

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL APPEAL No.1180 of 2016

JUDGMENT:

Aggrieved by the calendar and judgment in S.C.No.252 of 2016 dated 25.10.2016 passed by the Metropolitan Sessions Judge, Hyderabad, this criminal appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973, is filed by the appellant, challenging the conviction and sentence imposed against him for the offence punishable under Section 307 read with 511 IPC and Section 326 IPC, while acquitting him for the offence under Section 307 IPC, on various grounds.

2. The case of the prosecution in nutshell is that, on 13.08.2015, at about 0940 hrs., a complaint was lodged alleging that one Abhilash of the locality of the complainant used to pickup quarrels with locality people. On 12.08.2015, during evening hours, the complainant came to the Police Station and orally reported the matter to the Police. Keeping that in mind, on 12.08.2015, at about 2230 hrs., the accused along with two others came to the house of the complainant and attacked him with sticks and iron rods and when his father intervened, they beat him also, due to which the complainant sustained injuries on his face and other parts of the body, his father sustained fracture to his left leg. On the strength of the complaint, a case in Cr.No.140 of 2015 was registered for the offence punishable under Section 307 read with 34 IPC.

3. After investigation, Police filed charge sheet against the appellant and others before the Metropolitan Magistrate, but the Magistrate, having come to the conclusion that the case is exclusively triable by the Court of Sessions, committed the matter in P.R.C.No.1 of 2016 to the Sessions Division by order dated 15.06.2016. The Metropolitan Sessions Judge took cognizance of the case and issued summons and after securing the presence of the accused, framed charge for the offence punishable under Section 307 IPC, read over the charge and explained to him in Telugu, to which the appellant pleaded not guilty to the said charge and claimed to be tried.

4. During trial, on behalf of the prosecution, P.Ws.1 to 8 were examined and Exs.P.1 to P.7 and M.O.1 were marked. After closure of prosecution evidence, appellant-accused was examined under Section 313 Cr.P.C, explaining the incriminating material that appeared against him in prosecution evidence, but he denied the same and reported no defence.

5. Upon hearing both the counsel, the Sessions Court found the appellant-accused guilty for the offence punishable under Section 307 read with Section 511 IPC and Section 326 IPC, while acquitting him for the offence punishable under Section 307 IPC, convicted and sentenced him to undergo Rigorous Imprisonment for two years.

6. Aggrieved by the conviction and sentence imposed against the appellant, the present appeal is filed mainly on the ground that the quantum of sentence imposed against the appellant is excessive and that in the absence of any specific charge against the appellant, recording conviction and sentence to undergo Rigorous Imprisonment for 2 years for the offence under Section 307 read with 511 IPC and Section 326 IPC is illegal and prayed to set aside the same.

7. A bare look at the judgment of the Sessions Court makes it clear that charge for the offence under Section 307 IPC was framed and no charge for the offence under Section 307 read with Section 511 IPC and Section 326 IPC was framed. Unless the Court records that the offence punishable under Section 307 read with Section 511 IPC is a minor offence to the offence punishable under Section 307 IPC, it is not expected to record such finding, but there is an exception to this Rule under Section 222 (4) Cr.P.C., which permits the Court to convict the accused though no charge was framed, if the offence is minor offence or cognate offence to the major offence. Here, the offence allegedly committed by the appellant as per the charge is punishable under Section 307 IPC and Section 511 is minor or cognate offence and in view of the exception contained in Section 222 (4) Cr.P.C., though no charge was framed, the conviction of the accused for the minor offence, though a charge for major offence was framed, is legally sustainable. Therefore, the finding recorded by the Sessions Judge in recording conviction for the offence punishable

under Section 307 read with 511 IPC and Section 326 IPC is not illegal. So far as the sentence is concerned, according to the learned counsel for the appellant, appellant was in judicial remand since 01.09.2015 and the Sessions Judge gave setoff under Section 235(1) Cr.P.C., of the period already undergone and by now, the appellant had undergone 1 year 6 months and 8 days imprisonment. Section 511 IPC deals with punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. According to it, the accused are liable for punishment to one-half of the sentence provided for the main offence or one-half of the longest term of imprisonment provided for that offence. Whoever attempts to commit an offence punishable by the Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by the Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both. The main offence is punishable under Section 307 IPC and the punishment provided for the said offence is 10 years apart from fine. Therefore, the punishment of imprisonment for 2 years is less than the punishment provided under Section 511 IPC.

8. However, taking into consideration of pre-trial detention and post-trial detention of the appellant-accused, I deem it appropriate to reduce the sentence of imprisonment of the appellant-accused to the period of imprisonment already undergone by him. Hence, the imprisonment of two years imposed against the appellant-accused is converted to the imprisonment already undergone.

9. With the above modification, the appeal is disposed of.

M. SATYANARAYANA MURTHY, J

March 8, 2017
MRR

