

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1656 OF 2007

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') by the petitioners/A5 and A8 is directed against the judgment dated 29.11.2007 in CrI. Appeal No.23/2004 passed by the learned II Additional Sessions Judge, Kadapa at Proddatur.

1. (a) By the judgment dated 19.03.2004 in S.C.No.335/2001 the learned Assistant Sessions Judge of Proddatur while recording a finding that A1 to A8 are not guilty of the offence punishable under section 307 of the Indian Penal Code (for short, 'the IPC'), had however, found A1 to A8 guilty of the offences punishable under Sections 148, 324 and 326 read with Section 149 of the IPC and convicted them under section 235 (2) of the CrPC and imposed sentences. The offences for which the accused were convicted by the trial Court and the sentences imposed against them are stated in the table infra, for clarity.

S. No.	Section/s of law of the Offence	Substantive sentence of Imprisonment	Fine with In default sentence
1.	148 IPC	----	Rs.500/- each I D S I 3 months each
2.	324 IPC	RI two years each	---
3.	326 read with 149 IPC	RI three years each	Rs.500/- each I D S I 6 months each

The learned trial Judge had directed that the substantive sentences shall

run concurrently and that the accused are entitled to the benefit of set off under section 428 of the CrPC. All the accused had preferred the aforementioned First Appeal. The learned Additional Sessions Judge while allowing the appeal of A1 to A4, A6 and A7 had set aside the convictions and sentences against them and had acquitted them. However, the learned Additional Sessions Judge had convicted A5 of the offence punishable under Section 326 of the IPC and sentenced him to undergo rigorous imprisonment for one year while maintaining the fine amount and further convicted A8 for the offence punishable under Section 324 of the IPC and sentenced him to undergo rigorous imprisonment for six months while maintaining the fine amount.

2. I have heard the submissions of the learned counsel for the petitioners/A5 and A8 and of the learned Public Prosecutor. I have carefully perused the material record.

3. Now the points for consideration are: -

1. Whether the prosecution could bring home the guilt of the petitioners/A5 and A8, beyond all reasonable doubt, for the offences with which they were respectively charged and found guilty?
2. Whether the petitioners/A5 and A8 had made out valid and sufficient grounds for their acquittal? And, if so, whether the judgment of the court below is liable to be aside?

4. **POINTS:**

4. (a) The case of the prosecution including the gravamen of the charge, in brief, is this: 'On 20.06.2001 at about 2.00 PM when PW1 P. Ramanjulu was near the house of one Basha, all the accused armed with sticks came and attacked PW1 with the common object of killing

him and caused bleeding injuries to him. However, due to the intervention of PW2 and others, the accused went away. The crime was registered on the complaint lodged by PW1. The accused are close associates. The accused and the witnesses are the residents of the same village. Earlier, the accused and the witnesses belonged to the same group. However, PW1 and his followers had shifted to another group in the Panchayat elections. Bearing grudge, the accused had entertained the common object of killing PW1 and therefore, they had committed the offence.'

4. (b) During the course of investigation, the blood stained shirt was seized from PW1 under the cover of a Panchanama and PW1 was referred for medical examination. After completion of investigation, a charge sheet was laid.

4. (c) During the course of trial, PWs 1 to 6 were examined and exhibits P1 to P5 and MO1 were marked. Though no oral evidence was adduced, exhibits D1 and D2 were marked on the side of the defence.

4. (d) The learned counsel for A5 and A8 had contended that PW5, an independent witness had not supported the case of the prosecution and that the court below held that the evidence of PW3 is not credible and that PWs 1 and 2 are brothers and are interested witnesses and that admittedly, there is political rivalry and that on account of the said rivalry, the case was foisted and the accused are falsely implicated at the behest of one Prasada Reddy and that the medical evidence in regard to head injury is not corroborating the ocular evidence and that the court below having acquitted the other accused ought to have acquitted the present petitioners/A5 and A8 also and that the judgments of the courts below are not based on credible and legal evidence and are

therefore, liable to be set aside and that the accused are entitled to be acquitted.

4. (e) On the other hand, the learned Public Prosecutor having placed reliance on the evidence of PW1, the medical evidence and the promptness with which the report was lodged with the police and the motive for the attack on PW1 by the accused had contended that the prosecution had brought home the guilt of the accused by adducing necessary evidence and that there is no merit in this revision case and that the well reasoned findings in the well-considered judgment of the court below do not call for any interference and that the revision is devoid of merit and is liable to be dismissed.

