

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

-

Criminal Revision Case No.76 of 2007

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure ('the CrPC', for brevity) is directed against the judgment dated 10.01.2007 of the learned V Additional Sessions Judge, [Judge, Fast Track Court], East Godavari at Rajahmundry in Criminal Appeal No.138 of 2006.

1. **(b)** By the judgment dated 08.06.2006 made in S.C.No.143 of 2001, the learned Assistant Sessions Judge, Peddapuram of East Godavari District found A1 guilty of the offence punishable under Section 307 of the IPC and sentenced him to undergo simple imprisonment for five years and pay a fine of Rs.2,000/- and undergo simple imprisonment for three months in default of payment of the said fine amount. The learned Assistant Sessions Judge further found A2 and A3 guilty of the offence punishable under Section 307 read with 34 of the IPC and sentenced them to undergo simple imprisonment for three years each and pay a fine of Rs.1,000/- each and undergo simple imprisonment for two months each in default of payment of the said fine amounts. The court below had dismissed before mentioned appeal preferred by the said accused by confirming the judgment of the trial court in all respects.

2. I have heard the submissions of the learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent-State. I have perused the material record.

3. The case of the prosecution including the gravamen of the charge, in brief, is this: 'A1 to A4 are brothers and are residents of Pulimeru village in Peddapuram Mandal. They are maintaining a Barber shop at Chandramampalli village center and are living by doing their caste profession. PW1-Jayababu and PW2-Veera Surya Prasad are brothers.

PW4-Y.Satyavathi is their mother. Nallamsetty Shesha Rao (LW4), G.Kanakayya (LW5), K.Appala Swamy (PW3), Pothula Malleswara Rao (PW7) are keepers of the neighbouring shops at the scene of offence. PW6-K.Venkateswara Rao is the Sarpanch of the said village. Gogulapati Veerabadra Rao (PW5) is the V.A.O of the said village. PWs 1 and 2 along with their father are also maintaining a Barber shop at Chandramampalli village centre and they are also living by doing their caste profession since a very long time. While so, prior to the commission of the offence in this case, A1 to A4 had purchased a Barber shop; and their said barber shop is located on the Northern side of the Barber shop of PWs 1 and 2. There is professional rivalry between PWs 1 and 2 on one hand and A1 to A4 on the other. The rivalry resulted in a serious dispute. Having come to know of the disputes, the Sarpanch of the village-PW6 admonished both the parties and advised them to desist from quarrelling with each other. While so, on 03.08.2000 at about 9 AM, PWs 1 and 2 beat A2 with sticks. Thereupon, a case in Crime No.122 of 2000 was registered against them for the offence punishable under Section 324 read with 34 of the IPC by the Station House Officer, Peddapuram Police Station. Therefore, the accused were having grudge against PW1 and his family members. A1 to A4 entertained a common intention to kill PWs 1 and 2; and they were waiting for an opportunity to take revenge. On 05.08.2000 at about 12.30 PM while PW1 was proceeding on foot towards the Barber shop and reached Chandramampalli village centre opposite to his shop, A1 to A4 had attacked him. A2 to A4 caught hold of PW1 firmly and encouraged A1 to kill PW1. Then, A1 hacked PW1 with a knife on the wrist of his right hand, head and back with a view to kill him. As a result, the right hand of PW1 was cut off up to wrist and got separated from the rest of the hand and fell on the ground. Nallamsetty Shesha Rao (LW4), G.Kanakayya (LW5), K.Appala Swamy (PW3), and Pothula Malleswara Rao (PW7) who had witnessed the incident had raised cries and rushed to the scene. Thereupon, A1 to A4 had escaped from there. Immediately, PW1 went to his house and informed his mother-PW4-Satyavathi about the incident. PW2 brought to their house, the cut off portion of the hand, i.e., hand portion severed up to wrist of PW1.

