

Alli Bhaskar and Others Vs. State of Andhra Pradesh

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Court : Andhra Pradesh

Decided On : Jul-02-1997

Reported in : 1998(1)ALD171; 1997(2)ALD(Cri)798

Judge : S.V. Maruthi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 395; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Crl. A. Nos. 374 and 375 of 1995

Appellant : Alli Bhaskar and Others

Respondent : State of Andhra Pradesh

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Mr. C. Praveen Kumar and ;Mr. Nandigam Krishna Rao, Adv.

Judgement :

1. Crl.A.No.374 of 1995 is filed by A4 and Crl.A.No.375 of 1995 is filed by A1, A2, A3 and A5 against the judgment in SC No.235 of 1993 on the file of them Additional Metropolitan Sessions Judge, Hyderabad convicting them under the Section 395 IPC and sentencing them to undergo rigorous imprisonment for 5 years each. As these appeals arise out of the same crime, they can be disposed of

by a common judgment.

2. The facts in brief are as follows : PW1 was an Intermediate student, PW2 is his cousin brother doing petty money lending business and both of them were staying in one premises. A2 to A5 are the friends and neighbours of A1. They used to visit the house of one Pandit, where A2 also used to visit and thus A1 and A2 became close friends. The house of A2 is near to the house of the de facto - complainant Srinivasulu and Venkanna. A2 observed that PW2 Venkanna is dealing in money lending business and thought of committing robbery to rob the cash from PW2 Venkanna. He, therefore, took A1, A3 to A5 to his confidence and planned to commit robbery and waiting for a chance. On 29-5-1992, A1 to A5 assembled in the house of A2 and noticed that PW2 Venkanna went out and PW1 Srinivasulu was alone in the room. All of them went to the house of PW1 Srinivasulu and A1, A3 to A5 concealed themselves by the side of house wall and A1 knocked the door. When Srinivasulu peeped through the window, then A1 informed that he came from Nalgonda and want PW2 Venkanna. Since there was rain and Srinivasulu thinking that A1 came from Nalgonda, he opened the door. Immediately, A2 along with A1, A3 and A4 rushed into the room and A3 gagged the mouth of Srinivasulu with a towel and A1 threatened Srinivasulu with a knife and in the meantime, A5 who was guarding outside, rushed into the room and carried away the suit-case containing a cash of Rs.7,500/-, 2 shirts, shirt pieces, some books and memorandum of marks and A1 and A4 followed A5. At about 10.00 p.m., PW2 Venkanna returned back to the house and PW1 Srinivasulu narrated the incident to him. Both of them went to the house of LW3 V. Sudershan, who is the brother of LW2, and narrated the incident to LW3 Sudershan, LW3 advised them that it is late in the night and raining heavily and asked them to wait in his house till morning. On the next morning at 9.30 a.m., a report was given to the police by PW1 Srinivasulu and a case was registered. A1 to A5 were arrested on 1-6-1992. The police recovered the cash from their possession in the presence of panch witnesses. The identification parade of A1 to A5 was conducted and the de facto - complainant Srinivasulu identified all the accused. A6 was apprehended on 1-7-1992 and he was interrogated in the presence of panch witnesses and the suit-case was recovered from his possession, which contains shirt, shirt pieces and some documents. After completion of investigation, the charge-sheet was filed.

3. When examined under Section 313 Cr.PC, the accused pleaded not guilty. In support of its case, the prosecution examined PWs.1 to 6 and marked Exs.PI to PS and MOs.1 to 10. On the basis of the evidence, the learned Judge convicted and sentenced A1 to A5 as stated supra and acquitted A6. Aggrieved by the same, the present appeals are filed.

4. PW1 is the de facto-complainant PW2 is his cousin who was carrying on business in money lending. PW3 is a panch witness. PW4 is also a panch witness. PW5 is the Investigating Officer. PW6 is the Magistrate who conducted the identification parade.

