

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

Criminal Revision Case No.1818 of 2007

ORDER:-

The revision is directed against the Judgment dated 18-12-2007 in Criminal Appeal No.222 of 2007 on the file of the Principal Sessions Judge, Eluru, by and under which the learned Judge has confirmed the conviction and sentence imposed on the petitioner/accused for the offences punishable under Sections 307 and 324 I.P.C., by the learned Additional Assistant Sessions Judge, Tadepalligudem, in S.C.No.115 of 2006, dated 24-09-2007. The petitioner/accused has been sentenced to undergo rigorous imprisonment for three years and a fine of Rs.1,000/- for the offence under Section 307 I.P.C., and one year rigorous imprisonment for the offence under Section 324 I.P.C.

2. The facts, in brief, are as under:-

PW.1 and the petitioner/accused are neighbours. The accused is a toddy tapper. Father of PW.1 purchased a house site situated beside his house about a year prior to the incident from the Junior Paternal Uncle of the accused and therefore there were grudges in between the two families. On 14-05-2005, the children of the elder brother of PW.1 were playing cricket and when the cricket ball entered into the premises of the accused, the mother of accused abused the children. On the same day, at about 07.30 p.m., when PW.1 was questioning the father of the accused about the children being abused, the accused came from behind and hacked on the back of PW.1 with a toddy tapper's knife and when PW.2, the friend of PW.1, intervened, the accused also beat him with the same knife on the hand and caused simple injury. The case was registered on the statement of PW.1 in Cr.No.58 of 2005 and during the course of investigation, the statements of the eye-witnesses were recorded, the injured were treated by the Medical Officer – PW.7, after completion of investigation, the charge-sheet was laid on the file of the Additional Judicial

Magistrate of First Class, Tadepalligudem, where the cognizance was taken. After following the mandatory provisions, the case was committed to the Court of Sessions and was made over to the Additional Assistant Sessions Judge, Tadepalligudem, where during the course of trial, the two injured were examined as PWs.1 and 2 and the eye-witnesses to the incident were examined as PWs.3, 4 and 5 and also examined a panch witness as PW.6, Medical Officer as PW.7 and the Investigating Officers as PWs.8 and 9. Exs.P.1 to P.8 and M.Os.1 and 2 were marked. The accused examined under Section 313 Cr.P.C., where he denied the evidence on record. In defence, except for marking Exs.D.1 and D.2, which are the contradictory portions in the statement of PW.5, no other defence was produced. The trial Court, after considering the evidence on record, found the petitioner/accused guilty of the charges and convicted and sentenced as stated supra, and on appeal, the same was confirmed by the learned Principal Sessions Judge, Eluru. Hence, the revision.

3. Learned Counsel appearing for the petitioner/accused submits that both the Courts below erred in believing the evidence of PWs.1 to 5, which was discrepant, inconsistent and interested and that there was absolutely no motive, whatsoever, the accused to commit the offences as alleged, that the conviction and sentence cannot be sustained and hence the same is liable to be set aside.

4. On the other hand, learned Public Prosecutor submits that the evidence of PWs.1 to 5, more particularly, the two injured –PWs.1 and 2 is corroborated on all material aspects by the eye-witnesses and the independent eye-witness who was examined as PW.4 also supported the case of the injured witnesses and the medical evidence corroborates the evidence and therefore the learned trial Court as well as the appellate Court has found the petitioner/accused guilty and there are no merits in the revision and the same is liable to be dismissed.

5. The point that arises for consideration is as to whether the

prosecution could prove its case beyond reasonable doubt so as to sustain the conviction and sentence as imposed by both the Courts below or whether the Judgments rendered by the trial Court and the first appellate Court suffers from any material illegality or irregularity warranting interference by the revisional Court?

6. **Point:-** PWs.1 and 2 are the injured in this case. The accused is a neighbouring resident. They belong to different communities. About a year prior to the incident, in view of certain property being purchased, there arose differences between the families of the accused and the prosecution witnesses. On 14-05-2005 the incident took place. During the course of the day, when the children were playing cricket, the ball caused damage to a window of the house of the accused and in the evening at about 07.30 p.m., when elders were discussing about the incident, the accused came from behind armed with a knife and beat PW.1 on the back side and caused '3' injuries and when PW.2 intervened, the accused also beat PW.2 with the same knife on hand. Immediately, the complaint was lodged and by about 08.00 p.m., both PWs.1 and 2 were treated by PW.7-the Medical Officer who found grievous injuries on PW.1 and simple injury on PW.2.

7. The evidence of PWs.1 to 5, which is material to the case of the prosecution, is found to be cogent, consistent, convincing and inspiring the confidence of the Court. It is in the evidence of PWs.1 and 2 that when they were having some discussion about the incident, which took place prior to that, the accused came suddenly from behind armed with a knife and beat on the back of PW.1 and when PW.2 intervened, he too was attacked on hand. The two injured witnesses get corroboration to their claim on all the material aspects from PWs.3, 4 and 5, out of them, PW.4 is an independent witness who belongs to the community of the accused. The evidence of PWs.1 and 2 is fully corroborated by the evidence of the Doctor. All the material witnesses are elaborately cross-examined but nothing concrete is elicited from them for disbelieving their statement. The contradictions that are

elicited are too trivial in nature which do not go to the root of the case. Therefore, both the Courts below have found the evidence of PWs.1 to 5 to be trustworthy and upon re-appraisal of the same, I see no reason to take any view other than that has been taken by both the Courts below.

8. Learned Counsel appearing for the petitioner/accused submits that absolutely there was no motive whatsoever for the accused to cause the death of PW.1. Admittedly, the incident took place at the spur of the moment and there was no premeditation or any prior concert on the part of the accused. As noticed above, a trivial incident took place and when both the families were speaking about it, the accused caused the injuries. Upon carefully perusing the evidence on record, I find myself to be in agreement with the learned Counsel appearing for the petitioner/accused that the offence do not attract the ingredients of Section 307 I.P.C., even though the fact that the accused causing stab injuries to PW.1 is established. It is no doubt true that the injuries are on the head part of PW.1 but that by itself cannot be taken as an offence attracting the ingredients of attempting to cause the death of the injured. Therefore the offence under Section 307 I.P.C., is not made out even though the acts of the accused amounts to the offence punishable under Section 326 I.P.C.

9. With regard to the injuries on PW.2, admittedly, he sustained simple injuries and therefore Section 324 I.P.C. is attracted.

10. Learned Counsel appearing for the petitioner/accused further submits that taking into consideration the fact that the incident took place more than ten years back and the parties are residents of neighbourhood and after the incident, they had been living, imposing three years rigorous imprisonment is excessive and therefore a lenient view in the matter of sentence may be taken. Taking into consideration the totality of the facts and circumstances of the case, I feel that the ends of justice will be met if the rigorous imprisonment of three years is reduce to the rigorous imprisonment for a period of one

year for the offence punishable under Section 326 I.P.C., while maintaining the rest of the sentences. Subject to the above modification, the revision is liable to be dismissed. The point is answered accordingly.

11. In the result, the Criminal Revision Case is dismissed subject to modification. The offence punishable under Section 307 I.P.C. is modified to Section 326 I.P.C. and the sentence of rigorous imprisonment for a period of three years as imposed by the Courts below is reduced to one year rigorous imprisonment. The rest of the sentences shall remain unaltered. The trial Court shall take steps in accordance with law for serving the sentence.

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

M.S.K.Jaiswal, J

30th June, 2015
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