

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

-

Criminal Revision Case No.1910 of 2007

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure ('CrPC') by the petitioners/A1 and A2 is directed against the judgment dated 11.12.2007 in Criminal Appeal No.218 of 2007 passed by the Principal Sessions Judge, Eluru of West Godavari District, whereby, the learned Sessions Judge, while dismissing the appeal of the accused had confirmed in all respects the judgment dated 03.09.2007 in S.C.No.127 of 2006 passed by the learned Additional Assistant Sessions Judge, Eluru.

2. At the out set, it is to be noted that the trial Court had found A1 and A2 guilty of the offence punishable under Sections 341 of the IPC and convicted them of the said offence and sentenced them to pay a fine of Rs.200/-each and to undergo simple imprisonment for five days in default of payment of the fine amounts. The trial Court also found A1 guilty of the offence punishable under Section 307 of the IPC and convicted him of the said offence and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.200/-and undergo simple imprisonment for one month in default of payment of the said fine amount. The trial Court had found A2 guilty of the offence punishable under Section 307 read with 109 of the IPC and had convicted him of the said offence and sentenced him to undergo rigorous imprisonment for three years and pay a fine of Rs.200/- and undergo simple imprisonment for one month in default of payment of the said fine amount.

3. The case of the prosecution including the gravamen of the charge, in brief, is this: "K.Chandra Shekar (PW1) who is the victim was incharge of Indian Gas Godown. Both A1 and A2 used to do loading and unloading work under him. PW1 used to converse with N.Krishna Veni (PW5) who is the wife of A2. Such a conduct of PW1 led to a suspicion in the minds of the A1 and

A2 about the illicit intimacy between PW1 and PW5. Their warnings to PW1 are of no avail. Therefore, A1 and A2 hatched a plan to kill PW1. On the date of the incident, PW1 had closed the go-down and was about to proceed on his TVS Moped. At that time, A1 had also boarded the said vehicle as a pillion rider. On the way, when both PW1 and A1 had travelled up to Mamayyagarithota near Tangellamudi, A1 had requested PW1 to stop the vehicle. A2 was already present at that place by that time. PW1 had stopped the moped. A2 had twisted back the hands of PW1 and A1 had hit him on his head with an iron rod and had caused bleeding injuries. When PW1 placed both his hands to ward off the injuries, he was beaten on his hands. He had sustained fracture injuries on his hands and had fallen down unconscious. A person who was present there passed on the information to Rakshak vehicle and on that PW1 was picked up and was taken to Government Hospital. The statement of PW9, the Head Constable of Rakshak Wing, was recorded by the outpost police at Eluru Hospital and the said statement was forwarded to the police station. Based on that report, the subject crime was registered and an FIR under exhibit P10 was issued. During the course of investigation, the witnesses were examined and A1 and A2 were arrested and in pursuance of a confession made by A1, the weapon of offence, the iron rod (MO1), was seized. At the time of observation, a pair of chappals, a towel and an empty packet of condoms were recovered from the scene of offence. Exhibit P7 is the scene of offence observation report. Exhibit P11 is the rough sketch of the scene of offence. As per the report and opinion of PW4, Dr.A.V.R.Mohan, PW1 had suffered grievous and simple injuries. On completion of investigation, a charge sheet was laid. Cognizance was taken for the offences punishable under Sections 307 and 341 of the IPC and on committal of the case to the Court of Sessions, the case was taken on file and was tried by the trial Court.”

4. I have heard the submissions of the learned counsel for the petitioners/A1 and A2 and the learned Additional Public Prosecutor. I have perused the material record.

