

APHC010585752009



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3560]

THURSDAY, THE SEVENTH DAY OF MAY
TWO THOUSAND AND TWENTY SIX

**PRESENT
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA**

CRIMINAL REVISION CASE NO: 787/2009

Between:

1.MYLA VENKATESWARLU, S/O. PULLAIAH R/O. MUNAGAPADU
VILLAGE, PHIRANGIPURAM MANDAL, GUNTUR DISTRICT.

...PETITIONER

AND

1.THE STATE REP BY THE SHO PHIRANGIPURAM P S, Guntur District,
rep. by the Public Prosecutor, High Court of A.P. Hyderabad.

...RESPONDENT

Revision filed under Section 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to submit this memorandum of Criminal Revision Petition aggrieved by the judgment in S.C.No.425 of 2008, dated 9.2.2009 on the file of the court of the Principal Assistant Sessions Judge, Narasaraopet, and confirmed in Crl.A.No. 46 of 2009 dated 4.5.2009 on the file of the Judge, Family Court-cum-Addl. District & Sessions Judge, Guntur

IA NO: 1 OF 2009(CRLRCMP 1080 OF 2009)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the conviction and sentence handed over to the petitioner in S.C.No. 425 of 2008, dated 9.2.2009 on the file of the court of the Principal Assistant Sessions Judge, Narasaraopet, and confirmed in Crl.A.No.

46 of 2009 dated 4.5.2009 on the file of the Judge, Family Court-cum- Addl. District & Sessions Judge, Guntur and enlarge the petitioner on bail pending disposal of the revision

Counsel for the Petitioner:

1.Y NARAPA REDDY

Counsel for the Respondent:

1.PUBLIC PROSECUTOR

The Court made the following Order:

The instant criminal revision case is filed against the concurrent finding of learned Court below wherein and whereunder they found the petitioner to be guilty for an offence punishable under Section 307 IPC.

2. The brief fact of the prosecution case is that on 20.12.2007 in the morning when *de facto* complainant is going towards Nudurupadu side from his village Munagapadu for selling beaten paddy and puffed rice keeping them on a basket behind his cycle. Suddenly accused who was driving a motorcycle, and dashed *de facto* complainant's cycle from behind, as a result, *de facto* complainant fell down then and there, accused took out a sickle from back of his motorcycle and hacked *de facto* complainant on his head, left hand, neck and nose indiscriminately, thereby *de facto* complainant sustained bleeding injuries. It is alleged that accused had a grudge that *de facto* complainant had got illegal intimacy with wife of the accused. At the time one G.Kondala Rao along with G. Prakasa Rao came to the spot, snatched the sickle from the hands of accused and threw away, thereafter separated the accused. They called ambulance by phone and admitted injured in Government Area Hospital.

3. Charge was framed against petitioner under Section 307 IPC, during course of trial, prosecution has examined 14 witnesses and placed 12 documents marked as separate exhibits, material objects, M.Os.1 to 18, were also marked. Contradictions appeared in the evidences of prosecution witnesses were marked by the defence. After hearing the prosecution witnesses, learned trial Court has convicted petitioner for an offence punishable under Section 307 IPC and sentenced to go rigorous imprisonment for five years and directed to pay fine

Rs.1,000/-. Order of Conviction was challenged in appeal, learned appellate Court has confirmed the order by dismissing the appeal, hence this revision.

4. **Submissions of the learned counsel for the petitioner:**

The learned counsel for the petitioner submits that the order of conviction and sentence passed by the learned trial Court is only on the basis of conjectures and surmises. There are no specific evidence on record to substantiate the offence punishable under Section 307 IPC, amongst all 14 witnesses, PW1, PW3 and PW4 only deposed by supporting prosecution case. More so they are full of inconsistencies and contradictions. All the material witnesses including eyewitnesses and mediators were turned hostile. Conviction on the basis of injured and Investigating Officer is not maintainable. Though alleged iron sickle was seized and marked as M.O.3, the said iron sickle was not produced before the FSL examination. The doctor has opined that the injury sustained by PW.1 is simple in nature.

