

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No. 321 OF 2009

J U D G M E N T:

The appellant/Accused is convicted for the offence under Section 307 of Indian Penal Code and sentenced him to undergo seven years Rigorous Imprisonment and also to pay a fine of Rs.1,000/-, vide judgment in Sessions Case No.49 of 2008 dated 26.02.2009 passed by the learned IV Additional Metropolitan Sessions Judge, Hyderabad. Aggrieved by the same, the present appeal is filed.

2. The case of the prosecution is that on 25.09.2007 after 08.00 PM PW1 while proceeding to his house found that this appellant was making a nuisance holding a knife. PW1 asked the appellant not to create nuisance and at that instance the appellant became wild and attacked PW1. PW1 received injuries on his head and hand which are two grievous injuries and one simple injury. Aggrieved by this PW1 filed a complaint.

3. Basing on the complaint lodged by PW1, the police registered a case for the offence under Section 307 of Indian Penal Code and after completion of investigation, police filed charge sheet. The charge was also framed under aforesaid offence against the appellant/accused.

4. On completion of trial and the evidence produced by the prosecution, the learned Sessions Judge examined PWs 1 to 11 and marked Exs.P1 to P5 and after considering both oral and documentary evidence, the learned Sessions Judge convicted the appellant/Accused as stated supra.

5. Heard learned counsel for the appellant and learned Assistant Public Prosecutor for the respondent-state. Perused the record.

6. As seen from the record, the appellant attacked the PW1. The said attack was also witnessed by PWs 2 and 3. PW2 stated that there was an altercation between PW1 and the appellant, as such the appellant stabbed PW1, thereafter, PW1 was taken to the hospital. PW3 also corroborated the testimony of PWs 1 and 2.

7. The only defence that was taken by the appellant during the course of trial is that the appellant has nothing to do with the alleged incident and since the appellant was stranger to PW1, the identification cannot be believed.

8. On perusal of the record, there was an altercation between the PW1 and the appellant, during the said altercation the appellant injured PW1 with a knife on his head and hand. However, since the

attack by the appellant was pursuant to a quarrel in between PW1 and the appellant, it cannot be said that the injuries caused on the head and hand were with an intention to commit the murder of PW1.

9. In the said circumstances, the conviction for the offence under Section 307 of IPC is *set aside*. However, the appellant/accused is convicted for the offence under Section 324 of IPC for causing two grievous injuries and one simple injury on PW1. Accordingly, the appellant/accused is sentenced to undergo six months imprisonment. Since the appellant is on bail, the concerned Court shall take steps to secure the presence of the appellant and send him to prison to serve out the sentence.

10. Accordingly, the Criminal Appeal is partly allowed.

Miscellaneous applications, if any pending in this criminal appeal, shall stand closed.

K.SURENDER,J

Date: 13.09.2022
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