

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

MONDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIFTEEN

PRESENT

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

CRIMINAL REVISION CASE No.13 of 2007

Between:

Katuri Tirupataiah and 4 others

..... PETITIONERS

AND

The State of A.P.rep.by its

Public Prosecutor

.....RESPONDENT

The Court made the following:

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

CRIMINAL REVISION CASE No.13 of 2007

ORDER:

This Criminal Revision Case is filed against the judgment dated 18.12.2006 in

Crl.A.No.348/2004 on the file of the IX Additional District & Sessions Judge (FTC), Guntur at Tenali.

2. Heard the learned counsel appearing for the revision petitioner/A2 and the learned Additional Public Prosecutor, representing the State.

3. The revision petitioner is Accused No.2. He along with 4 others were charged for the offence punishable under section 326 r/w.34 IPC in C.C.No.218/2002 on the file of the II Additional Munisif Magistrate, Repalle. The petitioner/A2 and 4 others were tried, PWs 1 to 8 were examined and Exs.P1 to P4 were marked on behalf of the prosecution. When the accused were examined under Section 313 Cr.P.C, they have denied the material evidence on record, and no defence was produced on their behalf.

4. After considering the oral and documentary evidence, by judgment dated 19.08.2004, the trial Court found the petitioner/A2 and 4 others guilty of the offence punishable under Section 325 r/w.Sec.34 IPC and accordingly convicted and sentenced each one of them to undergo rigorous imprisonment for 3 (three) years and to pay a fine of Rs.2,000/- each, in default, to suffer simple imprisonment for 6 (six) months.

5 .Aggrieved by the conviction and sentence recorded by the trial Court, the petitioner/A2 and 4 others preferred appeal in Crl.A.348/2004. By judgment dated 18.12.2006, the appellate Court found that the case is made out only against the revision petitioner/A2, however, modified and reduced the sentence imposed against the petitioner/A2 from 3 years to 2 years rigorous imprisonment while maintaining the fine amount of Rs.2,000/- unaltered. The appellate Court found the remaining accused i.e. A1, A3 to A5 not guilty and acquitted them of the offence under Section 325 r/w.Sec.34 IPC and the fine amount, if any paid by them, was ordered to be returned. Against the judgment of the appellate Court, the revision petitioner/A2 filed the present criminal revision case.

6 .The learned counsel appearing for the petitioner/A2 submits that there is absolutely no independent supporting evidence to believe the testimony of PWs 2, 3 and 4 who are the members of one family, and absolutely there is no motive whatsoever alleged and attributed to the petitioner/A2 for having committed the offence. The learned counsel further contends that the material object said to have been used by the petitioner/A2 has not been produced by the prosecution, and

therefore, the Courts below erred in finding the petitioner/A2 guilty of the charge alleged and hence the petitioner/A2 is entitled for clean acquittal.

7. On the other hand, the learned Additional Public Prosecutor submits that the Courts below properly appreciated the oral and documentary evidence on record and have correctly concluded that the petitioner/A2 has caused grievous injury on the head of PW 2 with pestle and hence his conviction cannot be questioned, and the revision is liable to be dismissed.

8. Now the point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioner/A2 is legal and sustainable.

Point:

9. PW 1 is the wife of PW 2. The non-petitioner/A1 is the brother-in-law of PW 1. The petitioner/A2 is the son of A1. The allegation is that on the date of incident i.e. on 10.03.2002 there was death ceremony in the house of maternal uncle of PW 2 at Katurivaripalem village. The accused and prosecution witnesses attended the said ceremony and there arose some altercation in between the accused persons and the prosecution witnesses, due to which at about 4 p.m PW 2 was assaulted by A1 to A5. It is alleged that it is the petitioner/A2 who gave a blow with pestle on the head of PW 2, whereas the other accused bet PW 2 with hands and legs.

10. The evidence of PWs 1, 2 and 3 is material and the same has been perused. PWs 1, 2 and 3 consistently deposed that on the date and time of incident alleged, when the injured PW 2 was sitting in front of the house where the ceremony was being performed, the petitioner/A2 came and beat him with pestle. In their elaborate cross examination, nothing was elicited contrary to disbelieve the evidence of the material witnesses.

11. When a case is based on evidence of eyewitnesses, the question as to whether there is motive or not pales into insignificance. After the ceremony was concluded, there appears to have been some incident, due to which, the attack on PW 2 has taken place. Absolutely, there are no reasons to disbelieve the consistent and reliable testimony of PWs 1 to 3. PW 6, the Doctor, who examined PW 2, opined that the injuries sustained by PW 2 are grievous in nature and they might have been caused by a weapon such as pestle. The non-production of pestle in this particular

case does not effect the case of the prosecution, having considered the evidence on record. Upon perusing the oral and documentary evidence on record, I do not find any grounds to take a different view other than the view taken by both the Courts below. I find no infirmity or illegality warranting interference with the said findings.

12. With regard to quantum of sentence, the learned counsel appearing for the revision petitioner/A2 submits that the revision petitioner/A2 is aged about 40 years and after this trivial incident the relationship between the petitioner/A2 and the prosecution witnesses is cordial, and hence prays the court to take a lenient view.

13. Considering the submissions of the learned counsel appearing for the revision petitioner/A2, this Criminal Revision Case is dismissed, confirming the conviction recorded by the appellate Court against the revision petitioner/A2 for the offence alleged, but the sentence of 2 (two) years imprisonment is modified and reduced to the period 6 (six) months rigorous imprisonment, and the fine amount of Rs.2,000/- is enhanced to Rs.10,000/- (Rupees ten thousand only), in default, to suffer simple imprisonment for 6 (six) months. The fine amount of Rs.10,000/- if paid by the revision petitioner/A2, shall be given to PW 2 towards compensation. The trial Court shall take steps, in accordance with law, for apprehending the revision petitioner/A2 for serving the sentence.

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

M.S.K.JAISWAL,J

Date: 08.06.2015

Dsr