

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.350 OF 2009

JUDGMENT:

This Criminal Appeal, under Section 374 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed by the appellant/accused aggrieved by the judgment, dated 06.03.2009, passed in S.C.No.255 of 2008 by the learned VII Additional Metropolitan Sessions Judge, Hyderabad, whereby and whereunder, the appellant/accused was sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.500/-, in default to suffer simple imprisonment for one month for the offence under Section 325 of IPC.

2. Heard the learned counsel for the appellant/accused, the learned Additional Public Prosecutor representing the respondent/State and perused the record.

3. Learned counsel for the appellant/accused would contend that the findings of the trial Court are contrary to law and facts of the case. The trial Court erroneously convicted the accused for the offence under Section 325 of IPC. Identification of the appellant/accused is not established. There is no explanation for the delay in lodging the FIR. The prosecution has not examined independent witnesses in this case. The seizure of blood stained earth is not proved. The blood stained earth was seized by the investigating officer. The recovery of M.O.1 cricket bat is doubtful. The prosecution failed to prove the guilt of the accused beyond all reasonable doubt and ultimately, prayed to acquit the accused for the offence under Section 325 of IPC.

4. The learned Additional Public Prosecutor for the respondent/State would contend that P.W.2 is the victim in this case. P.Ws.1 and 3 are the independent witnesses. They have clearly and categorically stated that the accused beat on the left side of the head of P.W.2 victim. There are also medical reports as well as doctors' evidence to substantiate the injury. The injury suffered by P.W.2 is a grievous injury. It was caused voluntarily by the accused when P.W.2 and other players did not vacate the ground and facilitate the accused to play cricket in the ground. The prosecution proved the guilt of the accused for the offence under Section 325 of IPC. There is nothing to take a different view and ultimately prayed to sustain the conviction and sentence recorded against the accused.

5. In view of the submissions made by both sides, the points that arise for determination are as follows:

- 1) Whether the accused voluntarily caused grievous hurt to P.W.2 victim on 18.11.2007 at 7.00 a.m. with a cricket bat at Qurshidjah playground Hussainilam, Hyderabad?
- 2) Whether the conviction and sentence recorded against the accused for the offence under Section 325 of IPC is liable to be set aside?

6. The specific case of the prosecution is that on 18.11.2007 around 7.00 a.m. P.W.2 along with his friends were playing cricket at Qurshidjah playground Hussainialam, Hyderabad. The accused asked P.W.2 and his friends to go away. So that he can play cricket there. When P.W.2-victim and his friends did not vacate the ground, the accused voluntarily caused hurt to P.W.2 with M.O.1 bat.

7. To substantiate the case of the prosecution, the prosecution examined P.Ws.1 to 7 and got marked Ex.P1 report, Ex.P2 seizure report, Ex.P3 medico legal record, Ex.P4 case sheet of the victim, Ex.P5 FIR and Ex.P6 FSL report and M.Os.1 and 2. No evidence, either oral or documentary, was adduced on behalf of the accused.

8. In Section 313 Cr.P.C., simply the accused denied the incriminating evidence and pleaded innocence.

9. P.Ws.1 to 3 are the material witnesses in the subject crime. Ex.P1 report was lodged by P.W.1. The evidence of P.W.1 reveals that he is the resident of Shawgunj, Hyderabad. The offence took place about 11 months prior to his deposition on 18.11.2007 at 7.00 a.m. in the playground situated at Hussainialam, Hyderabad. P.W.1 and his friends had erected stumps to play cricket. When P.W.1 and his friend were ready for batting and P.W.2 was bowling, the accused approached them along with his brother and friends and demanded P.W.1 and others to vacate the ground. When they did not do so, the accused abused in filthy language and threatened them with dire consequences. P.Ws.1, 2 and other friends ignored the threats given by the accused and continued playing. Then suddenly, the accused snatched away the bat from his hands, beat and assaulted P.W.2 on the right side of his head. P.W.2 sustained bleeding injury. He also stated that the accused was assaulted on the left eye of P.W.2 and P.W.2 became unconscious. Thereafter, the accused along with his brother and friends absconded from the scene of offence. One Sohail (P.W.3), who was jogging in the ground, noticed P.W.2 with injuries and taken him to Esra Hospital, Shalibanda, where first-aid was given

to P.W.2. Thereafter, P.W.2 was shifted to O.G.H., Hyderabad. He along with his friends followed P.W.2 to O.G.H. Thereafter, he went to police station and lodged Ex.P1 report. Ex.P1 report corroborated with the evidence of P.W.1. P.W.1 was subjected to lengthy cross-examination. He reiterated the assault made by the accused and denied that a false case is foisted against the accused.

