

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL REVISION CASE No.1275 OF 2008

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of Cr.P.C., is filed by the petitioner/accused, challenging the judgment, 08.08.2008, passed in Criminal Appeal No.175 of 2007 by the Prl. Sessions Judge, Khammam, whereby, the judgment, dated 16.11.2007, passed in S.C.No.391 of 2006 by the Assistant Sessions Judge, Sathupally, convicting the petitioner/accused for the offence under Section 307 of IPC and sentencing him to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.200/-, in default, to undergo simple imprisonment for 15 days, was confirmed.

2. Heard Sri C.Sharan Reddy, learned counsel for the revision petitioner/sole accused, learned Assistant Public Prosecutor appearing for the respondent-State and perused the record.

3. The facts of the case, in brief, are that P.W.1 Sreedevi is the wife of the accused and one year old Vineetha is their daughter. That the accused had suspicion that the baby was not born to him and intended to kill the baby Vineetha and about 3 years back i.e. on 19.01.2014 at 7.30

P.M. sprinkled acid on the mouth of Baby. On hearing cries of Baby P.W.1 went inside the house, while she was entering, the accused pushed her and ran away. P.W.1 observed black marks around the mouth and informed the incident to Mahalakshmi and Pothu Raju. P.W.2, the mother of P.W.1 came to Sathupally on phone information, went to hospital and found burn injuries. On either side of mouth extending up to ears and P.W.1 narrated the incident to her. Then on report of P.W.1, P.W.8 P.Koteshwara Rao, S.I. of Police, Sathupalli, registered a case in Cr.No.21 of 2004 under Section 324 IPC submitted Ex.P6 registered FIR, investigated, seized Monkey cap, Acid smelling bottle, partly burnt blanket and lungi under cover of panchanama in the presence of P.W.5 M.Nagamani and another. On investigation of P.W.8, P.W.7 Dr. O.Suneetha examined the victim Baby on 21.01.2004 and issued Ex.P5 certificate that the injury is simple and could be caused by moist heat, on completion of investigation P.W.8 filed charge sheet.

4. The petitioner/accused was convicted for the offence under Section 307 of IPC. The date of commission of the alleged offence was on 19.01.2004. To substantiate the subject injuries sustained by the victim, the prosecution got examined PWs.1 to 8 and got marked Exs.P1

to P6 before the trial Court. The P.W.1 Ekalpa Sreedevi who is the mother of victim and the wife of accused and she deposed about the incident and her giving Ex.P1 report. P.W.2 A.Anasuya is the mother of P.W.1. She only deposed about her coming to know the incident through P.W.1. P.W.3 Bheemi Reddy Ranga Reddy is an independent witness. But he did not support the case. P.W.4 Dr. Sk.Khadar Vali is Medical Practitioner and he only deposed about his giving first aid to the child. P.W.5 Mandapati Nagamma and P.W.6 Boda Krishna are panch witnesses for the observation of scene of offence and both of them did not support the prosecution. P.W.7 Dr. O.Suneetha is the Medical Officer. She deposed about her examining the victim, finding burn injury and issuing Ex.P5 certificate. P.W.8 P.Koteshwara Sastry is the investigation officer. He deposed about receiving the report from P.W.1, registration of case, his investigation etc., facts. The documentary evidence corroborates the oral evidence of prosecution witnesses. The trial Court, after carefully evaluating the evidence on record, held that the prosecution has established its case that the petitioner / accused caused burn injuries by means of substance with an intention to kill. All the requirements for establishing the offence under Section 307 of IPC have been made out. There is no perversity or

illegality in the judgment passed by the trial Court. Further, the lower appellate Court, on re-appreciation of the entire evidence on record, recorded concurrent findings with regard to the guilt of the petitioner/accused and confirmed the conviction and sentence imposed against him. Furthermore, no grounds, much less valid grounds are made out in this revision to set aside the concurrent findings recorded by both the Courts below. Hence, no interference is warranted insofar as conviction of the revision petitioner for the offence under Section 307 of I.P.C. is concerned.

5. Here, it is apt to state that Sections 397 to 401 of Cr.P.C., confer only limited power on the Revisional Court to the extent of satisfying about the legality, propriety or regularity of the proceedings or orders of the lower Court and not to act like appellate Court for other purposes, including the recording of new findings of fact on fresh appraisal of evidence. The object of the Revisional jurisdiction is to set right a patent defect or an error of jurisdiction or law. In the instant case, a perusal of the material placed on record reveals that there is no illegality, impropriety or irregularity in the judgments under challenge. This Court does not find any merit in this revision.

6. As far as the quantum of sentence imposed against the revision petitioner is concerned, the offence took place as long back as in the year 2004. The petitioner/accused attended the trial Court as well as the lower appellate Court in connection with this case. Further, the petitioner/accused was on bail throughout the case before the trial Court as well as the lower appellate Court. Further, this Court, vide order, dated 25.08.2008, passed in Crl.R.C.M.P.No.1719 of 2008, granted suspension of sentence against petitioner/accused and ordered his release on bail. It is brought to the notice of this Court that in all, the petitioner/accused was in judicial custody nearly 60 days in connection with this case.

