

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.527 OF 2008

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 4.4.2008, in G.S.C.No.1 of 2007 on the file of the Metropolitan Sessions Judge – cum – I Additional District and Sessions Judge, Visakhapatnam whereunder and whereby, appellant herein/accused was found guilty of the offence punishable under Section 307 of the Indian Penal Code, 1860 (for short, "I.P.C.") and he was accordingly, convicted under Section 235(2) Cr.P.C. and sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of three months.

2. Case of the prosecution, in brief, is as follows:

The *de facto* complainant/P.W.1 lent an amount of Rs.1,50,000/- to the accused in the year 2004 and the accused promised to repay the said loan at Rs.5,000/- per month, but committed default. In that regard, prior to the incident, P.W.1 went to the house of the accused four or five times and demanded him to repay the said amount.

On 31.12.2005, while P.W.1 was proceeding on his cycle to have tiffin and when he reached hotel where he wants to take tiffin, accused came in an auto-rickshaw and stabbed him with a knife two times on his chest and stomach. Then, he went to some place and fell down and the accused reached there and stabbed him on

the side of his stomach twice and on his chest. Opposite to the place of incident, there is Sri Kanya Theatre where there are security guards. By the time the security guards reached the scene of offence, P.W.1 told the security guards about the phone number of his house. Then, security guards informed by phone to P.Ramachandra Rao (P.W.12), who is the son of P.W.1, who came and shifted him to hospital K.G.H. There, police recorded his complaint which is marked as Ex.P-1. On that day, he took treatment in K.G.H. up to 4:00 P.M. and as he was not satisfied with the medical treatment at K.G.H., he was shifted to Vaishnavi Hospital and he took treatment as in-patient up to 17th January. Thereafter, he was discharged from the hospital. Basing upon the complaint, F.I.R. was registered for the offence under Section 307 I.P.C.

3. The case was taken on file as P.R.C.No.10 of 2006 by the learned I Additional Chief Metropolitan Magistrate, Visakhapatnam and later, he committed the case to the Court of Sessions, as the offence under Section 307 I.P.C. is exclusively triable by the Sessions Judge. The same was taken on file as G.S.C.No.1 of 2007 by the Metropolitan Sessions Judge – cum – I Additional District and Sessions Judge, Visakhapatnam.

4. After hearing the learned Additional Public Prosecutor and the learned counsel for the accused, charge under Section 307 I.P.C. was framed against the accused, read over and explained to him for which, he pleaded not guilty and claimed to be tried.

5. To substantiate the charges, the prosecution examined P.Ws.1 to 13 and got marked Exs.P-1 to P-16.

6. After closure of the prosecution evidence, the accused was examined under Section 313(1)(b) Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the same. On behalf of the accused, none was examined and no documents were got marked.

7. The trial Court, after appreciating both oral and documentary evidence on record, found the accused guilty of the offence punishable under Section 307 I.P.C. and accordingly, convicted and sentenced him as stated supra. Challenging the same, the present appeal is filed by the accused.

8. After arguing for sometime, learned counsel for the appellant submitted that the offence falls under Section 326 I.P.C. and not under Section 307 I.P.C.; that if it is the intention of the accused to commit the murder of P.W.1., nothing prevented him from doing so since it is not the case of the prosecution that he ran away from the place of occurrence on intervention of some other persons because of the hue and cry raised by P.W.1, and hence, prayed to reduce the sentence of imprisonment.

9. From the material available on record, it is evident that the appellant had an intention to cause injuries to P.W.1. Considering all the facts and circumstances of the case and the injuries caused by the appellant to P.W.1, this Court is of the view that the offence falls under Section 326 I.P.C. There are many mitigating circumstances to reduce the sentence of imprisonment. All the eye

witnesses turned hostile and none of them supported the case of the prosecution. According to P.W.1, the motive for causing injuries is that he lent an amount of Rs.1,50,000/- to the appellant and the same was directed to be returned at Rs.5,000/- per month, but the appellant committed default and in that regard, P.W.1 went to the house of the appellant four or five times and demanded him to repay the same, but it is of no use. On the date of the incident, the appellant caused injuries to P.W.1 whereas it is the case of P.W.1 in the complaint that the appellant suspected that P.W.1 has illicit intimacy with his wife and hence, he has caused injuries. Hence, after perusing the entire material available on record and the evidence adduced by the witnesses, this Court is of the view that the prosecution has miserably failed to prove the guilt of the accused for the offence under Section 307 I.P.C. However, basing on the evidence of P.Ws.1, 7 and 9 and the wound certificates, this Court is of the view that the offence would fall under Section 326 I.P.C. and hence, the appellant can be convicted for the said offence.

10. At this stage, learned counsel for the appellant submitted that the appellant has aged mother, wife and children and he is the sole bread winner of his family; that the appellant has already suffered substantial period in jail and hence, prays to reduce the punishment imposed by the trial Court.

11. From a perusal of the record, it is evident that the appellant has suffered substantial period of sentence in the prison. Considering the said fact and in view of the fact that the offence

pertains to the year 2005, this Court is inclined to reduce the punishment imposed by the trial Court against the appellant.

12. In the result, the conviction and sentence imposed against the appellant/accused in the judgment, dated 4.4.2008, in G.S.C.No.1 of 2007 on the file of the Metropolitan Sessions Judge – cum – I Additional District and Sessions Judge, Visakhapatnam for the offence punishable under Section 307 I.P.C. is set aside and the appellant/accused is found guilty for the offence punishable under Section 326 I.P.C. and accordingly, he is convicted for the said offence. However, the sentence of imprisonment imposed by the trial Court is modified to the period which the appellant/accused has already undergone, while maintaining the sentence of fine.

13. Accordingly, the Criminal Appeal is partly allowed.

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

JUSTICE RAJA ELANGO

23.9.2016
AMD

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