

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.529 OF 2008

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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 27.03.2008, passed by the III Additional Sessions Judge, Guntur, in CrI.A.No.84 of 2007, where under and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 307 IPC, vide the judgment dated 19.02.2007 in S.C.No.445 of 2006 by the Additional Assistant Sessions Judge, Tenali, was modified.

2. The revision petitioner herein is the accused and respondent herein is the complainant in S.C.No.445 of 2006 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 in brief is that A1 and A2 were brothers. P.W.1 is the *de facto* complainant and the injured person. On 14.03.2006 at about 10.00 a.m., A1 and A2 attacked P.W.1 while he was going to Andhra Bank in the company of one Vuyyuru Ranga Reddy near Zenda Chettu center. Prior to 14.03.2006 there was a quarrel between A1 and P.W.1 on 13.03.2006 at about 6.00 p.m. On 14.03.2006 when P.W.1 was going to Andhra Bank, A2 caught hold of both hands of P.W.1, A1 stabbed him with a knife over left armpit and the middle of the chest with an intention to kill him. P.W.1 received bleeding injuries and immediately he raised hues and cries. Thereafter he was shifted to Government Hospital, Tenali. A1 and A2 attacked P.W.1 because on the previous day, he questioned the accused as to why they beat P.W.3, who is his cousin brother. *De facto* complainant gave a complaint to the police and the same was registered by the police for the offence punishable under Section 307 IPC against A1 and A2. The Investigating Officer visited the scene of offence

and he prepared the scene of offence observation report in the presence of P.Ws.6 and 7 and arrested A1 on 16.03.2006 and A2 surrendered before the Court on 13.04.2006. The Investigating Officer after recording the statements of all the witnesses and after receiving the wound certificate and after completing the investigation, filed charge sheet into the Court.

4. The learned II Additional Munsif Magistrate, Tenali, took cognizance of the case as PRC No.20 of 2006 under Section 307 IPC and committed the case to the Court of Session, Guntur and the same is numbered as S.C.445 of 2006 and made over to Additional Assistant Sessions Judge, Tenali for disposal. During trial, to prove the case of prosecution, PWs.1 to 9 were examined and Exs.P-1 to P-7 and M.O.1 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.

6. Trial Court after considering the evidence of P.Ws.1 to 9 and Exs.P1 to P7, convicted the accused No.1 for the charge under Section 307 IPC and sentenced him to undergo Rigorous Imprisonment for a period of four years for the said offence and to pay a fine of Rs.1000/- for the offence under Section 307 IPC and in default of payment of fine of Rs.1000/-, to suffer simple imprisonment for one month with benefit under Section 428 Cr.P.C. During pendency of the trial, A2 died on 09.05.2006, as such, case against A2 was abated.

7. Aggrieved by the conviction and sentence passed by the trial Court, the accused No.1 filed Criminal Appeal No.84 of 2007 on the file of III Additional Sessions Judge, Guntur. On 27.03.2008, the appellate Court modified the judgment dated 19.02.2007 passed by the Additional Assistant Sessions Judge, Tenali in S.C.No.445 of 2006 and converted the conviction from 307 IPC to 324 IPC and sentenced to undergo Rigorous Imprisonment for six months instead of four years. However, fine amount is unaltered.

8. Aggrieved by the judgments of both the Courts, accused No.1 preferred the

present revision. Learned counsel for the revision petitioner argued that the petitioner-accused is entitled for a clean acquittal because the prosecution failed to examine the doctor, blood stained clothes of P.W.1 were not seized by the police and there are no direct witness to the incident. The evidence of P.W.4 is hearsay evidence. P.W.5 is the RMP doctor, who has not treated the *de facto* complainant. It is also argued that no blood stain earth and controlled earth was collected from the scene of offence. The evidence of P.W.8 is not helpful to the prosecution as he is not the person who treated the *de facto* complainant for the injuries received and that the petitioner is a rickshaw puller and the alleged incident is happened in the year 2006 and petitioner is the sole bread winner of the family having old parents and that this is the first offence and there are no criminal antecedents against the petitioner, prayed the Court to take a lenient view.