Immediately, PWs 2 and 4 took PW1 to the Government Hospital, Kakinada along with the severed portion of the hand. On receiving intimation from the hospital, PW13-a Head Constable present at the said Hospital had recorded exhibit P1, the statement of PW1, and sent the same to the Station House Officer, Peddapuram on the point of jurisdiction. Thereupon, the subject crime was registered and exhibit P11 FIR was issued. PW11, the sub-inspector of Police during the course of investigation had recorded the statements of the witnesses, prepared the rough sketch of the scene and got drafted an observation report and had arrested the accused. PW12-Dr. B.Ranga Rao, a Civil Assistant Surgeon had issued the wound certificate exhibit P13, after treating PW1. On 08.08.2000 at 11 AM, on the confession of A1, PW11 had recovered the knife-MO1 in the presence of mediators including PW9. After the completion of investigation a charge sheet was laid against all the accused.'

4. During the course of trial, PW1-the injured victim, PW2-his brother, PW4-his mother, PW3-a neighbouring shop keeper, PW5-the V.A.O of the village, PW6-the Sarpanch of the village and other witnesses, apart from the official witnesses, were examined. Exhibits P1 to P16 and MO1 were marked. No evidence (oral and documentary) was adduced on the side of the defence.

5. I have carefully perused the evidence on record. PW1 had categorically deposed about the incident in which he was injured. He being the victim, his evidence which is of significance is as follows: 'PW4-Satyavathi is his mother. One Krishna Murthy is his father. He is having four brothers and one sister. They are running a barber shop; and the same is situated at Chandramampalli village, i.e., at the road leading from Samalkota to Prathipadu. A wine shop and a Barber shop are situated by the side of his shop. The accused are also having a barber shop. They are related to him being sons of his maternal aunt. One Satyababu had established his shop about ten years ago. On the date of the incident at about 12 noon or 12.30 PM after taking tea PW1 was returning to his shop. When he had reached

the wine shop, all the accused came there. While A2 to A4 caught hold of him, A1 while uttering 'chavu Lanjakodaka' hacked with a knife on the wrist of his right hand. All the accused had beat him with a knife on the back side of his head. He had received injuries on the back side upper portion of the head towards right side; the said injuries were caused with a barber's knife. The wrist portion of his right hand was cut off and fell on the ground. LW4-Seshaiah, PW14-Kanakayya and PW7-Malleswara Rao were present there and had witnessed the incident. By covering his right hand, he ran away to his house. At that time, his mother and one Srinivasa Raja were present.

He had narrated about the incident to them. He had regained consciousness in the Hospital at Kakinada. He is an illiterate.' PW1's statement recorded by the police at the hospital is exhibited as exhibit P1.

Regarding the motive, his evidence is as follows: 'Number of people come to my shop. The accused are calling such persons to come to their shop by asking them not to go to my shop. When I had objected, they had abused me. The same was informed to the President of the village. He had chastised both the parties. The accused had refused to heed the words of the President. I stated to the accused not to make any quarrel and that I will put up another business within one year. The Sarpanch tried to pacify the disputes, but the accused did not listen to him.' In his cross-examination, the following points were elicited: 'There are no disputes between me and the accused. There is a case pending against me in the Magistrate Court at Peddapuram. It is an earlier case. The day of the offence is Saturday. In our village Saturday is a shandy day. The place of shandy is at about 10 feet distance from my shop. It is true that by the side of our shop busses, lorries and carts will be parked. It is true that our shop is in a busy locality. My hand was cut off at about 12 noon. It is a busy time. I do not know the time taken for the altercation between me and the accused. The 1st accused beat me on my head. I could not know what was happening there. The accused came and first beat me on my head. I became unconscious. A1 beat me on my back. I was conscious when I was beaten on my back. Four to five people gathered at my shop when I was being beaten by the accused. Nearby shop owners came to me, immediately after I had received injuries. It will take

about 20 minutes to reach my home from my shop. I went to my house within five minutes. I was at my house for about half-an-hour to one hour. I went to the hospital at about 4 or 5 PM. I went to Government General Hospital, Kakinada. It is true that from my village Peddapuram is nearer than Kakinada. There is a Government Hospital at Peddapuram. Kakinada doctor did not question me as to how I had sustained the injuries. The injury was bleeding and my cloths were stained with blood. I can give the names of the accused who are related to me. I do not remember as to whether I had stated to the police that A1 had beaten me on my head. MO1 will not be available in the Barber shop.' When it was suggested to him that due to rivalry between him and the accused, he had filed the false case, he had denied the said suggestion. He had denied the further suggestion that he had cut off his hand while cutting coconut and that later the case was foisted. PWs.2 and 4, who are the brother and mother of PW1 had stated about their taking PW1 to the Hospital at Kakinada and the recording of the statement of PW1 under exhibit P1 by the police. PW13 is the Police Head Constable.