5. Now, the points for determination are:

1. **Whether the prosecution could bring home the guilt of the accused, beyond reasonable doubt, for the offences with which they were charged?**
2. **Whether the accused had made out valid and sufficient grounds for their acquittal? And, if so, whether the judgment of the court below is liable to be set aside?**

6. **POINTS:**

6. (a) At the time of hearing, the learned counsel for A1 and A2, while reiterating the grounds of revision, had further contended as follows: “The learned Judges of the courts below had failed to see that the prosecution had failed to prove the charges respectively leveled against A1 and A2 and that the evidence adduced is not sufficient to hold that the ingredients constituting the said offences were proved to record convictions against A1 and A2 for the offences with which they are respectively charged. The Courts below had erred in placing reliance on the highly interested and discrepant testimonies of PWs 1 and 2 and thereby, erred in holding that the medical evidence corroborated the version of PW1. The courts below had failed to take note of the fact that PW3 who is examined as an independent witness to the occurrence, did not support the case of the prosecution. The courts below had also failed to see that PWs 5 and 9 who are independent witnesses also did not support the case of the prosecution and that the prosecution case is based only on the interested testimonies of PWs 1 and 2 and that no independent witness had supported the case of the prosecution. According to the version of the prosecution, the parents of A1 were living in the gas go-down as watch-keepers; and the said watch keepers were neither listed nor examined as witnesses. The courts below ought to have seen that PW1 has given different versions in his cross-examination. He had initially deposed that A2 caught hold of his hands from the back side and then A1 had beaten him with an iron rod on his head; but, again, he had deposed that some unknown persons beat him on his head and caused fracture to his hand; at that stage, the Public Prosecutor sought permission to cross

examine PW1; thus, PW1 gave self-contradictory evidence. The trial court ought to have seen that PW8, the scribe of exhibit P7, seizure report, where under, the alleged weapon of offence was allegedly seized, had categorically deposed that identification slip was affixed to the iron rod, the MO1, but, no such slip is found attached to MO1. Therefore, the courts below ought to have held that the recovery of weapon of offence was not proved. The courts below ought to have seen that no confession was recorded from the 2nd petitioner/A2 and nothing was seized from him. There is absolutely no material on record to record a conviction against the accused for the offences with which they are charged.”

6. (b) On the other hand, the learned Public Prosecutor would submit that A1 and A2 have committed a ghastly offence and that in the incident of attack, PW1, the victim having received injuries fell unconscious and that his evidence which is well-corroborated by medical evidence is sufficient in a case of this nature to hold that the prosecution case is proved beyond reasonable doubt. He would further submit that PW2 had also supported the case of the prosecution and that the witnesses are not interested witnesses as contended by the defence and that the courts below having found that the evidence adduced by the prosecution is satisfactory and credible had recorded concurrent findings of fact and that there is no material irregularity or illegality either in appreciation of facts or evidence and that none of the grounds urged deserve consideration and that the grounds urged in the revision are devoid of merit and that the revision case is liable to be dismissed by confirming the judgments of the courts below.

6. (c) Now, it is necessary to advert to the evidence of the prosecution to find out as to whether the prosecution had adduced necessary and required standard of evidence to come to a safe conclusion that it proved its case as required under law. PW9, the Rakshak Head Constable, on whose report, the crime was registered, had deposed that on 06.09.2004 at about 7 PM, he had received a message from a crime stopper through VHF set about an injured male lying on road at Mamayyagarithota and on that, he

went on his vehicle to the spot and found that a person was lying unconscious with injuries at that place and had shifted the injured person to Government Hospital and that the injured was admitted in the hospital and that he found a book with telephone numbers in the pocket of the dress of the injured and that by making use of the said book, he had traced out the particulars of the injured person and informed the members of the family of the injured and fetched them to the hospital. He had also further testified that his statement was recorded by the outpost police of the hospital and that his said statement is exhibit P8. PW10 is the Police Constable, who had recorded the statement of PW9. PW10 testified that as the injured was unconscious at that time, he could not record the statement of the injured person. PW2 is the wife of the victim (PW1). According to her version, on receiving information from Rakshak police that her husband was admitted in the hospital with injuries, she had reached the hospital and found her husband in an unconscious state with injuries. PW4, the Government doctor had also testified that by the time PW1 was brought to the hospital with injuries, he was unconscious. The above evidence on record would sufficiently prove that PW1 having sustained injuries lost his consciousness and was lying on the road near Mamaiahgarithota and from there, he was brought to the hospital and was admitted in the hospital and that even by that time, he was unconscious. PW7 is the private photographer and according to his evidence, on 07.9.2004 at the request of the police, he had rushed to the scene of offence which is a place on the road near Mamayyagarithota. He had deposed that at that place, he had found blood stains and chappals and that he had taken photographs, exhibits P4 and P5, and gave them to the police. The investigating Officer prepared exhibit P11, the rough sketch of the scene of offence. Therefore, there is no dispute in regard to the place of scene of offence, which is a place on the road at Mamayyagarithota. The evidence of the doctor (PW4) would show that as the head injury was of serious nature and required better treatment from a neuro surgeon and as there is no Neuro Surgeon available at the Government Hospital, Eluru, PW1 was referred to the Government Hospital, Vijayawada. On PW1 regaining consciousness, his statement was recorded by PW11, the S.I of Police at that