4. (f) Now it is necessary to examine the evidence brought on record by the prosecution to find out whether or not the said evidence is sufficient and is of the required standard to hold that the prosecution proved the guilt of A5 and A8 for the offences with which they are respectively charged and found guilty.

4. (g) Coming first to the evidence of **PW1**, the victim, he had testified to the effect that he knows all the accused and that about 1½ years back at about 2 PM, while he was at the bunk of Khasim situated in his street, all the accused came there and beat him with sticks and stabbed him with knives and that A8 had hacked him with a knife on his head and that he had received bleeding injuries on his head and that all the other accused surrounded him and beat him with sticks indiscriminately over his body and that in the meanwhile, PW3, LW4-Talari Chinna Manikyam and PW5 came there and intervened and that on that all the accused had fled away and that afterwards he had proceeded to the Police Station and gave an oral report to the police and that the same was reduced into writing and that his said report is exhibit P1 and

that he was referred to the Government Hospital, Cuddapah for treatment and that he belongs to Congress party while the accused belonged to Telugu Desam Party and that as PW5-Subbarayudu had changed from Telugu Desam Party to his party i.e., the Congress Party the accused bore grudge and attacked him and that he was examined by the police and that the police have seized his blood stained shirt-MO1. In his cross examination, he had maintained his stand, particularly, that A8 had hacked him with a knife on his head and that all the other remaining accused had also attacked him. **PW2** is a resident of Proddatur town and he lives by doing business in fruits. He is the elder brother of PW1. He had also testified that he knows all the accused and that on the date of incident at about 2.00 PM, his brother (PW1) had received injuries while he was at Khasim Bunk and that on the previous day there was a galata between PW5-Subbarayudu and the accused for the reason that PW5 had shifted his loyalty from Telugu Desam Party to the Congress party and that the accused had suspected that PW1 is responsible for the shifting of loyalty by PW5 and that therefore, the accused bore grudge against PW1 and that with that grudge all the accused had attacked PW1. He had further testified that the A5 beat PW1 with a stick on his left leg and caused a fracture injury and that A8 had hacked PW1 with knife on his head and caused a bleeding injury and that all the other accused had also beaten PW1 with sticks all over his body and that on that PW1 fell down and that later the accused fled away from the scene of offence and that he and other women-folk present there took PW1 to the Police Station and that but for his presence at the scene, PW1 would have died. He had also maintained his stand in his cross examination.

PW3 is a businessman in electrical appliances. He had testified that he knows PWs 1 and 2 and also the accused persons and that on 20.06.2001 at about 2 PM he was at Khasim Bunk in Penna Nagar, Proddatur and that at that time PW1 was also standing there and that all

the accused came there armed with sticks and that among them A8 was armed with a knife and that they had attacked and beat him with sticks and that while PW1 was about to fall down A8 had hacked PW1 with the knife on his head and caused a bleeding injury and that A5 had beat PW1 with a stick on his left leg and had caused a fracture injury and that he, PW2 and PW5-Subbarayudu who were present there had raised cries and that on that the accused fled away from the scene of offence and that had the three of them had not gone there the accused would have killed PW1 and that PW2 and other women-folk took PW1 to the Police Station. He had asserted in his cross examination that neither the accused nor the witnesses are related to him and that he had not followed PW1 to the police station and the hospital and that he knows the names of the accused but not their surnames. **PW4** is the Doctor who had examined PW1, the victim, and had issued exhibit P2 Wound Certificate. He deposed that PW1 had sustained (i) a lacerated injury over the middle of the scalp obliquely over the parietal bone extending from left to right- scalp deep and (ii) tenderness of the chest and limbs, more at the left leg and that x-ray skull AP and lateral view presented a normal reading and that X-ray left leg with knee AP and Later view had revealed the fracture of upper 1/3rd of fibula. The Doctor opined that the injury no.1 is simple and injury no.2 is grievous in nature and that the age of injuries is two hours prior to the examination of PW1 on 20.06.2001 at about 3.15 PM. In his cross examination, it was elicited that the injury no.1 was not caused due to a sharp edged weapon and that on 20.06.2001, which is the date of examination, an x-ray was taken and that on the date of the examination the fracture of left leg was not found as x-ray was not taken and that eight days after the admission, on the complaint of PW1 that he was suffering pain in the left leg, x-ray was taken on that day. In the re-examination he had stated that he gave his opinion based on x-ray and the wound certificate. He had further stated

in the re-examination that he did not refer the patient to a Radiologist and had further admitted that x-ray was not produced before the Court. **PW5**-Subbarayudu did not support the case of the prosecution. **PW6** is the Investigating Officer. He had testified that during the course of investigation he had seized the blood stained shirt of PW1, i.e., MO1 under the cover of police proceedings under exhibit P5 and that he had laid the charge sheet after the completion of his investigation.