10. P.W.2 is the victim in this case. His evidence reveals that on 18.11.2007 at 7.00 a.m., when he went to Qurshidjah playground, Hussainialam along with P.W.1 and others, accused intervened and demanded to vacate the said ground. The accused threatened all of them. The accused also abused them in filthy language and demanded P.Ws.1 and 2 to play on some other pitch. When P.W.2 was about to bowl, accused beat him with the cricket bat on the right side of his head. When he was falling, the accused assaulted him on his right eye with bat. After sustaining injuries, he became unconscious. Thereafter, he regained consciousness at O.G.H. In cross-examination also, he reiterated the same and gave the details of the incident.

11. The evidence of P.W.3 also reveals that one year back, he went to Qurshidjah playground at 6.00 a.m. and noticed the accused hitting P.W.1 with bat on the right side of the head and after incident, he came to know the name of the accused and P.W.2. The victim was lying on the ground. Then he raised cries for lifting the injured to the hospital and he carried the injured to Esra Hospital. After first-aid, the injured was shifted to O.G.H. for treatment. His statement was recorded.

12. The presence of P.W.3 at the time of offence was also spoken by P.W.1. P.W.1 also specifically stated that P.W.3, who was jogging, took P.W.2 injured to the hospital. P.W.3 also reiterated the same in cross-examination and denied that he was saying falsehood. It is pertinent to state that P.W.3 is an independent witness. He has no relationship either with the accused or with P.Ws.1 and 2. There is no reason for him to support the prosecution case.

13. P.W.4 deposed about the confession made by the accused and seizure of M.O.1 under the cover of Ex.P2 panchanama.

14. P.W.5 is the doctor, who examined P.W.2 on 18.11.2007. He deposed about his examining the accused. He found laceration over the skull, right occipito temporal region size 5 x 1 cm. He also deposed that P.W.2 was referred to Neuro Surgeon. Ex.P3 is the certificate issued by him. Ex.P3 certificate issued by P.W.5 reveals that P.W.2 was examined by him on 18.11.2007 at about 7.30 p.m. and his evidence is corroborated with regard to the injury deposed by other eye witnesses.

15. There is also evidence of P.W.6 doctor, which reveals that he examined P.W.2-victim on 18.11.2007 and noticed the following injuries:

1. Hemtoma on the left eye.
2. There is a scalf laceration 8 x 1 cm.

On C.T. scan, it was found that P.W.2 sustained fracture of skull on the left side of the head. The injury is grievous. The said injury is possible by a cricket bat. P.W.5 doctor in his evidence also stated that P.W.2 stated to him that he was assaulted with a bat.

16. P.W.7 is the Sub-Inspector of Police, who received Ex.P1 report on 18.11.2007 and issued FIR against the accused for the offence under Section 307 IPC. Ex.P5 is the FIR. It reveals that the subject crime was reported to the SHO concerned at 10.48 hours. The evidence of P.W.7 further reveals that he conducted investigation in this case, recorded confession of accused and seized M.O.1 in the presence of panch witnesses and collected Ex.P6 FSL report.

17. As per the evidence on record, it is clear that P.Ws.1 and 2 are friends and when they wanted to play cricket on 18.11.2007 at about 7.00 a.m. at Qurshidjah playground, Hyderabad, the accused also wanted to play cricket there along with his brother. When P.Ws.1 and 2 did not vacate the ground, the accused voluntarily caused grievous hurt to P.W.2. P.Ws.1, 2 and 3 were eye witnesses. There is no reason for P.W.3 and also P.W.1 to depose false against the accused. As per Exs.P3, P4 and P6 medical record, the injury suffered by P.W.2 at the hands of the accused is grievous one. Furthermore, there is no reason for P.W.7 to fabricate material documents, such as Ex.P2 panchanama and M.Os.1 and 2 in the subject criminal case. P.Ws.1 to 3 as well as P.Ws.4 and 5 are truthful witnesses and there are no contradictions or material omissions to disbelieve their evidence.

Under these circumstances, the prosecution proved the guilt of the accused beyond all reasonable doubt for the offence under Section 325 IPC. There is nothing to take a different view.

18. As seen from the record, the accused is convicted and sentenced to suffer rigorous imprisonment for six months imprisonment and to pay fine of Rs.500/-. The sentence of imprisonment for the offence under Section 325 IPC can be extended for seven years. The conclusion reached by the trial Court shows that the learned Judge has taken a lenient view in imposing the sentence of imprisonment. Therefore, the situation does not warrant reducing further sentence of imprisonment.

19. In the result, the Criminal Appeal is dismissed confirming the conviction and sentence passed for the offence under Section 325 of IPC in the impugned judgment, dated 06.03.2009 in S.C.No.255 of 2008 by the learned VII Additional Metropolitan Sessions Judge, Hyderabad.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 15.02.2019
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