

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No.427 OF 2016

ORDER:

1. This Criminal Revision Case is filed by the petitioner-appellant-accused against the judgment of the I-Additional Sessions Judge, Adilabad, FAC Special Judge for Trial of Cases under SC & ST (PoA) Act cum V Additional Sessions Judge, Adilabad in CrI.A. No.11 of 2012 dated 03.09.2015 confirming the judgment in SC No.81 of 2010 on the file of the Assistant Sessions Judge, Nirmal, Adilabad District dated 13.01.2012.

2. The case of the prosecution in brief was that on 19.10.2009 at about 7.00 PM, while the injured Babya Naik was sitting in Mallesh Tea Stall at Munyal Village along with LWs.3 to 5, the accused went to the injured by saying "Namaste Kaka" and cut his throat from behind with a blade, due to which the injured sustained bleeding injury and the accused also damaged the glasses of the Omni Van of the injured with a stick. On the complaint given by the brother of the injured (LW.1) at 9.30 PM on the same day, police registered a case in Crime No.20 of 2009 and recovered the crime weapon i.e. cutter blade

at the instance of the accused. The Medical Officer who treated the injured opined that the injury was dangerous but simple in nature. On collecting the Medical Certificate of the injured, the Investigating Officer filed charge sheet against the accused for the offences under Sections 427 and 307 of IPC.

3. The Judicial Magistrate of First Class, Nirmal took cognizance of the offences and committed the case to the Court of Sessions, Adilabad Division. The case was made over to the Assistant Sessions Judge, Nirmal. During the course of trial, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to P16 and MOs.1 and 2.

4. On considering the evidence on record, the trial court found the accused not guilty for the offence under Section 427 IPC, but found him guilty for the offence under Section 307 IPC and convicted him and sentenced to suffer rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/- in default to suffer rigorous imprisonment for a period of five months and directed the fine amount to be paid as compensation to the injured under Section 357 Cr.P.C.

5. Aggrieved by the said conviction and sentence, the accused preferred an appeal. The appeal was heard by the Special Judge for trial of cases under SC & ST (PoA) Act cum V Additional Sessions Judge, Adilabad vide Criminal Appeal No.11 of 2012 and on re-appreciation of evidence, confirmed the guilt of the accused for the offence under Section 307 IPC. But, however, modified the sentence of imprisonment from five years to three years.

6. Aggrieved further, the petitioner-appellant-accused preferred this revision contending that both the courts below went wrong in convicting the petitioner under Section 307 IPC. The judgments of the Courts below were illegal, improper and incorrect. The courts below failed to see that prosecution failed to establish the motive behind the offence and failed to see that except the evidence of the injured, no other independent witness was examined by the prosecution, that the blood stained clothes of the injured were not seized, the confession given by the accused to PW.7 was in the presence of the police, no damaged material was placed before the court to establish the damage to the vehicle. The reasons given by the

courts below were unsustainable, the sentence was unduly severe and prayed to set aside the judgments of the courts below.

7. Heard learned counsel for the petitioner and the learned Assistant Public Prosecutor.

8. The learned counsel for the petitioner argued on the same lines as raised in the grounds of revision.

9. The learned Assistant Public Prosecutor submitted that there were concurrent findings of conviction recorded by the courts below confirming the guilt of the accused for the offence under Section 307 IPC. The sentence imposed by the trial court was already reduced by the lower appellate court and there was no need for further interference in the same and prayed to dismiss the revision case.

10. Perused the record. It is well settled that in exercise of revisional jurisdiction, the High Court in the absence of perversity would not upset the concurrent factual findings. It is not for the revisional court to re-analyze and re-interpret the evidence on record. On perusal of the judgments of the courts below, the trial court observing that the prosecution case rests upon the direct evidence of

the injured i.e., PW.2 and eye witnesses PWs.3 to 5 to prove the offence proper and the evidence of all these witnesses corroborated with each other and there were no serious infirmities in their evidence to disbelieve the prosecution case, found the accused guilty for the offence under Section 307 IPC.

11. The trial court also considered the defences raised by the accused and answered them appropriately. The trial court observed that the accused was not a stranger to PWs.1 and 2 and PW.1 stated that the accused was related to him as son by courtesy and PW.2 stated that except the incident there was no quarrel with the accused previously. The trial court also noted that PW.2 denied the suggestion that he did not see the face of the accused as the accused came from his behind and observed that it was not the case of the prosecution that the accused suddenly emerged at the scene and cut the throat of PW.2 and on the other hand, the cutting of throat preceded the accused wishing PW.2 saying “Namaste Kaka”. That being so, the fact that the accused cut the throat of PW.2 from behind, does not mean that the injured PW.2 had not seen the face of the accused.

12. The trial court also observed that the FIR was lodged within three hours after the incident as such there was no delay in lodging the report and Ex.P.1 substantially corroborated with the version of the injured PW.2. The trial court also observed that the defence taken by the accused that PW.3 belonged to the same caste of PW.2 was of no consequence to discredit his evidence. It further observed that PW.4 who belonged to a different caste also supported the prosecution case and he could not be branded as unreliable witness. Non examination of LWs.3 and 4 Mallesh and Narayana would not create any doubt on the prosecution case. It was not the quantity of evidence that has to be counted but the quality of evidence that was material. The evidence of the injured PW.2 was corroborated by the evidence of Doctor, who stated that he examined PW.2 on 19.10.2009 and found laceration of 8 cms length, 1 ½ cms deep and 2 cms width in front of neck and opined that the said injury was dangerous and could have been caused by a sharp weapon. The trial court considering the part of the body where the injury was inflicted on injured was the front portion of the neck which was a vital part and the weapon used by the accused was a sharp edged dangerous weapon and considering the manner in which it was used and severity of the blow, based on the measurements

stated by PW.8-doctor, came to the conclusion that the accused had an intention to kill the injured PW.2 or atleast had the knowledge that the act was likely to cause his death, found him guilty for the offence under Section 307 IPC.

