

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.1727 OF 2007

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ORDER:

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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 28.11.2007, passed by the III Additional District & Sessions Judge, (Fast Track Court), Medak, in Criminal Appeal No.137 of 2006, whereunder and whereby the conviction passed against the revision petitioner herein for the offence punishable under Sections 325 of the Indian Penal Code (for short, 'I.P.C') vide the judgment dated 07.12.2006 in S.C.No.342 of 2004 by the Assistant Sessions Judge, Medak, was confirmed and sentence was modified.

2. The revision petitioner herein is the accused, whereas respondent is the complainant in S.C.No.342 of 2004 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the S.C. before the trial Court.

3. The brief facts of the case are that accused and *de facto* complainant-PW.1 are the residents of Aksanpally village. There was a friendship between the son of PW.1 by name

K. Chandraiah-PW.2 and son of the accused by name Malleshham. The accused developed grudge over PW.2, since he felt that PW.2 is the person, who spoiled the relation between him and his son Malleshham. While the matter stood thus, the son of the accused left the house and was residing with Chandraiah. Many times, the accused discussed that matter with Chandraiah and requested him to send back his son. But, Chandraiah had not listened to his words. Therefore, the accused got mentally depressed and at the same time, developed grudge against PW.2 and planned to kill him. In implementation of the plan, on 26.02.2004, he attacked PW.2 with a knife, when PW.2 was carrying dung bowl to deposit the same in the dung heap, and thereby caused severe injuries on his head, left hand and stomach. This was witnessed by PWs.3 & 4, who while interfered, accused left the spot with the knife. On the

same day, at about 7:30 a.m, PW.1 came to police station and lodged a Telugu written complaint and basing on the same, a case in Cr.No.30 of 2004 for the offence punishable under Section 307 I.P.C was registered. The injured was sent to Government Hospital for medical treatment. The Sub-Inspector of Police recorded the statements of the eye-witnesses and material witnesses. During the course of investigation, scene of offence was examined in the presence of PW.7 and one John, and the scene of offence panchanama was also prepared. Later on 03.03.2004, accused was apprehended at his house, knife was seized from his possession under the cover of panchama in the presence of PW.8 and one Narasimulu. Later, the accused was sent for remand. The doctor examined PW.2-injured and gave opinion that he received grievous injuries. After completion of investigation, the Investigating Officer filed charge sheet into the Court.

4. On appearance of the Accused, the Judicial Magistrate of First Class, Andole at Jogipet, took cognizance of the case and as the case is exclusively triable by the Court of Session, he committed the case to the District & Sessions Judge, Medak Division at Sangareddy, who in turn made over the case to Assistant Sessions Judge, Medak, for disposal according to law.

5. On appearance of the accused, the Assistant Sessions Judge, Medak, framed charge for the offence punishable under Section 307 of I.P.C against the accused. During trial, to prove the case of prosecution, PWs.1 to 11 were examined and Exs.P1 to P5 and MO.1 were got marked. Exs.D1 got marked during the cross-examination of PW.5.

6. After closure of prosecution evidence, accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no oral or documentary evidence on his behalf.

7. The trial Court, after hearing the arguments and after perusing the record, convicted the accused and sentenced him to undergo Rigorous Imprisonment for a period of five years and to pay a fine of Rs.1,000/-, and in default of payment, to undergo Simple Imprisonment for a period of six months for the offence punishable under Section 325 I.P.C instead of the offence punishable under Section 307 I.P.C.

8. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.137 of 2006 before the III Additional District & Sessions Judge, (Fast Track Court), at Medak, where the Appellate Court after considering the oral and documentary evidence and after hearing both sides confirmed the conviction, but modified the sentence by reducing the Imprisonment to a period of three years from five years.

9. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.137 of 2006, the accused preferred the present revision case.

10. The learned counsel appearing for the revision petitioner/ accused argued that the Investigating Officer has not seized the material objects like cow dung basket to substantiate the case of prosecution; that both the Courts below ought not have believed the evidence of doctor; that the evidence of prosecution is full of contradictions and omissions and therefore, the findings of both the Courts are basing on assumptions and presumptions and prayed the Court to set aside the conviction passed by both the Courts. To substantiate the case, the learned counsel relied upon the case law reported in *Om Prakash and others v. State of Haryana*, wherein it is held at para 5 as follows:

"In these circumstances, after hearing the learned counsel for the appellants and Mr Mahabir Singh, learned counsel appearing for the State of Haryana and bearing in mind the facts and circumstances of the present case, we are of the considered opinion that this is a fit case where the court should have invoked the provisions of Section 360 Cr.P.C. While, therefore, upholding the conviction of the appellants, instead of the sentence, we direct that they shall execute a bond with one surety to the extent of Rs.10,000/- for a period of one year within which period they shall continue to be on probation for good behaviour and keeping peace. The appellants shall prove to be of good conduct and maintain peace during the period of probation. The bond be executed before the trying Magistrate within a period of two weeks from today."

