

Jeedipalli Bhaskar and Others Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Jan-28-2011

Judge : Gopala Krishna Tamada, J.

Acts : Indian Penal Code (IPC) - Sections 386 read with 120-B, 384; Code of Criminal Procedure (CrPC) - Sections 397, 401; Arms Act - Section 25(1)(a)

Appeal No. : CRIMINAL REVISION CASE No.1827 OF 2004

Appellant : Jeedipalli Bhaskar and Others

Respondent : State of A.P.

Advocate for Pet/Ap. : Sri C.Praveen Kumar, Adv.

Judgement :

:ORDER:

1. On the basis of the report given by N. Chakravarthula Ramaseshacharyulu, a case in Crime No.39 of 1996 was registered against Nagendla China Chennaiah of Seethanagulavaram village and three others for the alleged offence punishable under Section 386 of IPC. During the course of investigation, it was revealed that there are eight accused persons and hence, A1 to A7 were arrested on 17.9.1996 and the said China Chennaiah, who is arrayed as 8th accused, was arrested on 24.9.1996. After completion of the investigation in Crime No.39 of 1996, the Sub-Inspector of Police, T.V.Palli Police Station filed a charge sheet against the petitioners and others for the alleged offences punishable under Sections 386 and

386 read with 120-B of IPC. As the 6th accused by name K. Danial was absconding, the case was split up and the petitioners herein were tried in the said case. During the course of trial, the complainant was examined as P.W.1, his brother was examined as P.W.2 and eight more witnesses were examined on behalf of the prosecution. Similarly, Exs.P1 to P10 were marked on behalf of the prosecution. The trial Court i.e., the Judicial First Class Magistrate, Podili, having assessed the said evidence came to the conclusion that A1 to A4 are found guilty for the offence punishable under Section 386 IPC and accordingly, sentenced them to undergo rigorous imprisonment for a period of three years each and also to pay a fine of Rs.250 /- each in default to suffer rigorous imprisonment for a period of one year. Similarly, the remaining accused were found guilty for the offence punishable under Section 386 read with Section 120B IPC and sentenced to undergo rigorous imprisonment for three years and also to pay a fine of Rs.250/- each in default to suffer rigorous imprisonment for one year. The said judgment of the trial Court dated 20th September, 2001 was questioned by all the accused including the petitioners herein by filing Criminal Appeal No.198 of 2001 and the VI Additional District & Sessions Judge, Ongole by judgment dated 15th day of October, 2004, while holding that accused Nos.2, 5, 7 and 8 are not guilty of any of the offences for which they were tried, acquitted them. But however, insofar as the petitioners herein i.e., A1, A3 and A4 are concerned, the appellate Court confirmed the said sentence of three years for the offence punishable under Section 386 of IPC and thus, the appellate Court dismissed the said appeal insofar as the petitioners herein are concerned. The said judgment dated 15.10.2004 passed by the appellate Court is questioned in this revision under Sections 397 and 401 Cr.P.C.

2. The case of the prosecution in brief is as follows: Accused Nos.1 to 7 are close associates of accused No.8. All the accused hatched up a plan to extort money from the people by using the name of naxalites. On 19.7.1996 during night time, A1 to A7 went to Seethanagulavaram village and then, A1, A3 and A4 went to the house of P.W.1 and woke him up and demanded him a sum of Rs.4,00,000/- for purchasing AK 47 Gun. But P.W.1 expressed his inability to pay such huge amount. A1, A3 and A4 searched the house of P.W.1 and found nothing. At last, P.W.1 due to fear agreed to give an amount of Rs.30,000/-. Then, A8 was fetched

