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Court : Andhra Pradesh

Decided On : Jan-23-2003

Reported in : 2003(1)ALD(Cri)417; 2003(1)ALT(Cri)508

Judge : K.C. Bhanu, J.

Acts : Indian Penal Code (IPC) - Sections 395 and 412

Appeal No. : Crl. A. Nos. 1041 and 1068 of 2002

Appellant : Kanjarala Prashanth @ Kittu and ors.

Respondent : State of A.P. Rep. by P.P.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : K. Bali Reddy, Sr. Counsel for ;K. Suresh Reddy, Adv.

Disposition : Appeal allowed

Judgement :

K.C. Bhanu, J.

1. Criminal appeal No. 1041/2002 is filed by Accused Nos.1, 4 and 6 and criminal appeal No. 1068/2002 is filed by accused Nos. 2, 5 and 7, aggrieved by the judgment of conviction and sentence in sessions case No. 18 of 2000, dated 9.9.2002, on the file of the learned IV Additional Metropolitan Sessions Judge,

Hyderabad. The learned Sessions Judge convicted A1, A6 and A7 under Section 395 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for seven years each and to pay a fine of Rs.200/- each, and in default of payment of fine, to undergo simple imprisonment for six months each. A2, A4 and A5 were convicted under Section 412 I.P.C. and sentenced to suffer rigorous imprisonment for five years each, and to pay a fine of Rs.200/- each, and in default of payment of fine, to suffer simple imprisonment for six months each.

2. Since both the appeals arise out of the same sessions case, they are being disposed of by a common judgment.

3. The brief facts that are necessary for disposal of the present appeals are that on 31.10.1996 at 11.30 a.m., D. Suresh Kumar, the then Assistant Manager, State Bank of Hyderabad, Habsiguda Branch, his Cashier-Sainath, Typist-cum-Clerk-Latha Mahesh, and another staff member-Ch. Narayana, were going from their Branch to the A.P. Foods Extension Counter Branch in a rented car bearing No. AP 10F 6992 driven by William Joe Walter with an amount of Rs.11,60,000/- to disburse salaries of the employees of A.P. Foods, I.D.A., Nacharam, that at 11.50 a.m., they were at a distance of 300 meters away from their destiny, that then a white Maruti van bearing No. AP-28-7575 came across the road and suddenly four persons got down therefrom, threatened the inmates of the car, took away cash box keys, car dicky keys at the point of knives, and the cash of Rs.11,60,000/-, that on a report given by Suresh Kumar, the police registered a case and investigated into. During the course of investigation, on 10.7.1997 while the accused were moving under suspicious circumstances, they were intercepted by the police and on their confessional statements, certain amount of cash was seized from each of the accused. On completion of the investigation, police filed a charge sheet against eight accused in all. On behalf of the Prosecution, P.Ws. 1 to 11 were examined and Exs.P1 to P20, besides M.Os.1 to 11, were marked. On behalf of the accused, D.W. 1 examined and Exs.D1 and D2 were marked. The trial Court after appreciating the evidence on record acquitted A3 and A8 of the charges levelled against them, and convicted and sentenced the remaining accused as aforesaid.

4. Mr. K. Bali Reddy, learned senior counsel appearing for the appellants in both the appeals, contended that right from the lodging of complaint-Ex. P1 till the date of trial, no descriptive particulars of the accused were mentioned anywhere, that in the absence of such particulars it is very difficult for P.Ws. 1 to 3 to identify the accused after a lapse of nine months, that the seizure of articles or cash from the accused is not an incriminating circumstance against them because the cash seized from each of the accused was not shown to be the dacoit property or that the accused had reason to believe that it was dacoit property, that the accused complained to the Magistrate who conducted the test identification parade that their photographs had been shown to P.Ws.1 to 3 before the test identification parade was conducted, and that there is absolutely no legal evidence to show that the accused committed the offences with which they were charged. On the other hand, learned Additional Public Prosecutor contended that the incident in question is not denied or disputed, that the test identification parade was held immediately after the arrest of the accused, that in the test identification parade P.Ws. 1 to 3 identified the accused as their assailants, and that the evidence of P.Ws. 1 to 3 inspires confidence. He, therefore, prays to dismiss the appeals.