The learned counsel also relied upon the case law reported in *Manjappa v. State of Karnataka*, wherein it is held at para 15 as follows:

"15. Keening in view all the facts and circumstances, in our opinion, ends of justice would be met if we order that the substantive sentence which the appellant has already undergone is held sufficient. We are also of the view that it would be appropriate if over and above the amount which the appellant herein has paid towards fine and also towards compensation to the injured victim, the appellant is ordered to pay an additional amount of Rs. 10,000/- (Rupees ten thousand only), to the complainant by way of compensation."

The learned counsel also argued that the accused has already undergone sufficient substantive sentence and prayed the Court to reduce the sentence to

the period already undergone by the accused.

11. On the other hand, the learned Public Prosecutor appearing for the State of Telangana argued that both the Courts below held that accused is responsible for causing grievous injuries to PW.2 and therefore, concurrent findings of both the Courts needs no interference. In so far as sentence is concerned, it is argued that Court may reduce the sentence by modifying the order.

12. Now, the points for determination are --

1. Whether the prosecution could bring home the guilt of the accused for the offence punishable under Section 325 of I.P.C or not?
2. Whether the sentence passed by the Appellate Court can be modified by reducing it or not?

13. **P O I N T S:** A perusal of the evidence of PW.3 shows that 2½ years back at 6:00 a.m, while he was going to fields, PW.2 followed him by taking cow-dung basket. He had a talk with him. Whiles, he heard sounds and found accused stabbing PW.2. On his interference, accused left the place. The evidence of PW.4 is also similar to the evidence of PW.3. Thus, the evidence of PWs.2 to 4 shows that the accused is the person, who stabbed PW.2, due to which PW.2 suffered grievous injuries. Immediately after knowing the incident, PW.1 gave a complaint to the police and the same was registered as a case in Cr.No.30 of 2004 for the offence punishable under Section 307 I.P.C and First Information Report was issued. PW.9 is the person, who registered the First Information Report and referred the injured to Government Hospital for treatment. A perusal of the evidence of the doctor PW.10 shows that PW.2 sustained four injuries, injury Nos.1 & 4 are simple in nature and injury Nos.2 & 3 are grievous in nature. The Investigating Officer completed all other formalities in the presence of mediators i.e., preparation of the scene offence panchanama, seizure of the material object MO.1 in the presence of mediators under the cover of panchanama and arrested the accused.

14. The contention of the counsel for revision petitioner is that the evidence of PW.4 shows that when he turned his head, PW.2 is moving to village and accused was going to his house, thus PW.4 has not witnessed that the accused stabbed PW.2; that except PWs.2 to 4, nobody were present at the

scene of offence and the evidence of PW.4 cannot be taken into consideration. A perusal of the judgment passed by both the Courts below shows that it has held that PW.2, who is the injured person, categorically stated that accused stabbed him on the stomach, left arm, head and on cheek and his evidence was supported by the evidence of PWs.3 & 4; that the evidence of PW.2 was also supported by the evidence of the doctor, who clearly stated that PW.2 received grievous injuries. Therefore, both the Courts have concurrently held that the prosecution could able to establish the guilt of the accused for the offence punishable under Section 325 I.P.C and awarded punishment as stated above.

15. The only contention of the learned counsel for the revision petitioner/accused is that as the accused has already undergone sufficient substantive sentence, the Court can reduce the punishment to the period already undergone by him. It is nodoubt, the trail Court awarded sentence to undergo Rigorous Imprisonment for a period of five years and to pay a fine of Rs.1,000/- and the Appellate Court modified the sentence to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.1,000/-. The learned counsel for the revision petitioner/accused argued that the accused is suffering with ailments, he has three children, he is a poor person and he is the only bread winner to his family and prayed the Court to reduce the sentence of imprisonment. Taking into consideration the facts and circumstances of the case, I am of the view that a lenient view shall be taken in favour of the accused by reducing the sentence of imprisonment to one year from three years. Therefore, I am inclined to dispose of the revision as under.

16. The conviction recorded against the revision petitioner/accused by the Assistant Sessions Judge, at Medak, in S.C.No.342 of 2004 for the offence punishable under Section 325 I.P.C as confirmed by III Additional District & Sessions Judge, Medak in Crl.A.No.137 of 2006 is hereby confirmed. But, the sentence of imprisonment of three years imposed by the Appellate Court is hereby modified and reduced to one year. The sentence of fine is not interfered with. The period of imprisonment already suffered by the revision petitioner/accused is directed to be given set off.

17. Accordingly, the Criminal Revision Case is disposed of.

18. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 05.02.2015

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