9. On the other hand, the learned Public Prosecutor appearing for the State of Andhra Pradesh argued that the petitioner had not made out any case to set aside the concurrent findings of both the Courts as P.W.1 categorically stated about the attack made by A-1 on 14.03.2006 and due to the said attack by MO-1, he sustained bleeding injuries, therefore, the finding of the trial Court was confirmed by the appellate Court, but modified the conviction from Section 307 IPC to 324 IPC and reduced the sentence from 4 years to 6 months. Therefore, as already lenient view was taken by the appellate Court, the petitioner is not entitled for further lenient view and prayed the Court to dismiss the revision petition.

10. Now, the point for consideration is --

Whether the petitioner is entitled to set aside the judgment of the appellate Court in Criminal Appeal No.84 of 2007 dated 27.03.2008 modifying the judgment of the trial Court in S.C.No.445 of 2006 passed by the Additional Assistant Sessions Judge, Tenali dated 19.02.2007 as prayed for?

11. **POINT:**

A perusal of the evidence on record shows that on 13.03.2006 at about

11.00 a.m. P.W.3 cousin brother of P.W.1 sat on the rickshaw of A1 and A1 beat P.W.3 on that day. On the same day, P.W.1 questioned A1 about the incident, and there was some quarrel between P.W.1 and A1, due to timely intervention of the elders, no incident has taken place. But, on the next day, i.e., on 14.03.2006, at about 11.00 a.m. when P.W.1 was going along with L.W.3 Vuyyuru Ranga Reddy, A1 and A2 came in opposite direction, A-1 picked out a knife and A2 caught hold the hands of P.W.1 and folded the hands backwards, then A1 stabbed him with knife on his left armpit and the middle of the chest. When P.W.1 raised hues and cries, his father and P.W.4 came there. P.W.1 was taken to the private hospital of P.W.5 and P.W.5 in turn sent P.W.1 to the Government Hospital, where he was treated by the doctor and issued Ex.P4 wound certificate. A perusal of the wound certificate shows that P.W.1 received injury on front of right side of his chest measuring 2 X 2 X 2 cms., and also a stab injury below the left armpit measuring 2 X 2 X 1 cms. The doctor, who treated P.W.1, was not examined. To identify the signature on Ex.P4 wound certificate, P.W.8 was examined. Therefore, considering the evidence of prosecution witnesses and the nature of the injury received by P.W.1, the trial Court convicted the petitioner/accused No.1 for the offence under Section 307 IPC. The appellate Court after taking into consideration the evidence on record held that prosecution has failed to prove the guilt of the accused for the offence under Section 307 IPC as the prosecution failed to prove the grievous injury. Considering the evidence of P.W.1 that he received the injury in the hands of A1 and the said injury is with MO.1 knife and as per Ex.P4 wound certificate apart from grievous injury P.W.1 received simple injury. Therefore, considering the evidence of P.W.1, the appellate Court rightly modified the conviction from 307 IPC to 324 IPC and reduced the sentence from four years rigorous imprisonment to six months rigorous imprisonment. Therefore, the finding of the appellate Court regarding the conviction needs no interference.

12. Learned counsel for the petitioner argued that the petitioner is a rickshaw puller and he has to maintain his family. Further, the case is of 11 years old and this is the first offence and no criminal antecedents against the petitioner and prayed the Court to take lenient view. Therefore, I am inclined to dispose of

the revision as under.

13. The conviction of the appellate Court in Criminal Appeal No.84 of 2007 dated 27.03.2008 is confirmed, but in the facts and circumstances of the case the sentence of imprisonment is modified to one month from six months and the period already undergone by the petitioner can be given set off. The sentence of fine is not interfered with.

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

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

ANIS, J

Date:09.04.2015

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