4. (h) I have thus carefully gone through the entire evidence including the cross examinations of the witnesses, particularly of PWS 1 to 3 done at length. The defence that was sought to be advanced before this Court is that at the instance of one Prasad Reddy, PWs 1 to 3 who are the supporters of the said Prasad Reddy had foisted a false case and had deposed falsehood against the accused and that admittedly there is political rivalry and that on account of the political rivalry the false case was foisted against the accused. The Court below found that the evidence of PW3 is not reliable for the reasons assigned by it. Further, PW5, who was said to have been involved in the incident of shifting loyalty from one party to the other, a day before the attack on PW1 had not supported the case of the prosecution. Therefore, if the evidence of PW3 is to be eschewed from consideration then what remains is the evidence of PWs 1 and 2. As had already been noted, the evidence of PW1, the victim, was well supported by the evidence of PW2. The evidence of PW1, who is the victim, which is well corroborated by the medical evidence by itself is sufficient to show the complicity of the petitioners/A5 and A8 in the incident of attack on PW1. In this case, specific overt acts were attributed to A5/first petitioner herein and A8/second petitioner herein. Now that the other accused are acquitted by the Court of First Appeal and there was no appeal by the State, there is no need to advert to the other evidence showing the complicity of the other accused. Though the laceration on the head of PW1 is not

possible by a sharp edged weapon like a knife, such a laceration is possible if the said injury was caused either with the handle or the blunt edge of the knife as rightly contended by the learned Public Prosecutor. So, the evidence of PW1 coupled with the medical evidence is sufficient to come to a safe conclusion that the prosecution proved the guilt of the said petitioners/A5 and A8, beyond all reasonable doubt for the offences with which they are respectively charged and found guilty by the Court below.

4. (i) Coming to the aspect of political rivalry, as rightly urged, the political rivalry which is said to be the motive is a double edged weapon and it can be made use of by any one party against the other party and it may be a reason for the commission of the offence or for false implication. Therefore, in such a case, the evidence has to be scrutinized with caution. In the case on hand, PW1 had immediately went to the Police Station and lodged the report and on that he was referred to the Doctor for medical examination; and, within few hours of his sustaining injuries in the incident he was examined by the Doctor and the medical evidence shows that he had sustained lacerated injury on the head besides injuries on his chest and limbs and tenderness over left leg. Therefore, this Court is of the considered view that the concurrent findings of the Courts below so far as the complicity of the A5 and A8 do not suffer from any infirmities calling for inference. Therefore, this Court finds no merit in the contentions urged on behalf of A5 and A8.

4. (j) On the aspect of quantum of sentence, the learned counsel for A5 and A8 contended that they are of 38 and 45 years of age respectively as of now and that they are having respective families and that they are the sole bread winners of their families and that if they are sentenced to long terms of imprisonment, not only they but also their family members would suffer and the future of their children would be

ruined and that therefore, a lenient view may be taken and the sentences may be reduced. He had further submitted that after the incident the things have returned to normalcy in the village and there are no subsequent untoward incidents between the two groups.

4. (k) Having regard to the mitigating and extenuating circumstances and the explanatory statement offered on behalf of A5 and A8, this Court is satisfied that the sentences can be modified and reduced.

5. In the result, the Criminal Revision Case is dismissed. However, in so far as A5, while confirming the conviction for the offence punishable under Section 326 of the IPC the substantive sentence of rigorous imprisonment is only modified and is reduced from one year to three months while maintaining the fine amount. The accused is entitled to the benefit of set off. And, in so far as A8, while confirming his conviction for the offence punishable under Section 324 of the IPC, the substantive sentence of imprisonment is modified and reduced from six months to one already undergone as A8 is stated to be in judicial custody for a period of about one month. It is stated that he had already paid the fine amount; and if that is so his bail bonds shall stand cancelled after the further appeal/revision time is over. It is stated that A5 is at large being on bail; therefore, he is directed to surrender before the trial Court within two weeks from the date of the receipt of a copy of this order. On his failure to do so, the trial Court shall take steps for his apprehension and send him to prison for serving the remaining period of sentence.

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

19th January 2015
MVA

M.SEETHARAMA MURTI, J