hospital.

6. (d) The evidence of PW1, the victim, is to the following effect: 'He formerly worked in Indian Gas office and was in charge of its go-down, which is situated on the side of the Jangareddygudem road in Tangellamudi. He knows both the accused. He also knows Nelli Krishna Veni (PW5) as she had also worked with him in the go-down. A1 and A2 used to do the work of loading and unloading of gas cylinders at the go-down. PW2 is his wife. She is a house wife. PW6-G.Saibaba is the owner of the gas go-down. One B.Satyanarayana (LW6) is a rickshaw puller working in the gas go-down. The father of A1, by name, Biraginaidu is the watchman of the go-down. On 06.09.2004 at about 06.30 PM, he (PW1) had closed the go-down and was about to proceed to the gas office on his TVS 50 Moped to submit the accounts. A1 had asked for a lift and traveled along with him (PW1) on his vehicle as a pillion rider. On the way, when the vehicle reached a point, where PW1 had to take a right turn to reach the gas office, A1 had requested him to take a turn towards left, i.e., towards the road, which leads to market yard and requested him to drop him at that place. PW1, having obliged, took a turn towards the left side. After the vehicle had traveled a little distance, A1 had requested PW1 to stop the vehicle. A1 had got down. A2, who is the brother-in-law of A1 was already present there. He came and twisted the arms and turned the hands of PW1 on his back. Then, A1 had hit PW1 twice with an iron rod on his head and caused bleeding injuries. Since his hands were twisted forcibly, his right hand fore arm was broken. After he had fallen, he was beaten severely. He had lost his consciousness. The incident had occurred within thirty minutes from the time he had started from the go-down. He does not know whether anybody had witnessed the incident or not. He had regained consciousness four days later; and by that time, he was in the Government Hospital, Vijayawada. While he was in the hospital, police had recorded his statement. He was treated in the hospital for fifteen days. The head injury was treated by suturing. After his discharge, he took treatment from PW5. Subsequently, he had taken treatment at KEYVEE Hospital. In that hospital, an operation was performed and the fracture of bone of right fore

arm was corrected by fixing implants.’ He had identified in his evidence the iron rod as the one with which he was beaten by A1 on his head.

6. (e) On the aspect of motive, the evidence of PW1 is on the following lines: ‘PW5 is the wife of A2 and the sister of A1. A2 is a drunkard and he is not looking after his family properly. PW5 used to borrow monies from him and he used to lend money in sums of Rs.50/- and she used to repay the said sums some time latter. He used to help her by extending a word of mouth. This, he believed was the reason for the misunderstanding by the accused and for their thinking that PW1 had got illicit connection with PW5. Therefore, they might have caused injuries to him.’ In the cross-examination of PW1, the following points were elicited: ‘The father and mother of A1 live in the go-down campus. The houses of A1 and A2 are at the tank bund in Tangellamudi. A1 and A2 are not permanent workers of the go-down. Their services were used to be engaged as and when there used to be work of loading and unloading. The road at which the crime was committed is a lonely place and there are no habitations in that area. He does not know whether on that road, people indulge in drinking alcohol and spending time with women. To reach the house of A1, the road leading towards market yard is not the road concerned. When the accused beat PW1, he had cried as “*chatchipoyanu Babo!*” and then the accused had escaped. Within five minutes after their attack, he (PW1) had lost his consciousness. At that time, he was having possession of his mobile phone. He did not try to contact anyone on his phone. (The witness added that as he was in pain, he did not make a phone call). Till the time of the incident, he was not suspecting that the accused had a grouse against him. They were moving with him normally. Iron rod like MO1 will be available in any iron scrap shop. After regaining consciousness, he had told about the incident at the first instance to the police and not to any one else. Before this incident, PW1 did not tell anyone against the accused about their belief of his contacts with PW5-Krishnaveni. There are no other disputes between him and the accused. He had stated before the police that A1 used to come to his parents’ house after drinking and he used to admonish him. It is true that if

