

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT GULBARGA

DATED THIS THE 11TH DAY OF SEPTEMBER 2008

BEFORE

THE HON'BLE MR. JUSTICE H.N. NAGAMOHAN DAS

CRIMINAL REVISION PETITION No. 380/2006

BETWEEN :

Sri. Umakanth
S/o. Laxman Suryavanshi
Aged 30 years
Occ. Coolie
R/o. Munganal.

... Petitioner

(By Sri. Santosh Biradar, Adv.)

AND :

The State of Karnataka
Through Chintaki Police
Aurad taluk
Rep. By the State Public
Prosecutor
High Court Buildings
Bangalore – 560 001.

... Respondent

(By Sri. Subhash Mallapur, HCGP)

This CrI. R.P. is filed under Section 397 Cr.P.C. with a prayer to set aside the judgment and award dated 07.01.2006 passed by Fast Track Court-IV Bidar in CrI.A. No. 32/2005 and the order dated 13.07.2005 passed by the JMFC, Aurad in C.C. No. 180/2005 and etc.

This CrI.R.P. coming on for Hearing this day, the Court made the following;

ORDER

This criminal revision petition is directed against the judgment and sentence dated 07.01.2006 in Criminal Appeal No. 32/2005 passed by the Fast Track Court – IV at Bidar confirming the judgment and sentence dated 13.07.2005 in C.C. No. 180/2005 passed by the JMFC at Aurad convicting the petitioner under Section 325 IPC and sentencing to undergo rigorous imprisonment for a term of six months and to pay a fine of Rs.1,000/-.

2. Petitioner is the accused and the respondents are the complainants before the trial Court. In this judgment, for convenience, the parties are referred to their status before the trial Court.

3. It is the case of prosecution that on 18.12.2004 the complainant, P.W.6, the accused and others traveled in a jeep from Santhpur to Lingdalli village by agreeing to share the hire charges. When the jeep reached Hanuman temple at Lingdalli village, the accused got down from the jeep and the complainant demanded to pay the hire charges of Rs.6/-. The accused quarreled with the complainant, abused him in filthy language and assaulted him and as a result two upper teeth of the complainant were broken. On the next date, that is, on 19.12.2004 the complainant informed the jurisdictional police about the incident and the same came to be registered in crime No. 54/2004. The jurisdictional police

after completing the investigation filed charge sheet against the accused for offences punishable under Section 325 and 504 IPC. Before the trial Court the prosecution examined P.W.1 to P.W.6 and got marked Ex.P.1 to Ex.P.5. The trial Court after hearing the arguments on both the side framed the following three points for its consideration and determination.

- I. Whether the prosecution proves beyond all reasonable doubt that on 18.12.2004 at 8.00 P.M. near Hanuman temple at Lingdalli village, the accused abused and insulted the complainant in filthy words with intent to provoke the breach of public peace or to commit any other offences and thereby committed offences punishable under Section 504 IPC?
- II. Whether the prosecution proves beyond all reasonable doubt that on the above said date, time and place the accused voluntarily assaulted with hand, fist on the mouth of complainant due to which the upper 2 teen were broken and there by committed offences punishable under Section 325 of IPC?
- III. What order?

4. On appreciation of the oral and documentary evidence the trial Court held that the prosecution has proved the charge against the accused in respect of the offences punishable under Section 325 only and not in



respect of offences punishable under Section 504 IPC. Consequently the trial Court under the impugned judgment dated 13.07.2005 acquitted the accused for the offences punishable under Section 504 and convicted the accused for the offences punishable under Section 325 IPC. After hearing the accused the trial Court passed an order of sentence to undergo rigorous imprisonment for a term of six months and to pay a fine of Rs.1,000/-. Aggrieved by this judgment and sentence of the trial Court the accused filed an appeal before the Fast Track Court-IV at Bidar in appeal No. 32/2005 and the same came to be dismissed under the impugned judgment dated 07.01.2006 and confirmed the conviction and sentence passed by the trial Court. Hence, this revision petition.

5. Heard arguments on both the side and perused the entire records.

6. Both the Courts below have concurrently held that the prosecution has proved the charge against the accused insofar as it relates to offences punishable under Section 325 IPC. The material on record discloses that the evidence of P.W.6 corroborate with the evidence of the doctor – P.W.4 and wound certificate – Ex.P.3. Both the Courts below have rightly concluded that there is no reason to disbelieve the testimony of complaint – P.W.6. At one stage the accused contend that he has not traveled in the jeep in question with the complainant on the date of



7. The trial Court after hearing the accused passed the impugned order and sentence directing the accused to undergo rigorous imprisonment for a term of six months and to pay a fine of Rs.1,000/- and the same came to be confirmed by the lower appellate Court. Learned counsel for the accused contend that the accused is not having any past history. It is on record that the accused is the sole bread earner in his family. The accused is young in age and an opportunity is to be provided to him. From the date of incident in 2004 till now there is no allegation against the accused that he indulged in any illegal activity. It is also on record that from 27.12.2004 to 03.01.2005 the accused was in judicial custody. In the facts and circumstances of this case, I am of the opinion,



that this is fit case for exercising my discretionary power under Section 4 of the Probation of Offenders Act, 1958.

8. For the reasons stated above, the following:

ORDER

- i. The impugned judgment of both the Courts below convicting the accused under Section 325 IPC is confirmed and this revision petition is hereby dismissed.
- ii. The impugned order of sentence dated 13.07.2005 passed by the trial Court is hereby modified directing the accused to pay fine of Rs.5,000/-.
- iii. Out of this fine amount of Rs.5,000/-, a sum of Rs.4,500/- shall be paid to the complainant – P.W.6. ordered accordingly

Sd/-
Judge

LRS/11092008