5. Learned counsel for the petitioner further submits that the prosecution has failed to appreciate the motive of accused to kill PW.1. There are no evidence to show that accused ever tried to kill injured, thereby, the ingredients under Section 307 was not proved. Moreover, eye witnesses, who alleged to have been separated accused at the time of assault, were not supported the prosecution case, wound certificate also reflects injured sustained simple injury, does not support prosecution, seizure of sickle is also defective, hence the conviction is not maintainable.

6. **Submissions of the learned Assistant Public Prosecutor:**

Learned Assistant Public Prosecutor submits that PW.1 is the injured, who deposed before the learned Court below and stated the nature of assault done by the petitioner. Recovery of sickle was done by PW.8 and PW.9. He submits that though the sickle was not forwarded to forensic expert, for which the defence case cannot be failed. He further submits that learned trial Court has categorically scanned the evidences on record and recorded the order of conviction. There are no irregularity or impropriety. The order of conviction is further verified by the learned appellate Court. He has also confirmed the order of conviction. The evidence of PW.1 as well as the wound certificate and the evidence of PW14, itself supports the prosecution case.

7. **Observation of this Court:**

In this particular case, charge was framed under Section 307 IPC. Facts of assault shows that the petitioner suddenly dashed PW.1's cycle from behind, when PW.1 fell down, petitioner allegedly took out an iron sickle and assaulted in his head. It is the prosecution case that petitioner intended to kill PW.1 as PW.1 has developed illicit relationship with his wife. Except such stray statements in the report, there are no evidence before learned trial Court to substantiate the intention of petitioner to kill PW.1. PW.3 is the brother of PW.1, who came after hearing the incident, also stated regarding the illicit relationship between PW.1 and wife of petitioner but such evidence has got no support during cross-examination as well as other evidences. It further appears that the prosecution case has depicted the name of some eye-witnesses, but such eye-witnesses never came forward to support the prosecution case. Furthermore, it appears that

the date of offence was 20.12.2007 and seizure of sickle was made by the Investigating Agency on 24.1.2007. Moreover the seizure of sickle was not properly proved by adducing evidences as mediators turned hostile. Though injuries of victim appeared to be simple in nature, but they are in the vital part of the body and all are incise injury that is caused by sharp-cutting weapon.

8. Section 307 IPC defined attempt to murder. To prove the guilt of petitioner, the prosecution has to prove that petitioner had intention or knowledge to cause death of PW.1 or cause such bodily injury which shall otherwise cause death. Intention to kill is mental act. The prosecution must have to prove some other incident by which the petitioner has developed grudge against PW1 to kill. Merely causing assault by sharp-cutting weapon is not itself proved the ingredients punishable under Section 307 IPC. Mental ailment described in Section 307 IPC must be proved by the prosecution or prosecution must place such circumstances in which it would be crystal clear that accused had intention to commit murder of PW.1.

9. In this particular case, though it has been proved that petitioner has caused hurt by using sharp-cutting weapon such as particular sickle but the mental ailment regarding causing murder of PW1 is missing here. Thus, in my view, the prosecution has miserably failed to bring the charge against the petitioner under Section 307 IPC. The learned trial Court as well as the learned appellate court has committed error in not following the ingredients of offence punishable under Section 307 IPC, thereby there are some errors in recording conviction under Section 307 Act. However, after thorough perusal of the entire facts and circumstances of this case, it appears that the petitioner has voluntarily

caused hurt to PW.1 by dangerous weapon means for instrument by stabbing and cutting, thereby, the petitioner is guilty for offence punishable under Section 324 IPC. Accordingly the punishment of petitioner is hereby converted to Section 324 IPC, hence, he is punished for rigorous imprisonment for a period of two years, period of detention of the petitioner during investigation, enquiry, remand and trial shall be set off according to the provisions of Section 324 of Cr.P.C.

10. The order of suspension of sentence passed by this Court during pendency of the instant Criminal Revision Case is hereby revoked. The Petitioner is directed to appear before the learned Trial Court within eight (08) weeks from the date of passing of this order to serve out the remaining portion of sentence, failing which, learned Trial Court shall issue Non-Bailable Warrant against the present petitioner to comply the order.

11. On the above observation, the Criminal Revision Case is disposed of. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand disposed of.

JUSTICE SUBHENDU SAMANTA

Date : 07.05.2026

SPP

THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL PETITION No.787 of 2009

Dated 07.05.2026

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