According to his version, on receipt of exhibit P10, intimation, from the causality on 05.08.2000, he had visited the hospital and had recorded exhibit P1-statement of PW1, who had sustained bleeding injuries, and had forwarded the said statement as well as exhibit P10 to the Station House Officer, Peddapuram on the point of jurisdiction. PW10-Balaraju, the Assistant Sub-inspector of Police had also stated that on receipt of exhibits P1 and P10, he had registered the subject crime and had issued exhibit P11-FIR. PW11 was the then Sub Inspector of Police. He had deposed that by the time the case was registered, he was on other duty and that subsequently, he had taken up the investigation. Exhibit P1, on a perusal, would show that PW1 had stated about the details of the incident in that statement, which was immediately given after he had reached the Government Hospital, Kakinada. In his evidence, he had identified MO1, the weapon of offence. PW2 had deposed that he went to the shop of PW1-his brother to send him for lunch and that he had come to know of the incident, which has already happened and had noticed the cut off portion of the hand of PW1 lying on the margin of the road in front of the shop and took the same

to his house. PW3-K.Appala Swamy, is the resident of Tatiparthi and he had deposed that he is running a barber shop near the shop of PW1. PW7 is having a Fancy and General Stores at that place. PW14-Kanakayya is running a fast food centre near the scene of offence. The said witness did not support the case of the prosecution.

6. Before coming to a safe conclusion as to whether the evidence brought on record is credible and is sufficient to base a conviction, it is necessary to advert to and examine the contentions advanced on behalf of the accused. It was sought to be argued that PW1 has stated in his cross-examination that after A1 beat him on the back, he became unconscious; but, he had earlier deposed that he fell unconscious after he went to the house on sustaining injuries in the incident; therefore, his evidence is highly suspicious. As rightly pointed out by the learned Public Prosecutor, PW1 was an illiterate person living by his caste profession. His cross-examination was done long after his examination-in-chief. He was examined in chief on 04.01.2002 and his cross-examination was done on 30.10.2002, i.e., nearly ten months after his examination-in-chief. Therefore, much weight cannot be given to such discrepancies, which are minor in nature. Similarly, exhibit D1, which has been marked during the course of examination of PW2 is also not going to advance the case of the defence as it appears from exhibit D1 that PW2 had stated to the police that after PW1 had raised cries and the neighbouring shop keepers gathered, the accused had fled away from the scene and that he was informed that his brother PW1 went to their house with bleeding injuries. Admittedly, PW2 is not an eye witness to the incident. The further contention of the defence that the evidence of PW1 is interested and it cannot be relied upon cannot also be countenanced. The explanation sought to be advanced in the defence to the effect that the injury was sustained by PW1 while cutting a coconut also cannot be countenanced in view of the medical evidence on record. **PW12**, the Medical Officer, had testified that on 05.08.2000, he had examined PW1 and had issued exhibit P13-wound certificate. According to his evidence, PW1 had sustained the following injuries:

- i) Traumatic amputation of the right hand at the level of wrist joint;
- ii) An incised wound over the occipital, near right parietal eminence; about 7 cm X 2 cm bone deep from above downwards;
- iii) An incised wound in between the two parietal eminences about 3 X 1 cms skin deep from above downwards;
- iv) An incised wound below the right scapula near to the spine at the level of 5th, 6th and 7th ribs about 6 X 3 cms bone deep with fresh bleeding.”

