

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.21 OF 2008

-
ORDER:
-

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 petitioners herein challenging the judgment dated 04.01.2008, passed by the VIII Additional District & Sessions Judge(FTC), Guntur, in CrI.A.No.390 of 2005, whereunder and whereby the conviction and sentence passed against the revision petitioners herein for the offence punishable under Section 307 IPC, vide the judgment dated 07.11.2005 in S.C.No.139 of 2005 by the Additional Assistant Sessions Judge, Tenali, was modified.

2. The revision petitioners herein are the accused and respondent herein is the complainant in S.C.No.139 of 2005 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 case of the prosecution is that the complainant and all the accused are residents of Burripalem village. The *de facto* complainant developed illicit intimacy with one Dalli Kumari, D/o.Santha, who is the concubine of one Kurapati Kantha Rao, that such Kantha Rao coming to know about the illicit intimacy warned the *de facto* complainant to discontinue the relation with Dalli Kumari, but the *de facto* complainant did not care to his words and continued his contacts with the said girl, that to put an end to the threats of Kurapati Kantha Rao, the *de facto* complainant killed the said Kantha Rao and a case was registered in Crime No.101 of

2003 against the complainant herein under Section 302 IPC. The first accused in this case is the cousin of said Kurapati Kantha Rao, who took part in the murder case. Hence, he was waiting for an opportunity to settle the scores with the *de facto* complainant herein. While things stood thus, on 24.12.2004 at about 6.30 p.m. when the *de facto* complainant and his friends Ponugupati Kumari and Karumandhi Jarmiya went to matinee show to Sangameswara Theatre and at about 6.30 p.m. after the show when they came out of the theatre, A1 to A5 herein armed with deadly weapons stood in front of the Priya Theatre, which is adjacent to the Sangameswara theatre, attacked the *de facto* complainant with knives. A5 sprinkled chilly powder on the face of T.Ravi, A1 hacked with knife on left side chest, A2 stabbed on the right side lower lip, on right knee and below of right knee. A3 stabbed with knife caused injury on right cheek, A4 beat P.W.1 with stick caused injury on his back and caused injuries on vital part of P.W.1 and the accused attempted to murder him and the incident was witnessed by Chitturi Krishna, N.Malleswara Rao and Gondi Ravindra (P.Ws.3 to 5) and Jala Bhaskar (L.W.6) took the injured to the District Hospital, Tenali for treatment. On the intimation given by the doctor, police came and recorded the statement of P.W.1 and registered a case in Crime No.257 of 2004 under Section 307 read with 34 IPC. After receiving necessary certificates and after completing investigation, the Investigating Officer filed charge sheet into the Court.

4. The learned I Additional Judicial Magistrate of First Class, Tenali, took cognizance of the case as PRC No.4 of 2005 under Sections 147, 148, 307 read with 149 IPC and committed the case to the Court of Sessions, Guntur and the same is numbered as SC 139 of 2005 and made over to Additional Assistant Sessions Judge, Tenali for disposal. During trial, to prove the case of prosecution,

PWs.1 to 12 were examined and Exs.P1 to P13 were marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C putting all incriminating material available against them. Accused denied the material evidence and reported no oral evidence on their behalf, however, Ex.D1, relevant portion in 313 Cr.P.C. statement of P.W.1, was marked.

6. Trial Court after considering the evidence on record, convicted the accused 1 to 3 for the charges under Section 307 IPC and sentenced to undergo Rigorous Imprisonment for a period of four years and to pay a fine of Rs.1,000/- each.

7. Aggrieved by the conviction and sentence passed by the trial Court, the accused 1 to 3 filed Criminal Appeal No.390 of 2005. The appellate Court after considering the evidence on record, set aside the conviction of the accused under Section 307 IPC and convicted the accused for the offence under Section 324 IPC and modified the sentence to undergo Rigorous Imprisonment for six months instead of four years imposed by the trial Court and the fine amount imposed by the trial Court unaltered except modified sentence.

8. Aggrieved by the judgment of the appellate Court, A1 to A3 preferred the present revision. Learned counsel for the revision petitioners argued that the offence took place about 11 years back and the appellate Court already modified the conviction under Section 307 IPC to 324 IPC and also modified the sentence from four years to six months. It is also argued that petitioners are affected physically and financially during these eleven years and all the petitioners already undergone the period for about 44 days in the jail altogether, therefore prayed the Court to reduce the

sentence.

9. On the other hand, the learned Public Prosecutor appearing for the State argued that both the courts have given concurrent finding and the said finding needs no interference and prayed the Court to dismiss the revision petition.

10. Now, the point for determination is --

Whether the petitioners are entitled to set aside the judgment of the appellate Court in Criminal Appeal No.390 of 2005 dated 04.01.2008 as prayed for?

11. **POINT:**

A perusal of the evidence on record clearly establish that A1 to A3 committed the offence punishable under Section 307 IPC and the evidence of the witnesses corroborated with each other and finding of the trial Court was confirmed by the appellate Court. But the appellate Court after considering the evidence modified the conviction from 307 IPC to 324 IPC and awarded six months imprisonment and not altered the fine amount imposed by the trial Court. The learned counsel for the petitioners has not disputed about the findings of the Courts below, but prayed the Court to take a lenient view as the petitioners already suffered since eleven years and they are physically and financially also suffered. As the petitioners' counsel stated that petitioners already undergone 44 days in jail of different period and the same has to be considered. Therefore, I am inclined to dispose of the revision as under.

12. The conviction of the appellate Court in Criminal Appeal No.390 of 2005 dated 04.01.2008 is confirmed, but the sentence of punishment is modified to the period already undergone by the petitioners. The sentence of fine is not interfered with.

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

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

ANIS, J

Date:11.02.2015

Rns