

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.1789 OF 2005

JUDGMENT:

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 24.11.2005, in Sessions Case No.69 of 2005 on the file of the Assistant Sessions Judge, Gurazala whereunder and whereby, appellants herein/A-1 and A-2 were found guilty of the offence punishable under Section 307 read with 34 of the Indian Penal Code, 1860 (for short, "I.P.C.") and A-1 was sentenced to undergo rigorous imprisonment for eight years and also to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for two months; and A-2 was sentenced to undergo rigorous imprisonment for four years and also to pay a fine of Rs.1,000/- in default, to undergo simple imprisonment for two months.

2. The brief facts that are necessary for disposal of the present appeal may be stated as follows:

On 23.8.2004, at 0015 hours, L.W.1 – Nalabothula Basavaiah (since dead) came to police station and gave a complaint stating *inter alia* that excise people registered cases against both the accused as they were selling illicit liquor. His brother Venkateswarlu is an elder in the village. On an earlier occasion, A-2 was taken away by excise people and as his brother Venkateswarlu did not intervene, the accused bore grudge against him. While so, one the night of 22.8.2004, around 9:00 P.M., near Ankalamma Temple, A-1 hacked his brother Venkateswarlu with an axe with an intention to kill him and cut his lips. He was bleeding blood. A-2 hit him with a stick on his head and caused a bleeding injury. At that time, himself, P.W.1 – Palakurthy Koteswara Rao and P.W.2 – Nalabothula Sesharao

intervened. The accused fled away from the scene of offence. The Station House Officer registered a case in Crime No.142 of 2005 for the offence punishable under Section 307 read with 34 I.P.C., took up investigation and sent the injured to Government Hospital for treatment. He visited the scene of offence in the presence of mediators and prepared observation report, examined other witnesses and recorded their statements. On 10.9.2004, he arrested both the accused and sent them for remand. The doctor, who examined the injured, opined that he sustained both simple and grievous injuries. Hence, the charges.

3. The trial Court framed charges under Section 307 against A-1 and under Section 307 read with 34 I.P.C. against A-2.

4. When the above charges were read over and explained to the accused in Telugu, they pleaded not guilty and claimed to be tried.

5. To substantiate the charges, the prosecution examined P.Ws.1 to 7 and got marked Exs.P-1 to P-8 besides case properties – M.Os.1 and 2.

6. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses. They denied the same. On behalf of the accused, none was examined and Exs.D-1 to D-3 were got marked.

7. The trial Court, after appreciating both oral and documentary evidence on record, found the accused guilty of the charges with which they were charged and accordingly, convicted and sentenced them as stated supra. Challenging the same, the present appeal is filed by A-1 and A-2.

8. During the pendency of the case, A-1 died. Therefore, the case against A-1 is dismissed as abated.

9. On 24.2.2016, the informant, who was examined as P.W.3, appeared before this Court and filed an affidavit seeking to compound the offence. In view of the fact that the offence for which A-2 was convicted by the trial Court is a non-compoundable one, this Court is not inclined to compound the offence. The material on record clearly goes to show the commission of offence by A-2 and the other accused. The evidence of the prosecution witnesses clearly established the guilt of the accused. No rebuttable evidence was placed by the accused. Therefore, this Court is of the view that the trial Court has rightly convicted A-2 for the offence punishable under Section 307 read with 34 I.P.C.

10. At this stage, learned counsel for the petitioner sought to reduce the punishment imposed by the trial Court.

11. From the material available on record, it is evident that the role of A-2 is lesser than A-1 and in view of the amicable terms between the complainant and A-2 and in view of the submission made by the learned counsel for A-2, this Court is inclined to modify the sentence.

12. In the result, the conviction imposed against A-2 in the judgment, dated 24.11.2005, in Sessions Case No.69 of 2005 on the file of the Assistant Sessions Judge, Gurazala for the offence punishable under Section 307 read with 34 I.P.C. is confirmed. However, the sentence of imprisonment imposed by the trial Court for the said offence is modified to the period which A-2 has already undergone, while maintaining the sentence of fine. The case against A-1 is abated.

13. Accordingly, the Criminal Appeal is partly allowed.

14. Miscellaneous petitions pending, if any, in this Criminal Appeal

shall stand closed.

JUSTICE RAJA ELANGO

14.7.2016

AMD

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Date: 14.7.2016

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