
(2003) 01 AP CK 0120

In the Andhra Pradesh High Court

Case No : Criminal Appeal No's. 760 and 776 of 1996

Dammagouni Dubba Rajagoud and Another

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Arms Act, 1959 — Section 25(1)

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 395, 412

Citation : (2003) 1 ALD(Cri) 292 : (2003) 2 ALT(Cri) 299

Hon'ble Judges : K.C. Bhanu, J

Bench : Single Bench

Advocate : C. Praveen Kumar, J, for the Appellant; Public Prosecutor, for the Respondent

Judgement

K.C. Bhanu, J.—Crl.A. No.760 of 1996 is filed by A-1 and A-2 whereas Crl.A. No.776 of 1996 is filed by A3 to A-6 against the judgment in S.C. No.387 of 1993 on the file of the Assistant Sessions Judge, Siddipet, Medak District whereunder A-1 to A.6 were convicted for the offence u/s 412 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of ten years each and further A-1 is sentenced to pay a fine of Rs.5000-00 in default to undergo simple imprisonment for 11/2 years whereas A-2 to A-6 are further sentenced to pay a fine of Rs.1000-00 each in default to undergo simple imprisonment for 21/2 years each. Further, A-1 is convicted for the offence u/s 25(1) of the Arms Act and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.5000-00 in default to undergo simple imprisonment for 11/2 years and the substantive sentences of imprisonment imposed against A-1 are directed to run concurrently. Assailing the said judgment, the above two Criminal Appeals (Crl.A.No.760 of 1996 and Crl.A.No.776 of 1996) are filed by A-1 and 2 and A-3 to A-6 respectively.

2. The brief facts that are necessary for the disposal of the present appeals may be stated as follows:- On the intervening night of 14/15-2-1993 at about 1-15

Hours some unknown culprits entered into the house of P.Ws.1 to 5 and committed robbery of gold and silver ornaments and cash of Rs.28000-00 at the point of gun and decamped with the booty. Thereupon, P.W.1 went to the Police Station and lodged a complaint, Ex.P.1. Basing on Ex.P1 complaint P.W.9 registered a case in Crime No.12/93. P.W.10 Inspector of Police took up further investigation. During the course of investigation, on 17-3-1993 at about 17-00 Hours P.W.10 apprehended A-1 to A.6 near Upper Primary School, Yengurthi village and on their confession, P.W.10 recovered M.Os.1 to 26 and after completing the investigation P.W.10 filed the charge sheet.

3. Charges for the offences u/s 395 IPC and Section 25(1) of the Arms Act were framed against A-1 to A-6. On behalf of the prosecution P.Ws.1 to 10 were examined and Exs.P.1 to P.12 were marked besides marking case properties as M.Os.1 to 26. After closure of evidence for the prosecution, the accused were examined u/s 313 of the Code of Criminal Procedure and they have denied the incriminating circumstances and pleaded not guilty to the charges. The trial court, after hearing both sides and after considering the evidence on record, came to the conclusion that the prosecution has proved the charges for the offence u/s 412 IPC against all the accused, instead of Section 395 IPC., and also u/s 25(1) of the Arms Act against A-1, beyond reasonable doubt and accordingly they were convicted and sentenced to undergo rigorous imprisonment and to pay fine, as stated above.

4. Sri C. Padmanabha Reddy, the learned Senior Counsel appearing on behalf of the appellants-accused, contended that no test identification parade in respect of the properties seized in the case was conducted and there is no evidence to show that the property involved in this case was the subject matter of dacoity or that the accused had reasonable grounds to believe that the said property has been involved in the dacoity and that excepting the interested testimony of P.W. 10 there is no other evidence to prove the possession of M.Os.1 to 26 with the accused and, therefore, he prays to acquit the accused.

5. On the other hand, the learned Public Prosecutor contended that the evidence of P.W.10 is very clear that the accused were found in possession of M.Os.1 to 26 and there was no explanation for the possession of M.Os.1 to 26 and, therefore, he submits that the lower court has rightly convicted the accused and hence he prays to dismiss the appeals.

6. It is not in dispute that a dacoity had taken place on the intervening night of 14/15-2-1993 in the house of P.Ws.1 to 5 in Yengurthi village and in the said dacoity gold and silver ornaments besides cash of Rs.28000-00 were taken away at the point of gun by the assailants and at that time P.Ws.1 to 5 were present in the house. None of the witnesses identified any of one of the accused as the persons who committed the dacoity. On the other hand, P.Ws. 2 and 5 specifically stated that the accused are not the culprits. Therefore, there is absolutely no evidence to show that the accused committed dacoity so as to convict them for the offence u/s 395 IPC and the lower court has rightly acquitted the accused of

the said charge. In fact, there is no appeal filed by the State questioning the acquittal of the accused for this offence u/s 395 IPC.

