adilabad.

The brief facts of the case of the prosecution are that, the appellant has filed Criminal Appeal No.46 of 2015 under Section 374 (3) (a) of Cr.P.C. for setting aside the conviction and sentence imposed against the Appellant in S.C.No.29 of 2014 on the file of Assistant Sessions Judge, Nirmal.

The learned Principal Sessions Judge, Adilabad, on consideration of the evidence of the witnesses Pws. 1 to 9 and Exs. P.1 to P.9 and Exs. Mo.1 and 2 and judgment of the trial Court, has dismissed the appeal finding the accused guilty for the offence

under Section 326 IPC and sentenced him to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for a period of four months.

The learned Assistant Sessions Judge at Nirmal, originally convicted the accused for the offence under Section 307 IPC and sentenced him to undergo Rigorous Imprisonment for a period of 5 years and to pay fine of Rs.1,000/-, in default to suffer SI for a period of two months. The sentence imposed by the trial Court is modified by the Appellate Court as stated above. However, dismissed the appeal filed by the Appellant challenging the conviction and sentence imposed by the trial Court.

Aggrieved by the impugned Judgment, the Appellant/accused is before this Court.

Heard Smt B. Yaijayanthi, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent.

Learned counsel for the Appellant submits that there are no eye witnesses to the occurrence of incident. The evidence of PWs. 2 and 3 is not trustworthy as their presence at the scene is doubtful. There is no medical evidence to show the alleged grievous hurt under Section 326 IPC is proved by the prosecution by any evidence. As per the testimony of PW.5, Civil Assistant Surgeon, Area Hospital, Nirmal, the victim has received seven injuries, which are simple in nature. Therefore, the offence at the most would have been committed by the accused falls under Section 324 IPC and not under Section 326 IPC.

This is a case of attempt to commit murder punishable under Section 307 IPC. The trial Court has convicted the accused for the offence under Section 307 IPC and sentenced him to undergo Rigorous Imprisonment for a period of 5 years and to pay a fine of

Rs.1,000/-. On appeal, the sentence imposed by the trial Court under Section 307 IPC is held not proved and the offence under Section 326 IPC is held proved and the accused was convicted and sentenced to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.1,000/- with default sentence. It is observed in the Judgment of the Appellate Court that the findings of the Court below does not warrant interference by the Court as the injuries were caused on the head of the deceased and therefore, the accused is liable for punishment for the offence under Section 326 IPC.

The point for consideration is whether the prosecution proved the guilt of the accused beyond all reasonable doubt for the offence under Section 326 IPC?

The Appellant/accused is challenging the Judgment rendered by the Appellate Court convicting him for the offence under Section 326 IPC. The contention raised by the learned counsel for the

appellant is that the appellant has not committed offence punishable under Section 326 IPC as the injuries alleged to have been caused by him were simple in nature. At this stage, it is appropriate to refer Section 326 IPC, and it is extracted hereunder:

Section 326 IPC: Voluntarily causing grievous hurt by dangerous weapons or means:

Whoever, except in the case provided for by Section 335, voluntarily, causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.

In the instant case, the testimony of PW.5-Medical Officer is relevant to come to the conclusion whether the injuries received by the victim are grievance in nature or not and whether the weapons used are deadly weapons.

The evidence of PW.5, Civil Assistant Surgeon, Area Hospital, Nirmal, reveals that the victim has suffered seven injuries, which are simple in nature. Ex.P.5 is the Injury Certificate, which clearly reveals that all the seven injuries are simple in nature. Some of them are caused by sharp edged weapons and some of them are caused by blunt objects. The Appellate Court after considering the entire evidence convicted the accused for the offence under Section 326 IPC, disbelieving the version of the prosecution that he attempted to commit murder on the victim for the offence under Section 307 IPC. The Appellate Court has lost sight of the nature of injuries suffered by the victim. All the injuries are simple in nature and therefore, they do not come under the definition of grievous hurt.

Section 320: Grievous hurt: The following kinds of hurt

only are designated as “grievous:

First: Emasculation.

Secondly-Permanent privation of the sight of either eye.

Thirdly: Permanent privation of the hearing of either ear,

Fourthly- Privation of any member or joint.

Fifthly –Destruction or permanent impairing of the powers of any member or joint.

Sixthly: Permanent disfiguration of the head or face.

Seventhly: Fracture or dislocation of a bone or tooth.

Eighthly: Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits.

As per the testimony of PW.5, PW.2 was admitted on 18.02.2013 at 06.30 pm and discharged on 25.02.2013 at 06.00 pm. Therefore, Pw.2 was treated in the hospital as in patient for seven days. Even if we take into consideration the Clause 8th of Section 320 IPC i.e., any hurt which endanger life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits, it has to be considered as a grievous hurt. Therefore, there is no evidence forth coming that the victim has suffered severe bodily pain for 21 days, In view of the above medical evidence, it can be safely concluded that the injuries received by Pw.2 are not grievous in nature and therefore, there was no grievous hurt and at most, it may be a hurt caused to Pw.2.

Therefore, the offence punishable under Section 326 IPC is not proved by the prosecution and the same falls under Section 324 IP in the light of the above facts.

Section 324 IPC reads as under and it is extracted hereunder :

Section 324 IPC: Voluntarily causing hurt by dangerous weapons or means:

“whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

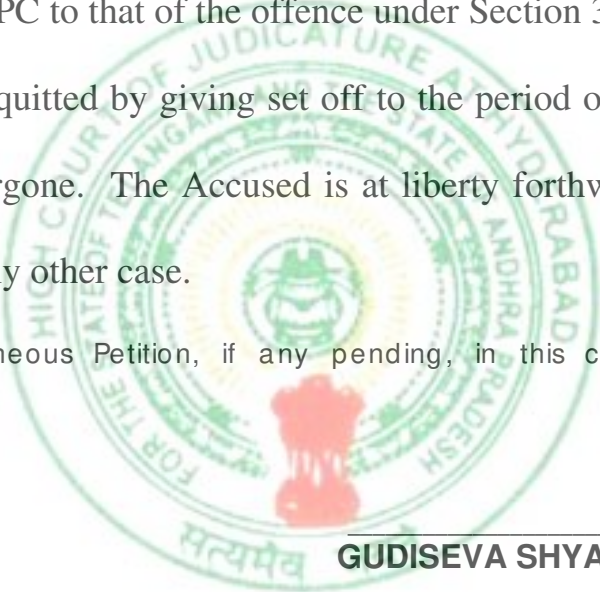
This is a case where the injuries were caused by sharp edged weapons and blunt objects. Therefore, the injuries alleged to have been caused might be dangerous weapons and there was a hurt caused due to the injurious. Therefore, the offence punishable under Section 324 IPC is only for a term which may extend to three years, or with fine, or both.

Learned counsel for the Appellant submits that the Appellant has already undergone imprisonment for more than two years out of

three years of imprisonment imposed by the Appellate Court. In view of the fact that the offence falls under Section 324 IPC, the Accused be sentenced to the imprisonment for the period already undergone by him.

In the result, the Appeal is partly allowed modifying the sentence imposed by the Appellate Court for the offence under Section 326 IPC to that of the offence under Section 324 IPC and the accused is acquitted by giving set off to the period of imprisonment already undergone. The Accused is at liberty forthwith if he is not required in any other case.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.



GUDISEVA SHYAM PRASAD, J

Date: 06-12-2018
eha



THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



eha