13. The contention of the learned counsel for the revision petitioner with regard to non-establishment of motive by the prosecution, in not examining the mother of the accused to prove the allegation made by the prosecution against the accused that he attacked PW.2 on the ground that PW.2 got illicit intimacy with his mother, the trial court observed that even if the mother of the accused was examined, she would not have spoken about any illicit intimacy with PW.2 and she would have been offended even if any investigating officer enquired on such matter and more over motive for a crime was of no importance where there was positive evidence against the accused. Absence of motive would loose its significance when there is direct evidence. Only in cases of circumstantial evidence or witnesses having an inimical background, motive assumes importance. This Court does not find any illegality or impropriety in the observations of the trial court on the above aspects.

14. The Hon'ble Apex Court in **Surinder Singh v. State of Haryana**¹ decided on 26.11.2021 by relying upon its judgments in **Shivaji Genu Mohite v. State of Maharashtra**² and **Bipin Kumar Mondal v. State of West Bengal**³, wherein it was held that:

“In case of prosecution not able to discover an impelling motive, that would not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye- witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy”,

observed that unlike intention, motive is not a yardstick of a crime, a lawful act with an ill motive would not constitute an offence but it might not be true when unlawful act is committed with best of motive and concluded that absence of motive alone cannot abjure the guilt of the accused under Section 307 IPC.

¹ [2021 SCC Online SC 1135)

² (1973) 3 SCC 319

³ (2010) 12 SCC 91

15. Thus, this Court does not find any merit in the contention of the learned counsel for the revision petitioner with regard to prosecution not establishing the motive behind the offence.

16. With regard to the contention of the learned counsel for the revision petitioner about the non-seizure of the blood stained clothes of PW.2 by the prosecution, the trial court observed that the victim PW.2 stated in his cross examination that his blood stained clothes were removed in the hospital and he did not know whether anybody took them; the Investigating Officer PW.10 stated in his cross examination that he had not seized the blood stained clothes from PW.2; it was not an invariable rule that the blood stained clothes should be seized by Investigating Officer in each and every case and the prosecution case could not be thrown over board simply because the blood stained clothes of victim were not seized by the prosecution.

17. This Court does not find any infirmity in the observation of the trial court that the prosecution case could not be thrown over board because of non-seizure of blood stained clothes of the injured.

18. With regard to the contention of the learned counsel for the petitioner that the confession made by the accused to PW.7 was before the presence of police, it is to be noted that the trial court had not relied upon the confession made by the accused but only relied upon the recovery of the weapon, which was admissible under Section 27 of the Evidence Act and not based its conviction upon the extra judicial confession made by the accused before PW.7.

19. With regard to the contention of the learned counsel for the petitioner that no damaged material was placed before the court to establish the damage of vehicle theory, it is also to be noted that the trial court acquitted the accused for the offence under Section 427 IPC, not believing the evidence of the witnesses on the said aspect. When the trial court itself acquitted the case, disbelieving the evidence of the prosecution with regard to damage to the Omni Van of the injured, there is no necessity for the petitioner to raise this ground in this revision.

20. The contention of the learned counsel for the petitioner that except the injured witness, no other independent witness was examined by the prosecution, the same was also answered by the

courts below. The trial court observed that two independent witnesses PWs.3 and 4 were examined by the prosecution and their evidence corroborated with the evidence of PW.2. The trial Court noted that PW.3 though belonged to the same caste as that of PW.2, his evidence could not be dis-credited on the said ground and PW.4, who belonged to another caste was also examined by the prosecution and he also supported the prosecution case.

21. The learned counsel for the revision petitioner contended that there were contradictions in the evidence of the witnesses as to who shifted the injured to the hospital and the mode of transport used in shifting him to the hospital and the nature of the weapon used. But, these points are also considered by the courts below and observed that they would not dilute the prosecution case in any manner.

22. Thus, this court does not find any illegality or infirmity in the judgments of the courts below in coming to the conclusion with regard to the guilt of the accused for the offence under Section 307 IPC. The lower appellate court also reduced the sentence of imprisonment imposed against the accused from five years to three years, considering the plea of the accused with regard to his social and

marital status. Thus this court does not find any necessity to interfere with the sentence as modified by the lower appellate court.

23. In the result, the Criminal Revision Case is dismissed confirming the judgment of the I-Additional Sessions Judge, Adilabad, FAC Special Judge for trial of Cases under SC & ST (PoA) Act cum V Additional Sessions Judge, Adilabad in Crl.A. No.11 of 2012 dated 03.09.2015, wherein the appellate court confirmed the judgment of conviction against the petitioner-appellant-accused in SC No.81 of 2010 on the file of the Assistant Sessions Judge, Nirmal, Adilabad District, dated 13.01.2012, but modified the sentence. The bail granted to the petitioner-accused shall stand cancelled. The petitioner-accused is directed to surrender before the court below forthwith and in case he fails to do so, the court below is directed to take steps in accordance with law to take him into custody

Pending miscellaneous petitions, if any, shall stand closed.

Dr. G. RADHA RANI, J

October 18, 2022
KTL