7. Now, it has to be seen whether the evidence on record would attract Section 412 IPC so as to convict them for the said offence. On 17-3-1993 all the accused were arrested by P.W.10 at Upper Primary School, Yengurthi village and in pursuance of their confession statement, M.Os.1, 2, 6, 20 and 26 were recovered from the possession of A-1 under Ex.P.4 Panchanama, M.Os.3, 4, 5 and 21 were recovered from the possession of A-2 under Ex.P.5 Panchanama, M.Os.7, 14, 15 and 22 were recovered from the possession of A.3 under Ex.P.6 Panchanama, M.Os.8, 9, 16 and 23 were recovered from the possession of A-4 under Ex.P.7 Panchanama, M.Os.11, 12, 18 and 24 were recovered from the possession of A-5 under Ex.P.8 Panchanama and M.Os.10, 13, 17 and 25 were recovered from the possession of A-6 under Ex.P.9 Panchanama. M.Os.1 to 19 are the gold and silver ornaments and M.Os.20 to 25 are the cash and M.O.26 is the SBML country made gun. The learned senior counsel for the appellants-accused contended that no test identification parade was conducted in respect of the properties. But P.Ws.3 to 5 have categorically stated that M.Os.1 to 25 belong to them. The evidence of P.Ws.3 to 5 insofar as M.Os.1 to 25 are concerned that they belong to them is not denied or disputed in the cross-examination. When a fact is stated by a witness and when the same is not denied or disputed in the cross-examination, it must be deemed that such a fact is admitted. So, from the prosecution evidence it is established beyond doubt that M.Os.1 to 25 belong to P.Ws.1 to 5. In this view of the matter, conducting of test identification parade in the particular facts and circumstances of the case is not material and the contention of the learned senior counsel in this regard does not hold water.

8. Now, it has to be seen whether M.Os.1 to 26 were seized from the possession of the accused. P.Ws.6 and 7 are the mediators for the scene of observation. Their evidence is not helpful to the case of the prosecution. P.W.8, who is one of the mediators for the arrest and recovery of M.Os.1 to 26 from the possession of the accused, did not support the case of the prosecution. P.W.9 simply registered the case on the basis of Ex.P.1 complaint. The only evidence remains on record is the evidence of P.W.10 who speaks about the recovery of M.Os.1 to 26 from the possession of the accused. P.W.10 specifically stated that on 17-3-1993 he arrested the accused at U.P. School, Yengurthi village at about 17 Hours and recorded their confession statement and in pursuance of the said confession statement the afore-said Material Objects were seized from the respective accused. Simply because P.W.10 is a Police Officer, it does not mean that his evidence has to be disbelieved on that ground. His evidence has to be appreciated like that of the evidence of any other witness. Except giving a bald suggestion to P.W.10 that M.Os.1 to 26 were not recovered from the possession of the accused, nothing has been elicited in the cross-examination of this witness to discredit his testimony. Immediately within two or three days after the incident the property was deposited into the court. There is no other reason to disbelieve the evidence of P.W.10 with regard to the recovery of the Material

Objects from the possession of the accused, as stated in his evidence. So, from the evidence of P.W.10 it is crystal clear that M.Os.1 to 26 were recovered from the possession of A-1 to A-6. There is no other reason to disbelieve the evidence of P.W.10. When such is the case, it has to be seen whether mere possession of M.Os.1 to 26 would attract Section 412 IPC. In this connection it is relevant to extract Section 412 IPC., which reads as hereunder:-

"412. Dishonestly receiving property stolen in the commission of a dacoity:- Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine."

9. The learned senior counsel for the appellants relied upon a decision reported in *K. Venkateshwar Rao v. State*, 2001(CrL.)SCC 1290 wherein Their Lords of the Supreme Court observed as follows:

"....Therefore, it becomes obligatory on the part of the prosecution to establish that the property in question was involved in a dacoity and that the appellant was in possession of the same knowing that the said property was the subject matter of a dacoity or at least had reasonable ground for believing that the said property had been involved in a dacoity."

10. Thus, on a reading of the above decision and also Section 412 IPC., it is clear that the prosecution has to establish that the property in question was involved in a dacoity and that the accused was in possession of the same knowing that the said property was the subject matter of the dacoity or at least had reasonable ground for believing the same. Learned senior counsel contends that for the purpose of proving that the appellants had knowledge of the dacoity, there is absolutely no evidence in this case and, therefore, the conviction of the appellants for the offences u/s 412 IPC and Section 25(1) of the Arms Act by the trial court is against law. But, as discussed above, the accused were found in possession of the stolen property. Under Illustration (a) to Section 114 of the Indian Evidence Act the court may presume that a man, who is in possession of stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. The appellants did not account for possession of M.Os.1 to 26. If presumption is drawn under Illustration (a) to Section 114 of the Indian Evidence Act, the presumption is that the appellants are the thieves or receivers of the stolen property. The appellants did not account for the possession of M.Os.1 to 26 or that they claim that those properties belong to them. So, from the evidence on record it can be said that the appellants committed the offence punishable u/s 411 IPC but not the offence punishable u/s 412 IPC. Further, A-1 was found in possession of M.O.26 a SBML country made gun, which is a prohibited weapon

within the meaning of Section 25(1) of the Arms Act.

11. In view of the above discussion, the conviction and sentences recorded against the appellants for the offences u/s 412 IPC are set aside and, in stead, A-1 to A-6 are convicted for the offence u/s 411 IPC and sentenced to undergo Rigorous Imprisonment for a period of 3 (Three) years each and to pay a fine of Rs.1000-00 each and in default to suffer Simple Imprisonment for two (2) years each. The conviction and sentence recorded against A-1 for the offence u/s 25(1) of the Arms Act are confirmed. The substantive sentences of imprisonment imposed on A-1 on the two counts shall run concurrently. Excess fine amount, if paid by A-1, shall be refunded to him.

12. Both the Criminal Appeals are disposed of accordingly.