

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2584 OF 2017

ORDER:

Challenging the conviction recorded, under 235 (2) Cr.P.C., for the offence punishable under Section 326 I.P.C. and the sentence of rigorous imprisonment of three years inflicted and fine of Rs.1,000/- with default sentence, the petitioner – sole accused preferred the present revision case.

2. Heard Sri P. Nagendra Reddy, learned counsel for the petitioner – accused, and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

3. Originally, the charge sheet was laid alleging the offence punishable under Section 307 I.P.C., but the learned Additional Assistant Sessions Judge, Machilipatnam, by judgment, dated 14.08.2015, rendered in S.C.No.397 of 2011, while holding that the prosecution failed to prove the attempt to commit murder, opined that the prosecution, however, made out a case for the offence punishable under Section 326 I.P.C., instead of offence punishable under Section 307 I.P.C. and, thus, recorded the aforesaid conviction and inflicted the sentence of rigorous imprisonment for three years.

4. When the matter was carried in appeal, the learned X Additional Sessions Judge, Krishna at Machilipatnam, by the judgment, dated 30.08.2017, rendered in CrI.A.No.176 of 2015, on

re-appreciation of evidence on record, confirmed the conviction recorded and the sentence of rigorous imprisonment inflicted and the sentence of fine.

5. Learned counsel for the petitioner would mainly contend that there has been inconsistency in the case of the prosecution as the ocular evidence would contradict the medical evidence, which the trial Court has projected in paragraph No.24 of the judgment. When the medical evidence does not support the description of the injuries occurring on PW.2, the victim, the Courts below ought not to have recorded conviction and ought to have acquitted the petitioner and, thus, according to the learned counsel for petitioner, there is legal infirmity in appreciation of evidence on record and the finding recorded is patently illegal.

6. A few facts, which are relevant for the purpose of appreciating the arguments advanced by the learned counsel for petitioner, are projected.

7. On 18.01.2011 at 09:30 AM, while one Abdul Rehaman, who is the *de facto* complainant, was proceeding to attend to the carpentry work and reached Krishna Tulasi Theatre, the petitioner abused him in filthy language without any cause and as such, the said Abdul Rehaman questioned the petitioner. A verbal altercation took place between them and then the petitioner picked up an iron rod and

tried to beat the said Abdul Rehaman. He escaped from the blow and took the iron rod from the petitioner and beat him on his head causing bleeding injury. At the intervention of one Rafi and Ariff, they were separated and left the place. The petitioner grew wild and picked up a knife with an intention to kill Abdul Rehaman and went to the house of Abdul Rehaman, but he was not found at home and his mother, Abdul Lathifunnisa, who was examined as PW.2, was present. He picked up quarrel with her and hacked her with knife on the neck and face indiscriminately with an intention to kill her and caused bleeding injuries to her. She was shifted to Saibaba Hospital, Pedana, and from there she was taken to the Government Hospital, Bandar. The Sub-Inspector of Police, Pedana, on receipt of information, went to the Government Hospital, Bandar, and recorded the statement of Abdul Rehaman. A crime was registered under Section 307 I.P.C. and investigated into.

8. During the course of investigation, all relevant witnesses were examined and scene of offence panchanama was conducted. A rough sketch was prepared. The crime weapon used by the petitioner was recovered under a mediators report. The present case is a counter to Crime No.12 of 2011 registered for the offence punishable under Section 324 read with 34 I.P.C., in which, the *de facto* complainant herein was an accused. The petitioner was arrested on 07.02.2011 and

charge sheet was laid for the offence punishable under Section 307 I.P.C.

9. Since, the petitioner pleaded not guilty, when examined for the offence punishable under Section 307 I.P.C., trial was conducted.

10. During trial, PWs.1 to 8 were examined and Exs.P1 to P6 were marked by the prosecution, besides the iron rod M.O.1, in order to bring the guilt of the petitioner to his home.

11. The learned Additional Assistant Sessions Judge, having formulated the point for determination, appreciated the evidence on record. The learned Judge did not believe the evidence of PWs.4 and 5, who were cited as eye-witnesses in order to prove that they chased the petitioner, but the petitioner escaped. The learned Additional Assistant Sessions Judge also analysed the evidence of PW.8 with the description of injuries mentioned in Ex.P6 – wound certificate and believed the evidence of PW.8 observing that the shape of the injury cannot be material, and even Ex.D1, a portion of contradiction in Ex.P1, according to the learned Additional Assistant Sessions Judge, would not constitute material contradiction. Thus, basing on the evidence of PWs.2 and 8 and recovery of iron rod, marked as M.O.1, the learned Judge held that the prosecution proved the offence under Section 326 I.P.C., though, the charge under Section 307 I.P.C. is not made out, as the intention of the petitioner was to kill the *de facto*

complainant, but not his mother. Incidentally, Section 84 I.P.C. was also examined and held that it is not a case where the petitioner can be given benefit of Section 84 I.P.C. on the ground that mere epilepsy cannot be a ground to hold that the petitioner was of unsound mind.

12. In the appeal preferred by the petitioner, the learned Sessions Judge, having re-appreciated the evidence of PWs.2 and 8, by referring to the nature of injuries in paragraph No.50 of the judgment, observing that in Ex.P6, the shape of the injury was not mentioned either as curve or straight and also the nature of the weapon that was used for causing the injury was not mentioned, and had PW.8 stated that he found straight injury on PW.2, it would have gained some prominence, and as there is no such mentioning in Ex.P6, opined that the discrepancy that had cropped up, as PW.8 has admitted that the injury with M.O.1 would be in the shape of a curve, but as per Ex.P6, the shape of the injury is not curve, will not be sufficient to discard the evidence of PW.8.

13. The findings recorded by both the Courts below, basing on the evidence of PWs.2 and 8 and recovery of weapon of offence, cannot be brushed aside as nothing is brought out in the cross-examination of PW.2 to view the prosecution case with suspicion. On the other hand, the evidence of PW.2 is cogent, clear and beyond reproach. Therefore, unless it is shown that the findings recorded by

the Courts below suffer from utter perversity or patently illegal, certainly, no interference is warranted.

14. Now, turning to whether the sentence of rigorous imprisonment of three years inflicted by the Courts below is justified under the facts and circumstances occurring herein, the fact that there is a case pending against the *de facto* complainant on the complaint of the petitioner cannot be side-lined. This apart, it has come up in the evidence that the petitioner was suffering from epilepsy. When, kept in view, these two aspects, certainly, the sentence of rigorous imprisonment of three years inflicted by the trial Court and confirmed by the appellate Court can be reduced to two years and accordingly, the impugned judgments are modified to that extent alone, while maintaining the conviction recorded for the offence punishable under Section 326 I.P.C.

15. The present revision case is, therefore, dismissed confirming the judgments impugned in all respects, however, except to the extent of reducing the sentence of rigorous imprisonment from three years to two years.

16. Miscellaneous Petitions, if any, pending in this revision case shall stand closed.

A. SHANKAR NARAYANA, J

October 31, 2017.
MD