

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.11 OF 2006

JUDGMENT:

One of the injured persons examined as PW.2 is the revision petitioner in the present Criminal Revision Case. Aggrieved by the order of acquittal so far as respondent Nos.2 and 3, who are accused Nos.2 and 3, are concerned and taking a lenient view so far as respondent No.1, who is accused No.1, is concerned holding that the prosecution failed to prove the charge under Section 307 of Indian Penal Code, 1860 (for short 'IPC'), but convicted him (accused No.1) for the offence punishable under Section 324 of IPC, preferred the present Criminal Revision Case under Sections 397 and 401 of the Criminal Procedure Code, 1973 (for short 'Code').

2. The learned sessions Judge has taken a lenient view opining that interest of justice demands imposition of fine on accused No.1 rather sentencing him to undergo imprisonment with a view to give an opportunity to him to reform himself and not to repeat such instance, imposed a fine of Rs.2,000/- and in default to undergo sentence of simple imprisonment for a period of six (6) months. The learned Sessions Judge also directed to pay a sum of Rs.500/- each to PWs.1 and 2 by way of compensation under Section 357 of the Code. The said sentence is under challenge besides fine of Rs,500/- directed to be paid.

3. Heard Mrs. Latha Alapati, learned counsel, representing Sri Korrapati Subba Rao, learned counsel for the revision petitioner, and perused the material on record.

4. The learned counsel for the revision petitioner would submit that non-examination of the *de facto* complainant, LW.1, is not at all fatal to the case of the prosecution and having held that the prosecution proved the guilt of the accused beyond all reasonable doubt and also having found that PWs.1 and 2 sustained injuries and the injuries are proved, that too in the hands of accused No.1 and others, ought not to have acquitted rest of the two accused and the intention of the accused was not properly assessed though, the ingredients of Section 307 of IPC would attract and ought not to have taken a lenient view by imposing a mere penalty, and, therefore, sought to set aside the judgment.

5. On a perusal of the evidence, it is forthcoming that PWs.1 and 2, who are the injured witnesses were treated in NIMS Hospital. The learned trial Judge has answered the delay in sending First Information Report and convinced himself of the explanation offered in lodging the First Information Report with delay on the main ground that PWs.1 and 2 were injured on account of indiscriminate beating by accused No.1 and others and ruled out the stand that a false case is foisted against the accused and observed that the medical evidence supports the injuries on the persons of PWs.1 and 2. He has extracted

the evidence of PW.8, the medical officer, who treated PWs.1 and 2 and discarded the contradictions in Exs.D-1 to D-3.

6. The learned trial Judge opined that the evidence let in by the prosecution is not helpful to the prosecution to establish that respondent Nos.2 and 3 have participated in the commission of offence and, therefore, benefit of doubt is given to respondent Nos.2 and 3. When a positive finding is recorded by the learned Sessions Judge as to lack of evidence, so as to prove participation of accused Nos.2 and 3, the main ingredient being common intention, which necessarily implies a pre-concerted plan on the part of accused Nos.1 to 3, which does not find place in the prosecution case, even when intrinsically examined the evidence of prosecution witnesses PWs.1, 2 and 9, it cannot be said that the learned Sessions Judge went wrong in recording the order of acquittal.

7. There is absolutely no patent illegality that crept in the judgment rendered by the learned Sessions Judge so far as the case against respondent Nos.2 and 3 is concerned warranting any interference. Therefore, that finding cannot be upset. Thus, it is clear that there is no merit in the present revision case.

8. Touching the sentence of fine imposed on respondent No.1 for the offence punishable under Section 324 of IPC and the finding that the prosecution failed to prove the charge under Section 307 of IPC are concerned, it is based on proper appreciation of evidence on

record. The injuries sustained by PWs.1 and 2 are not on vital parts as rightly observed by the learned Sessions Judge. When the common intention fails and the injuries sustained by PWs.1 and 2 on their persons are not on the vital parts of their persons respectively, it is too difficult to view that the prosecution could prove the attempt to murder as alleged by it.

9. Therefore, even the finding recorded by the learned Sessions Judge holding that the prosecution failed to prove the charge under Section 307 of IPC against accused No.1 cannot be faulted. Since the injuries on the persons of PWs.1 and 2 were proved through the evidence of the medical officer - PW.8 as simple in nature, the only penal provision that attracts the acts of accused No.1, is Section 324 of IPC. Hence, even in regard to conviction recorded against accused No.1 under Section 235(2) of the Code for the offence punishable under Section 324 of IPC, nothing can be commented. Thus, there is no merit in the present revision case.

10. Therefore, the Criminal Revision Case is dismissed confirming the judgment under challenge.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision case stand dismissed.

A. SHANKAR NARAYANA, J

November 7, 2017.
PV