one intentionally beats another on the head with MO1, it creates a very big injury leading to multiple fractures. He had suspected that A1 was having a grouse against him as he (PW1) used to admonish him for drinking.' When it was suggested to him that on that day, he went for a woman to the place of incident and that some persons concerning her beat him and caused injuries and that thereafter, he had suspected that A1 is having a grouse against him as he used to admonish A1 for his drinking and that with that suspicion, he spoke against the accused, PW1 had denied the said suggestions as 'not true'. When it was further suggested to him that A1 was not there at the go-down and that he did not ask for a lift and did not accompany PW1 on the Moped and that the police at Vijayawada Hospital did not record his statement and that he is speaking falsehood, he had denied the said suggestions. He had denied the further suggestion that he went to the place of incident for a woman and that he was beaten by the persons concerned to that woman and that he is deposing falsely that A1 has beaten him as there would be family disputes if PW2 and his family come to know of the true incident. After this witness was cross-examined on 23.07.2007, he was again recalled for cross-examination on 23.08.2007, i.e., about one month thereafter. In his further cross-examination done for the accused, PW1 had stated as follows: 'On that day, somebody dashed my TVS 50 Moped from behind and it fell into the road side tank. A1 was not there at that time. I do not know who caused hurt to me as I fell down and some one from behind caused injuries to me and I lost consciousness. I did not reveal these facts to the police as they did not ask me. Previously, I deposed against the accused as advised by the police. Police did not collect from me any medical reports concerning my injuries. My gas company owner gave back my TVS 50 Moped. On that day, both the accused did not cause injuries to me.' Thus, after his recall, he had completely turned hostile to the case of the prosecution. The learned Additional Public Prosecutor in the re-examination/cross-examination while putting questions in the nature of cross-examination had suggested to PW1 that after he had earlier deposed in the matter, he had received money from the accused and that in collusion with the accused, he is deposing falsely. PW1 had denied the said suggestion.

PW2, the wife of PW1 had testified as under: 'She knows A1 and A2. Rakshak police, Eluru informed her that her husband was injured and was admitted in the hospital. She went to the Government Hospital, Eluru and found PW1 unconscious with injuries. On the advice of the doctors; her husband was shifted to Government Hospital, Vijayawada. She does not know any other facts. In her cross-examination, it is stated that at 7 PM in the night, she was told about the fact that PW1 was admitted in the hospital and that on the next morning, PW1 was shifted to Vijayawada. PW4 is the Doctor, who had examined PW1 in the Government Hospital, on his admission into the hospital in an unconscious state. He had stated as follows: 'He had found six injuries and out of them, injuries 1 to 5 are simple in nature and injury no.6 is grievous. As already noted, the doctor had found that the head injury required better treatment and hence, he had referred PW1 to Government Hospital, Vijayawada as there was no Neuro surgeon at Eluru. PW4 in his evidence had also stated that the injuries sustained by PW1 were possible when one is beaten by a weapon like MO1. PW11 is the Sub Inspector of Police. He had deposed that in pursuance of the information received by him, he had visited the scene of offence and had prepared rough sketch of the scene of offence and the observation report and that he had recorded the statements of PWs 3, 6 and LW6 and that on 17.09.2004 he had apprehended A1 near railway station and recorded his confession and that A1 had told him that he would show the iron rod which he had thrown away and that A1 had lead the police to a place near the way bridge and had picked up the iron rod and showed it to the police and that it was seized and that exhibit P7, seizure report, was prepared and that an identification slip was affixed to MO1.

