

## **THE HON'BLE SRI JUSTICE RAJA ELANGO**

### **Criminal Revision Case No.17 of 2014**

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#### **ORDER :**

This Revision Case is filed challenging judgment dated 30-12-2013 in Criminal Appeal No.29 of 2012 on the file of the principal Sessions Judge at Khammam, wherein judgment dated 03-02-2012 in S.C. No.358 of 2011 on the file of the Assistant Sessions Judge, Khammam, was confirmed.

2. Brief facts leading to this revision case are as follows :

The Sub-Inspector of Police, P.S. Khanapuram Haveli, filed charge-sheet against the accused vide Cr.No.121 of 2011 alleging that the marriage of the complainant was performed with one Boda Suresh of Pedda thanda of Khammam rural Mandal on 15-05-2011 and on 30-05-2011, the complainant and her husband Suresh came to Donabanda village for celebration of 16<sup>th</sup> day marriage function. On the same day, after they had dinner, the complainant and her husband along with family slept in front of their house. At about 11.20 PM while they were in deep sleep, the accused came there, armed with an axe and hacked the husband of the complainant and caused head injury. On seeing the incident, the complainant raised cries. Then, the accused fled away from the scene. Before marriage with Boda Suresh, the accused and his parents pressurized the complainant to marry the accused. But, due to bad habits of the accused, the complainant did not accept the marriage proposal with the accused. She bluntly refused the proposal, for which the accused bore grudge and keeping that enmity in mind, on the said night while the complainant and her husband were sleeping, the accused attacked the complainant's husband with an axe. For the incident, the complainant preferred complaint before S.I. of Police, Khanapuram Haveli P.S. and the complaint was registered as case in Cr.No.121 of

2011 under Section 307 I.P.C. The prosecution, to prove the said charge, examined P.Ws.1 to P.W.11 and got marked Exs.P1 to P11 and M.O.1. No witness was examined and no exhibit was marked on behalf of the accused.

3. On a overall consideration of oral and documentary evidence, the trial Court found the accused guilty for the offence under Section 307 I.P.C. and sentenced him to suffer rigorous imprisonment for a period of three years with a fine of Rs.2,000/-. Aggrieved by the same, accused preferred appeal to the Court of Principal Sessions Judge at Khammam, and the learned Principal Sessions Judge, on a re-appraisal of evidence, dismissed appeal confirming conviction and sentence. Aggrieved by the same, present revision is preferred by accused.

4. Heard both sides.

5. Even admitting the entire case of the prosecution, this Court is of the view that the evidence adduced by the prosecution does not attract an offence under Section 307 I.P.C., since because, the alleged occurrence happened in the midnight at 11.20 PM and if it is the intention of the accused to cause the death, nothing prevented him from committing the said offence. There is no evidence that he ran away from the place of occurrence and there was interference of other persons and also identifying of other persons to the accused concerned. Hence, this Court is of the view that prosecution is able to establish the case to the extent of presence of the eyewitnesses and accused at the place of alleged occurrence and the manner in which the accused caused injuries, but, at the same time, the said evidence and the facts of the case does not disclose an offence under Section 307 I.P.C. The offence, which attract to the facts of the case, is the offence under Section 326 I.P.C., since P.W.2 has received fracture at occipital bone on left side with displacement of fractured fragment into brain parenchyma.

6. Hence, the conviction as imposed by the trial court and confirmed by the lower appellate court is modified to one under Section 326

I.P.C. and further, the sentence is also modified to the period already undergone.

7 . Accordingly, the Criminal Revision Case is disposed of. Miscellaneous Petition pending, if any, in this Criminal Revision Case shall stand closed.

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RAJA ELANGO, J.

17<sup>th</sup> November, 2015

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