to the house of P.W.1 and A8 was warned in the presence of P.W.1 as per their plan and asked P.W.1 to send money through A8 on the next day and also threatened him not to inform the same to anyone. On 20.7.1996 P.W.1, in the presence of P.W.2 gave Rs.10,000/- to A8 and made a request to inform the accused that he can provide that much only and cannot arrange rest of the amount. On 22.7.1996 while P.W.1 was coming to his village from Markapur, the same accused stopped P.W.1 near Poolasubbaiah colony and questioned about the rest of the amount. Then, the accused directed P.W.1 to arrange money by 26.7.1996 and they would come to his house and take that amount. P.W.1 was also threatened not to reveal the incident to anybody. On 26.7.1996 at about 1.00 p.m., A1 to A4 went to the house of P.W.1 and by that time P.Ws.2 and 3 were also present there. P.W.1 gave Rs.10,000/- to A1 to A4. Subsequently, on 27.8.1996 P.W.1 received a letter in the name of Tiger Dalam directing P.W.1 to hand over remaining Rs.10,000/- to A8 and not to do any harm to A8 and if so, P.W.1 and his family would be killed. Subsequently, P.W.1 came to know the involvement of A8 in the incident and later having confirmed that the accused are not naxalites, on 15.9.1996 he gave a report to the police and the same was registered as a case in Crime No.39 of 1996 under Sections 384 IPC and subsequently, the same was altered to Section 386 IPC. During the course of investigation, A1, A3, A4 and A5 and another person were caught by the police and A1 produced a jip bag containing Rs.20,000/- and the same was seized in the presence of P.Ws.5 and 6. After completion of investigation, P.W.10 filed the charge sheet.

3. The main contention of Sri C. Praveen Kumar, learned Counsel for the petitioners is that as per the report dated 15.9.1996, which was marked as Ex.P1, it is only A8 and three others, who have proceeded to the house of P.W.1 and demanded the said amount of Rs.4,00,000/-. According to him, the person, whose name figured in the FIR, was arrested only on 24.9.1996 whereas the petitioners as per the case of the prosecution were arrested much prior to the said date i.e., on 17.9.1996 and it is curious to note as to how the police have to come to know about the participation of the petitioners herein. It is further contended by the learned Counsel for the petitioners that the alleged date of offence even as per the case of the prosecution is 19.7.1996 and there is no explanation from the

prosecution as to why P.W.1 reported the matter after lapse of about two months i.e., on 15.9.1996. Further, according to the learned Counsel for the petitioners that there is a gap of more than 2 1/2 months in conducting test identification parade and the entire case is a falsity.

4. The learned Public Prosecutor has opposed the said submissions and stated that the lower appellate Court has rightly come to the conclusion that the petitioners-A1, A3 and A4 committed extortion by putting P.W.1 to fear of death and as such, the appellate Court is justified in convicting the petitioners for the offence under Section 386 IPC.

5. In the light of the submissions made by the learned Counsel for the petitioners, this Court looked into the evidence. It is true that the alleged incident took place on 19.7.1996 and the report was given after about two months i.e., on 15.9.1996. Definitely it can be said that there is delay in lodging the FIR. The delay alone cannot be said to be fatal to the case of the prosecution provided there is some sort of explanation. P.W.1 while giving the report as well as during the course of evidence has in unequivocal terms stated that he was under the impression that the persons who visited his house on 19.7.1996 are nexalites and in those circumstances, he could not report the matter to the police at the earliest point of time. It is common knowledge that in villages, the people have threats from nexalites. In those circumstances, it cannot be expected that the aggrieved person shall immediately rush to the police station and report the matter. Here, the prosecution has come forward with further explanation stating that P.W.1 after coming to know that the said persons are not nexalites and it is only falsity, then only he gave the said report on 15.9.1996. In my considered view this explanation can definitely be accepted.

6. There is a gap of about 2 1/2 months in conducting the test identification parade. No doubt, in a catena of decisions, the Supreme Court as well as this Court have held that if there is delay in conducting test identification parade, the very parade itself loses its significance. But, it shall be remembered that in the first information report lodged by PW1, he gave the descriptive particulars of the persons, who visited his house and demanded the said amount of Rs.4,00,000/-.