The doctor had opined that the injuries 1 and 4 are grievous in nature and the age of the injuries is less than six hours prior to the examination of PW1 by him and that the said injuries could have been caused by a sharp edged object. When it was suggested to PW12 that the injuries 2 to 4 are possible by a fall on the rough surface while going on a cycle, he had denied the said suggestion and had asserted that the injuries are possible only by a sharp edged object. Thus, the medical evidence fully corroborates the version of PW1. PW1 also spoke about the motive for the accused to commit the offence against him. In a case of this nature, the evidence of PW1, who had sustained a grievous and serious injury, is of significance and is trustworthy and is sufficient to base a conviction, in the well-considered view of this court. PW11, the Investigating Officer had deposed that on receipt of the information, he along with his staff and PW9-formerly the V.A.O of Chadalada village proceeded to Chandramampalli and the shop of Jayababu and found the accused there and arrested them and that at that time, A1 had confessed about the offence and that at the instance of A1, MO1-knife was seized in the presence of the mediators under the cover of exhibits P8-mediator's report and P9. PW9 had testified about the said facts including the fact that he had drafted exhibit P9 at the house of the accused when knife was seized by the police in his presence pursuant to the confession of A1. PW9 had thus fully corroborated the version of PW11-the Investigating Officer. The learned counsel for the accused contended that there is no label affixed to MO1 though PW9 had deposed that such a label was affixed to MO1. However, on a perusal of exhibit P9, which was drafted at the time of seizure of MO1 would not show that any label was affixed to MO1 at the time of its seizure. When

the recovery of knife was made from the house of the accused in consequence of the disclosure statement of A1 and when there are no circumstances to doubt the testimony of the mediator, the evidence in regard to the fact of discovery, which is admissible in evidence, in view of the provision of Section 27 of the Indian Evidence Act, cannot be disbelieved. No contradictions and/or omissions, which are material in nature and which are of significance were brought out in the cross examinations of PW1 and other material witnesses. Therefore, the contentions based on the previous statements of the witnesses recorded by the police are of no avail to the accused. The contention of the accused that the earlier PWs 1 and 2 have beaten A2 and that a criminal case was registered at the instance of the accused against PWs 1 and 2 and that therefore, out of grudge and also on account of professional rivalry, the accused were falsely implicated in the present crime cannot be accepted in the light of the credible evidence of PW1-the victim, which is well corroborated by the medical and other evidence on record. The further contention that A2 to A4 have long back sold away their shop and are doing cultivation and that they have nothing to do with the offence and that they are innocent also cannot be countenanced in the facts and circumstances of the case. In fact, PW6, the Sarpanch of the village spoke about the disputes between the two parties and the professional rivalry. A careful analysis of the evidence would show that none of the contentions raised by the accused are sufficient to dislodge the prosecution case. Viewed thus, this court finds that the prosecution had established its case beyond all reasonable doubt. Therefore, this Court finds no reasons to interfere with the concurrent findings of the courts below.

7. Coming to the measure of sentence, the learned counsel for the accused alternately contended that the sentence imposed by the trial court against A1 is not proportionate to the gravity of the offence. In the case on hand, PW1 had suffered traumatic amputation of the right hand at the level of wrist joint and the said injury, which is a ghastly injury and which shocks one's conscience, is caused by A1. Therefore, this court is disinclined to accept the contention that the sentence imposed against A1 by the court

below is not commensurate to the crime and that there is no proportionality to the gravity of the offence. The learned counsel had further submitted on behalf of A2 and A3 that the said accused did not cause any injuries and that they held PW1 when the A1 allegedly caused injury to PW1 and that the evidence does not show that they had inflicted any injuries with knives and that they are young persons living by caste profession and that they are married and having young children and that if they are sentenced to long terms of imprisonments, not only their future lives but also the lives of their children would be affected and that A1 to A3 are brothers and that if all the brothers are sent to prison there will not be any male support to the families of the brothers and that the brothers are the only bread winners of the families. He had hence, prayed for reducing the substantive sentences of imprisonments imposed on A2 and A3. Having regard to the special and extenuating circumstances and the explanatory statement offered on behalf of A2 and A3, this court deems it just and proper that the sentences imposed against A2 and A3 can be modified and be reduced.

8. In the result, the Criminal Revision Case is dismissed confirming the judgment dated 10.01.2007 of the learned V Additional Sessions Judge, Fast Track Court, East Godavari at Rajahmundry in Criminal Appeal No.138 of 2006. The sentences imposed against A1 are confirmed in all respects. However, the substantive sentences of imprisonments of three years each imposed on A2 and A3 are modified and are reduced from three years to simple imprisonment for one year each while maintaining the fine amounts imposed by the Court below. All the accused are entitled to the benefit of set off. It is stated that the accused are at large being on bail. If that is so, 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 remaining periods of respective sentences.

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

12th February 2015
RAR

M. SEETHARAMA MURTI, J