

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.738 of 2007

ORDER:

This Criminal Revision Case is filed against the judgment in CrI.A.No.89/2004, dated 08.06.2007 on the file of the IX Additional District & Sessions Judge, (FTC) Krishna, Machilipatnam, by and under which, the conviction and sentence as imposed by the trial Court against the petitioner/A1 was modified.

Originally, the petitione/A1 was charge sheeted on the file of the Assistant Sessions Judge, Nuzvid in Sessions Case No.136/2002 for the offence under section 307 IPC.

During course of trial, the prosecution examined PWs 1 to 11 and marked Exs.P1 to P9 and M.Os.1 to 3. Except marking Exs.D1 to D5 the contradictions in 161 Cr.p.c. statements, no other defence was produced on behalf of accused.

The learned trial Court found the petitioner/A1 guilty for the offence under Section 307 IPC, convicted and sentenced him to suffer rigorous imprisonment for 5 (five) years and to pay a fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month. On appeal, the appellate court modified the said conviction and sentence to that of under section 324 IPC and sentenced the petitioner/A1 to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for one month.

Aggrieved by the said modified judgment, the petitioner/A1 filed the present revision, contending that both the Courts below have erred in appreciating the prosecution evidence in proper perspective and did not take into consideration the material discrepancies and inconsistencies in 161 Cr.P.C statements of prosecution witnesses. It is further contended that the medical evidence on record do not prove that the three injured sustained any grievous injuries and hence the petitioner/A1 is entitled for acquittal.

On the other hand, the learned Additional Public Prosecutor, representing the

State, submits that both the Courts below have properly appreciated the evidence on record in proper perspective and found the petitioner/A1 guilty of the offence and convicted him, and the said conviction and sentence recorded against the petitioner/A1 does not warrant any interference.

The point that arises for consideration in this revision is whether the conviction and sentence imposed against the petitioner/A1 is legal and sustainable or alternatively require any further modification.

Point:

The allegations in brief are that the petitioner/A1 along with his father who was originally charged as A2 (subsequently died) went to a place where A1, A2 and another were running a gambling den. There PWs 1 to 3 objected the acts of the accused in organizing the gambling. However, PW 1 also participated in the game of gambling and in that process, he lost a sum of Rs.5,000/-. PW 1 demanded the said money from A1 to continue to play, A1 refused, then there arose a scuffle in between them. A1 left the place threatening PW 1 with dire consequences. Thereafter, when PWs 1 to 3 proceeding to their houses on scooters and at a distance of just 100 yards from the place where gambling was played, the petitioner/A1 is said to have intercepted PW 1 and stabbed him with a knife on his chest. When PWs 2 and 3 came to his rescue, the petitioner/A1 is alleged to have stabbed them also with the same knife and caused injuries. The incident was witnessed by PWs 6 & 7 and two others. PWs 6 and 7 shifted the injured to the hospital. The Medical Officer found the injuries to be grievous in nature. On intimation being sent, the police visited the hospital and recorded the statement of PW 1 and on the base of it a case was registered against the accused. During course of investigation, scene of offence panchanamas were conducted, accused was arrested, M.Os.1 to 3 were seized, and after completion of investigation, charge sheet was filed.

As already stated, while the trial judge has convicted the accused for the offence under Section 307 IPC, the learned appellate Court has modified the same into under section 324 IPC and sentence imposed by the trial judge was also modified, as stated supra.

PWs 1 to 3 are the injured and PWs 5 and 6 are said to be eyewitnesses. PW 4 is said to have treated the injured. PWs 1 to 3 have consistently deposed about the

incident proper. It is in their evidence that after the scuffle at the gambling den, when PWs 1 to 3 were proceeding to their houses on their scooters, they were waylaid by the petitioner/A1 and stabbed PW 1 with a knife on the chest and abdomen, and when PWs 2 and 3 tried to rescue PW 1, they were also sustained injuries in the hands of the petitioner/A1 with knife. The medical evidence corroborates the claim of PWs 1 to 3. Both the eyewitnesses PWs 6 and 7 also substantiated and corroborated the claim of PWs 1 to 3. Nothing was elicited contrary from their cross examination for disbelieving their testimony. Therefore, the Courts below have not committed any error in accepting the evidence of PWs 1 to 3 and finding the petitioner/A1 guilty of the offence alleged.

Upon re-appreciation of the evidence on record, I see no reason to take a different view other than the view taken by both the Courts below in so far as the evidence on record is concerned. Therefore, the conviction of the petitioner/A1 as recorded by the appellate Court under section 324 IPC is liable to be sustained.

With regard to quantum of sentence, the learned counsel appearing for the revision petitioner/A1 submits that the incident is said to have taken place as long back on 28.05.2001 and injuries sustained by PWs 1 to 3 could not be proved to be grievous in nature, the petitioner/A1 is a labourer and is said to be having dependent family and therefore, lenience in the matter of sentence is prayed for.

Taking into consideration the totality of the facts and circumstances of the case, nature of evidence on record, and the fact that the incident took place more than 14 years back, I feel that ends of justice would be met if the sentence of one year rigorous imprisonment is reduced to six months, while maintaining the imposition of fine. Subject to the said modification, the revision is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed, confirming the conviction recorded by the Court below against the revision petitioner/A1 for the offence under Section 324 IPC, but the sentence of one year rigorous imprisonment is modified and reduced the same to the period six months rigorous imprisonment. The trial Court shall take steps, in accordance with law, for apprehending the revision petitioner/A1 for serving the sentence.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 03.11.2015

Dsr