5. PW1 in his evidence spoke about the incident that took place on 29-5-1992. There is no other corroboration except the evidence of PW1. PW6 in his evidence spoke about the identification parade conducted by him wherein A1, A2 and A5 were identified by PW1. As regards the identification of A3 and A4, though they were arrested on 1-6-1992, the identification was conducted on 1-8-1992. The reason for conducting the identification parade of A3 and A4 subsequently was that they were released on bail on 1-6-1992 and on the subsequent occasion, they were not present. As regards the recovery, though the cash was recovered from the accused, the identity of the cash is not established.

6. The main argument of the learned Counsel for the appellants-accused is that no descriptive particulars of the accused were given by PW1 or PW2 and in the absence of descriptive particulars, it is difficult to believe the evidence of PW1 identifying the accused A1 to A5.

7. The Magistrate (PW6) in his evidence stated that when PW1 was asked, he stated that he can identify the suspects on seeing them. Therefore, furnishing of descriptive particulars is irrelevant as PW1 has stated that he could identify the accused on seeing them. Further, the identification parade was held within 17 days from the date of arrest and the incident. Therefore, there is no substance in the argument of the learned Counsel that PW1 could not have identified A1, A2 and A5.

8. As regards A3 and A4, whatever may be the reason for which the identification parade was not held, the fact remains that the identification was held after two months from the date on which they were arrested. It is doubtful whether PW1, after a period of 2 months, could have identified A3 and A4. Further, there is no evidence as to how long they were in the room of PW1 while committing the offence. In the absence of evidence that for a considerably long time the accused were in the house of PW1, it is doubtful whether PW1 could successfully identify A3 and A4. Therefore, in view of the delay in conducting the identification parade, A3 and A4 are entitled for benefit of doubt.

9. As regards A1, A2 and A5, the participation of these accused in the offence is not in doubt. The learned Judge gave cogent and convincing reasons in support of his finding that A1, A2 and A5 participated in the commission of the offence. I do not see any reason to disagree with the view expressed by the learned Judge.

10. It is true that in *Ram Lakhan v. State of U.P.* : 1983 CriLJ691 , a Bench of the Supreme Court consisting of Murtaza Fazal Ali and O. Chinnappa Reddy, JJ., held:

'..... Before an offence under Section 395 can be made out, there must be an assembly of 5 or more persons. On the findings of the Courts below, it is manifest that only one person is now left. In these circumstances, therefore, the appellant cannot be convicted for an offence under Section 395.'

Holding as above, the learned Judges acquitted the accused. That was a case where, in the FIR, 9 persons were mentioned as the persons participating in a dacoity and the trial Court acquitted 5 persons and the High Court acquitted 3 persons and convicted 1 person. On appeal to the Supreme Court, it was held that in the absence of 5 persons, 1 person cannot be convicted. However, in *Saktu v. State of UP.*, : AIR 1973 SC760 , a Bench consisting of J.M. Shelat, Y.V. Chandrachud and I.D. Dua, JJ., held:

'Whereabout 14 persons had admittedly taken part in the dacoity and the charge framed against eight named persons was that they along with six others had taken part in the dacoity, the conviction of three of them only is not bad merely because

they are less than five.'

I have also held relying on Ram Lakhan's case (1 supra) that in the absence of 5 persons, there cannot be conviction of accused either one or two under Section 395. However, at that time, the judgment in Saktu's case (2 supra) was not brought to my notice. The judgment in Saktu's case being a judgment rendered by 3 Judges will prevail over the judgment of 2 Judges in Ram Lakhan's case. Therefore, in view of the judgment in Saktu's case, the convictions and sentences can be sustained.

11. In the result, the convictions and sentences imposed on A1, A2 and A5 are confirmed. A3 and A4 are acquitted and they are directed to be set at liberty forthwith unless they are required in any other case. The appeals are partly allowed.

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