In the light of the said descriptive particulars given by P.W.1, the said contention cannot be countenanced. In fact, in the test identification parade conducted on 1.10.1996, P.Ws. 1 and 3, who were present at the time of offence have clearly identified the petitioners herein and the descriptive particulars, which were mentioned in the First Information Report clearly tally. In those circumstances, the said contention is rejected.

7. I find some force in the submission of the learned Counsel for the petitioners that P.w.8 without having any knowledge with regard to the participation of the petitioners have arrested them on 17.9.1996. As per the report, dated 15.9.1996 given by P.W.1, it is only China Chennaiah (A8) and three others came to his house and demanded the said Booty. In fact, the said contention canvassed by the learned Counsel for the petitioners created a doubt in the mind of this Court. When the said China Chennaiah, who is arrayed as 8th accused, was arrested on 24.9.1996, it is not known as to how and why the police have arrested the petitioners and others on 17.9.1996. Keeping the said contention in mind, this Court looked into the record. There are two mediators' reports. One is dated 17.9.1996 and the other is dated 24.9.1996. The report, dated 17.9.1996 is in connection with Crime No.63 of 1996 i.e., relating to some other case whereas the mediators report dated 24.9.1996 is with regard to Crime No.39 of 1996 relating to the case on hand. It is true that the 8th accused was arrested only on 24.9.1996 i.e., much after the arrest of the petitioners herein and the said arrest is in connection with the present crime. From the perusal of the mediators' report dated 17.9.1996, it appears that it was not as though Yerragondapalem police is having information about the petitioners herein either in connection with Crime No.63 of 1996 registered for the offence under Section 384 r/w 34 IPC and also under section 25(1) (a) of the Arms Act or in connection with Crime No.39/96 registered for the offence under Section 384 IPC, which was subsequently altered to 386 IPC. While they were proceeding in a jeep bearing No.AP 9P 414, they found the petitioners in suspicious circumstances, intercepted them and when questioned it appears they made a confession stating that they have visited the house of P.W.1 and demanded the said amount of Rs.4,00,000/-. In the light of the said confession, the petitioners were arrested in connection with the present crime i.e., Crime No.39 of 1996. In the light of the above discussion, the said contention that

even before getting knowledge and without any report with regard to participation of the petitioners herein, the police arrested the petitioners on 17.9.1996 in connection with Crime No.39 of 1996, cannot be accepted. May be it is true that the person whose name is figured in the first information report was arrested on 24.9.1996 and the petitioners and others were arrested on 17.9.1996. As stated supra, while the police were proceeding in connection with Crime No.63 of 1996, they found the petitioners in suspicious circumstances and that prompted them to intercept and on the basis of the confession made by the petitioners, the alleged arrest has taken place on 17.9.1996 i.e., much prior to the date of arrest of A8. Accordingly, the said contention of the learned Counsel for the petitioners is also hereby rejected.

8. In the light of the discussion made above, this Court sees no merits in this revision. Furthermore, it is brought on record that the petitioners are not shown as accused in this case alone and there are some other cases i.e., Crime No.65/96 and 63/96 also. In those circumstances, it can definitely be construed that the petitioners are habitual offenders. However, as the alleged offence is of the year 1996, this Court is of the view that lesser sentence can as well be imposed.

9. In the result, this revision case is dismissed. But however, the sentence of rigorous imprisonment of three years for the offence punishable under Section 386 IPC imposed on the petitioners-accused Nos.1, 3 and 4 by the VI Additional District & Sessions Judge (Fast Track Court), Ongole, by the judgment dated 15.10.2004 passed in Criminal Appeal No.198 of 2001, is reduced to one year, and the fine amount of Rs.250/- each imposed on the petitioners herein by the learned Sessions Judge is enhanced to Rs.2,000/- each. The said enhanced fine amount shall be paid within a period of four weeks from the date of receipt of a copy of this order. If the petitioners fail to pay the said fine amount within the stipulated period, it is needless to observe that the petitioners shall undergo the sentence imposed by the Courts below.