7. Determining the adequacy of sentence to be awarded in a given case is not an easy task, so also evolving a uniform sentencing policy. That is because the quantum of sentence that may be awarded depends upon a variety of factors including mitigating circumstances peculiar to a given case. The Courts generally exercise considerable amount of discretion in the matter of determining the quantum of sentence. In doing so, the Courts would be influenced in varying degrees by the reformatory, deterrent and punitive aspects of punishment, delay in the conclusion of the trial and legal proceedings, the age of the accused,

his/her physical/health condition, the nature of the offence, the weapon used and in the cases of illegal gratification the amount of bribe, loss of job and family obligations of accused are also some of the considerations that weigh heavily with the Courts while determining the sentence to be awarded. The Courts have not attempted to exhaustively enumerate the considerations that go into determination of the quantum of sentence nor have the Courts attempted to lay down the weight that each one of these considerations carry. That is because any such exercise is neither easy nor advisable, given the myriad situations in which the question may fall for determination. Broadly speaking, the Courts have recognized the factors mentioned earlier as being relevant to the question of determining the sentence. There is plethora of judgments of the Hon'ble Supreme Court on this subject.

8. In B.G. Goswami v. Delhi Administration¹, the Hon'ble Supreme Court, while reducing the punishment to the period already undergone by the accused therein, laid down the general principles that are to be borne in mind by the Courts while determining the quantum of punishment. It was observed as follows:-

“The sentence of imprisonment can be for a lesser period but in that event the Court has to assign special reasons which must be

¹ (1974) 3 SCC 85

recorded in writing. In considering the special reasons the judicial discretion of the Court is as wide as the demand of the cause of substantial justice. Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part, but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and re-claim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after 7 years of the agony and harassment of these proceedings when he is also going to lose his job and to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs. 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same.”

9. Further, in the recent decision of the Hon’ble Apex Court in **V.K.**

Verma v. CBI², it was held as follows:-

“In imposing a punishment, the concern of the court is with the nature of the act viewed as a crime or breach of the law. The maximum sentence or fine provided in law is an indicator on the gravity of the act. Having regard to the nature and mode of commission of an offence by a person and the mitigating factors, if any, the court has to take a decision as to whether the charge established falls short of the maximum gravity indicated in the statute, and if so, to what extent.

² (2014) 3 SCC 485

The long delay before the courts in taking a final decision with regard to the guilt or otherwise of the accused is one of the mitigating factors for the superior courts to take into consideration while taking a decision on the quantum of sentence.

The Appellant is now aged 76. We are informed that he is otherwise not keeping in good health, having had also cardio vascular problems. The offence is of the year 1984. It is almost three decades now. The accused has already undergone physical incarceration for three months and mental incarceration for about thirty years. Whether at this age and stage, it would not be economically wasteful, and a liability to the State to keep the Appellant in prison, is the question we have to address. Having given thoughtful consideration to all the aspects of the matter, we are of the view that the facts mentioned above would certainly be special reasons for reducing the substantive sentence but enhancing the fine, while maintaining the conviction.”

10. While determining the quantum of sentence, the Court is expected to strike balance between too harsh and too lenient view. Balancing has to be done between the rights of the accused and the needs of society at large. It would also be a daunting challenge to preserve the trust of citizens when using the authority of the Courts to convict an accused. In the instant case, the incident pertains to the year 2004, i.e., more than 18 years ago. The petitioner/accused has already undergone physical incarceration for about 60 days and mental trauma for about 18 years. Keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof *qua* the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony which he undergoes on account of

protracted trial. Under these circumstances, directing the petitioner / accused to serve the remaining period of sentence imposed upon him would be unfair. Article 21 of the Constitution would bring within its sweep, not only expeditious trial but disposal of appeals and revisions. Having given thoughtful consideration to all the aspects of the matter, this Court is of the considered opinion that the facts mentioned above would certainly be special reasons for reducing the substantive sentence, while maintaining the conviction. Considering the totality of the circumstances, this Court deems it appropriate that if the sentence of imprisonment is modified to the period already undergone by the petitioner/accused, the same would sub-serve the ends of justice.

11. Accordingly, while maintaining the conviction recorded against the petitioner / accused, the sentence of imprisonment imposed against him by the trial Court and confirmed by the lower appellate Court, is reduced to the period of imprisonment already undergone by him. The fine amount of Rs.200/- imposed is maintained, along with default sentence.

12. With the above reduction / modification of sentence of imprisonment, this Criminal Revision Case is dismissed, being devoid of merit.

Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUVVADI SRIDEVI, J

21st October, 2022

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