5. It is not in dispute that on 31.10.1996 at 11.30 a.m., while P.Ws. 1 to 3 and others were taking cash from the Habsiguda Branch of the State Bank of Hyderabad, to the A.P. Foods Extension Counter for disbursement of salaries to the employees of the A.P. Foods, four persons got down from a Maruthi Van and took away the cash of Rs.11,60,000/- at the point of knives, and that P.W.1 immediately lodged a complaint with the police.

6. The specific case of P.Ws. 1 and 2 is that four persons came out of the van and committed dacoity. P.W.2 stated that the Driver of the van was sitting in the van, whereas P.W.3 stated that four or five persons got down from the van. But, the police filed charge sheet against eight accused.

7. P.W.9 conducted test identification parade on 26.7.1997. P.W.1 identified A1, A3, A6 and A7, P.W.2 identified A3, and P.W.3 identified A6 and A7. Ex.P18 is the test identification proceedings. It is admitted by P.W.9 that the witnesses did not give any specific features for, or the age of, the suspects. There is no reason to

disbelieve the evidence of P.W.9 and the recitals in Ex.P18. But, is it possible for an ordinary man to identify his assailants after a lapse of nine months, is the question.

8. Admittedly, the incident in question took place on 31.10.1996 and the test identification parade was conducted on 26.7.1997, that is nearly nine months after the incident. If the witnesses had stated that the accused had some striking features, it would have been possible for them to identify the accused by recollecting the features, even after a lapse of a long time of nine months. Ex.P1 is the earliest report given by P.W.1 to P.W.10. It reads that four persons got down from the Maruti van and took away the cash of Rs.11.60 lacs while the Driver was sitting in the van itself. Except this, Ex.P1 does not contain the age of the assailants or their physical features such as whether they were thin or stout etc. Though P.W.1 stated during the cross-examination that some of the assaults were of medium height and one was of above normal height, but that fact was not stated to the police, and, therefore, it is an improvement. P.W.2 admitted that the descriptive particulars of the accused such as the age and height of the assailants were not stated to the police. P.W.3 also admitted not to have stated any descriptive particulars of A6 and even any of the culprits.

9. Even though the incident took place in a broad daylight, according to P.W.2, it was completed within five minutes and immediately the assailants went away in the van. P.W. 2 stated they were terribly frightened and shocked by the incident. When the incident lasted only for five minutes and when the witnesses were in a shock, it is very difficult for them to note any physical or striking or some other features of the accused. But, to prove the charges levelled against the accused, it is for the Prosecution witnesses to identify the accused as their assailants.

10. Admittedly, the accused were strangers to the witnesses. That is the reason why the police gave a requisition to the Magistrate to conduct test identification parade. The proceedings of the test identification parade are not substantive evidence to base a conviction. They are only corroborative. It is for the Prosecution witnesses to say as to how they could identify the assailants after a lapse of nine months. But, they could not say as to how they identified. Therefore,

the probable inference is that the accused must have been shown to the prosecution witnesses or their photographs were shown to them prior to the conduct of the test identification parade. Under these circumstances, no credence can be given to Ex.P18-test identification proceedings.

11. P.W.4 did not support the Prosecution. P.W.5 is one of the mediators for observation report. Therefore, his evidence is not of much relevance to prove the case of the Prosecution, inasmuch as the incident in question is not in dispute. P.W.6 caught hold of A2. That evidence is not incriminating against the accused to prove the charges levelled against them. P.Ws. 7 and 8, who are Panch witnesses, did not support the case of the Prosecution. Therefore, their evidence is not of much importance. P.W.10 registered the case on receipt of Ex.P1-report from P.W.1. There is no dispute of registration of the case by him.