6. (f) Thus, a plain reading of the material evidence on record would show that the prosecution had adduced sufficient evidence to bring home the guilt of the accused for the charges which were leveled against them respectively. PW1 had categorically stated that the accused had suspected that he had illicit intimacy with the wife of A2 and that therefore, he believed that the injuries were inflicted upon him in revenge. PW1, the

Godown incharge had also deposed that there was a liaison between PW1 and the wife of A2 and that lead to this incident. PW6 had also stated that after this incident, the father of A1 had resigned the job and left the place. Therefore, it appears that there is a motive for A1 and A2 to attack and cause injuries to PW1. No doubt, the learned counsel for the accused had vehemently contended that PW1 after his recall, and in his further cross-examination, did not support the case of the prosecution and that therefore, the accused are entitled to a reasonable benefit of doubt. The very same witness PW1 had categorically deposed that A2 had twisted his hands on his back and A1 had hit him with an iron rod. He had maintained his stand in the cross-examination earlier done. However, after his recall after a period of about one month, he had resiled from his earlier statement and had stated that his vehicle was involved in an accident and that in the said accident, he might have sustained injuries and that A1 was not present there at that time and that A1 and A2 did not cause injuries to him. However, such improved version, which was stated by PW1 after his recall, cannot be countenanced. In the decision in **POOHI SATYANARAYAN @ SATHIYYA VS. STATE OF A.P.**^[1], this Court held that in the delayed cross-examination of the witnesses, naturally witnesses turn hostile and hence, the delayed cross-examination does not affect the credibility of the earlier version of such witnesses, if it is found consistent with medical evidence and the version of other independent witnesses.

6. (g) Having thus examined the evidence on record, this Court is of the view that there is no merit in any one of the contentions of the defence. The contention of the accused that on that day PW1 went for a woman to the place of incident and that some persons who were concerned about her had beat him and caused injuries and that thereafter, he had suspected that A1 is having a grouse against him as he used to admonish A1 for his drinking and that with that suspicion, he spoke against the accused having implicated the accused in the instant crime, cannot be countenanced in the light of the evidence on record. Therefore, on a careful examination of the evidence on record, this Court finds no illegality or irregularity or impropriety in the

judgments of the courts below calling for interference.

6. (h) The learned counsel for the accused had alternately contended that in this case, the Radiologist was not examined and that the

X ray report was not produced and marked and that therefore, the sentence of three years rigorous imprisonment which is onerous may be reduced to one already undergone. He would further submit that PW1 had turned hostile to the case of the prosecution after his recall and that the said facts would show that the matter is settled between the parties and that they are living amicably and without any reference to one another and that therefore, the sentence may be reduced. He had also pointed out that the accused are married persons and are having children, who are dependant upon them, and that, therefore, a lenient view can be taken. According to his further submissions, PW1 by his conduct is responsible for creation of a suspicion of illicit intimacy with the wife of A2 and that the circumstances in which A1 and A2 were placed may be taken into consideration while awarding appropriate punishment.

7. Having regard to the extenuating and mitigating circumstances and the explanatory statement offered on behalf of the accused, this court is of the well-considered view that the sentence of rigorous imprisonment of three years each imposed against A1 and A2 respectively for the offences punishable under Section 307 of the IPC and 307 read with 109 of the IPC respectively can be modified and reduced to one year rigorous imprisonment each while maintaining the fine amounts imposed for the said offences and other offences.

8. Accordingly, the Criminal Revision Case is dismissed. However, the substantive sentence of imprisonment of three years each imposed against the petitioners A1 and A2 alone is modified and reduced to one year rigorous imprisonment each, while maintaining the fine amounts imposed by the trial Court. It is submitted that the accused are at large being on bail. Therefore, the accused are directed to surrender before the trial Court within two weeks from the date of the receipt of a copy of this order. On failure of the

accused to do so, the trial Court shall take steps for their apprehension and send them to prison for serving the respective remaining periods of sentences. The accused are entitled to the benefit of set off.

Miscellaneous petitions, pending if any, in this revision shall stand closed.

M. SEETHARAMA MURTI, J

19th January 2015
RAR

[\[1\]](#) 1996 CRL.L.J 1738