

THE HON' BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1711 of 2008

ORDER:

This Criminal Revision Case is preferred by the petitioner – Accused No.1 against Judgment, dated 17.11.2008, passed in Crl.A.No.334 of 2007 by the IX-Additional Sessions Judge, (FTC), Guntur, whereby the learned Additional Sessions Judge disposed of the appeal by modifying the conviction and sentence imposed by the Principal Assistant Sessions Judge, Tenali, in SC No.467 of 2006 vide Judgment, dated 16.10.2007, wherein the learned Assistant Sessions Judge found the petitioner –accused No.1 guilty of the offence under Section 307 IPC and accordingly, convicted and sentenced him to undergo rigorous imprisonment for a period of five (5) years and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for one month.

The case of the prosecution, in brief, is as follows:

The de facto complainant –PW.1 and the petitioner are residents of Uppudi village. The petitioner developed illicit intimacy with the wife of one Allamsetty Sambasivara Rao – LW.5 and used to go to the house of LW.5. Forty days prior to the incident, the petitioner was caught hold by PW.1 by the side of paddy puri of LW.5 and PW.1 tied him to a tree and informed to the villagers about his illegal activities. The elders of the village chastised him and sent him away with a warning not to come to the house of LW.5. The petitioner felt insult of the said incident and grew wild and hatched a plan with the help of PW.1 to do away the life of PW.1. On 21.05.2006 at about 9.15 p.m., while PW.1 was coming alone through Basaveswara Theatre to Lakshmi Theatre towards Uppudi road, the petitioner along with A2, went from behind PW.1 and hacked him indiscriminately with a coconut cutting knife on

his left shoulder, wrist, right side of the head. A2 hacked LW.1 on his right shoulder, elbow and on the left thigh in order to kill him. Then PW.1 fell down on the ground and the petitioner and A2 left that place. On hearing the cries of PW.1, LW.2, who was coming on the way, shifted him to the Government Hospital, Repalle and from there to the Government Hospital, Guntur. The Head Constable of Repalle Police Station visited the Government Hospital and basing on the same, the Sub-Inspector of Police registered a case in Crime No.68 of 2006 for the offence under Section 307 r/w.34 IPC. On 12.06.2006 the accused were arrested and were sent to judicial custody. After completion of investigation, the police filed charge sheet against the accused for the offence under Section 307 r/w.34 IPC.

The II-Additional Munsif Magistrate, Tenali had taken cognizance of the case under Section 307 r/w.34 IPC and committed the case to the Court of Sessions, Guntur, as the offence is exclusively triable by the Court of Sessions. Thereafter, the case was made over to the trial Court for trial and disposal in accordance with law. During pendency of the case, A2 died, therefore, case against A2 was dismissed as abated. On appearance of the petitioner –A1 before the trial Court, the charge was read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

To substantiate its case, the prosecution examined PWs.1 to 9 and marked Exs.P1 to P8 and MOs.1 to 4. On behalf of A1, no oral evidence was adduced but, Exs.D1 to D6 were marked.

After appreciation of oral and documentary evidence, the trial Court found A1 guilty of the offence under Section 307 IPC, and accordingly, convicted and sentenced him as stated above. Aggrieved by

the same, A1 preferred Crl.A. No.334 of 2007 before the IX-Additional Sessions Judge, Guntur. The learned Additional Sessions Judge, after re-appreciation of the evidence, found A1 not guilty of the offence under Section 307 IPC and set aside the conviction and sentence passed by the Principal Sessions Judge, Tenali, for the said offence, and consequently, found him guilty of the offence under Section 326 IPC and accordingly, convicted and sentenced him to undergo rigorous imprisonment for a period of three (3) years and to pay a fine of Rs.2,000/- . Challenging the same, the present revision is preferred by the petitioner –A1.

Heard and perused the entire material available on record.

After evaluating the evidence and after considering the material available on record, this Court is of the view that there are no valid reasons to interfere with the findings of the appellate Court in convicting the petitioner –A1 for the offence under Section 326 IPC.

When this Court pointed out that there are no merits in the revision, learned counsel for the petitioner –A1 restricted his arguments to the quantum of sentence by submitting that the petitioner is the sole bread winner of his family and he has to look after his family and his old aged parents and therefore, a lenient view may be taken while imposing the sentence.

Considering the facts and circumstances of the case and taking into consideration the submissions of the learned counsel for the petitioner – A1, this Court is inclined to reduce the sentence of imprisonment imposed by the appellate Court on the petitioner for the offence under Section 326 IPC to that of the period, which the petitioner has already undergone.

In the result, the conviction recorded by the IX-Additional Sessions Judge, Guntur, vide judgment, dated 17.11.2008, in Crl.A. No.334 of 2007, for the offence under Section 326 IPC is hereby confirmed. However, the sentence of imprisonment imposed by the appellate Court, against the petitioner under the above head, is reduced to that of the period, which the petitioner has already undergone. The fine amount is not interfered with.

Accordingly, the Criminal Revision Case is partly allowed. Consequently, miscellaneous applications, if any pending, shall stand closed.

September 27, 2016.
KTL

RAJA ELANGO, J