12. The remaining evidence on record is the evidence of P.W.11 who is the Investigating Officer. According to him, he arrested the accused, and in pursuance of confession made by them, he seized Rs.35,890/- from A1, Rs.35,200/- from A7, Rs.25,450/- from A5, Rs.30,160/- from A4, and Rs.33,350/- from A2, under Exs.P9 to P13 respectively. Simply because the police seized cash from the accused, it does not mean that they committed dacoity. It must be shown that the accused were the receivers of stolen property or that they had reason to believe the same to be the property obtained in the commission of a dacoity. Therefore, it is the duty of the Prosecution to explain that the cash taken away in the dacoity was the self-same cash that was in the possession of, and seized from, the accused. P.Ws. 1 to 3 did not say that the cash seized from each of the accused was the self-same cash they were carrying on the date of the incident. Therefore, there is absolutely no evidence to show that the cash seized from the accused is the self-same cash that was being carried by P.Ws. 1 to 3 on the date of the incident. Therefore, the seizure reports-Exs.P9 to P13, is not incriminating against A2, A4, A5 and A7. Similarly, the seizure of M.Os. 4 to 8 does not incriminate against the accused, as none of the Prosecution witnesses identified that the accused threatened them with those knives. M.O.1 is not the Maruti van which the assailants were traveling in at the time of the incident. The seizure of cash-box-M.O.3 and the motor cycle-M.O.9 does not incriminate anything against the accused, because there is no

evidence to show that the prosecution witnesses were carrying cash in the same cash-box. Even assuming for a moment that the cash or the above articles were seized from the accused as stated by P.W.11, it does not per se constitute any offence, unless it is shown by the Prosecution that the cash or the articles were part of the dacoit property.

13. It is not known when the dacoity was committed by four persons, the police filed charge sheet against eight persons. No doubt, it is a very serious crime where dacoity was committed in broad daylight, but at the same time it is the duty of the Prosecution to prove that the accused participated in the commission of the offence or that some of the accused were receivers of the dacoit property. The trial Court observed that the evidence of P.Ws. 1 to 3 goes to show that their power of identity was not so weak that they could not identify the culprits of such a ghastly offence seven or eight months after the incident, and that they had no motive to implicate the accused falsely in the offence. Maybe, the offence was ghastly or it was committed in broad daylight, but it is expected from the prosecution witnesses to state as to how they could be in a position to identify the accused after a lapse of nine months, especially in view of the fact that the entire incident lasted for only five minutes. It is not the case of the Prosecution that some physical features of the assailants were imprinted in the minds of the prosecution witnesses so as to recollect the same to identify the assailants at a later point of time. The case of the accused is that their photographs had been shown to the witnesses prior to the identification parade, and that the witnesses were brought to the police station and they were shown to them. That possibility cannot be ruled out in this case, in view of the fact that there was a gap of nine months from the date of the incident to the date of the test identification parade.

14. Under these circumstances, it is not possible for P.Ws. 1 to 3 to identify the accused after a lapse of nine months. Even P.Ws 1 to 3 did not give any descriptive particulars of the accused when they were examined by the police during the course of investigation. Therefore, the conviction of A1, A6 and A7 under Section 395 I.P.C. cannot be sustained. In so far as the conviction of A2, A4 and A5, the offence under Section 412 I.P.C. is not made out. There is no finding by the trial Court that they were receivers of the property stolen in dacoity or that

the possession whereof they had knowledge or reason to believe to have been transferred by the commission of dacoity.

15. In view of the above discussion, this Court holds without any hesitation that there is no legal evidence to convict A1, A6 and A7 for the offence under Section 395 I.P.C. and A2, A4 and A5 for the offence under Section 412 I.P.C. and hence the impugned judgment of conviction and sentence is liable to be set aside.

16. In the result, the judgment of conviction and sentence passed by the trial Court against the accused-appellants is set aside. The appeals are allowed. All the accused-appellants be set at liberty forthwith, if not required in any other case. Fine amount, if paid, be refunded to the accused-appellants.

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