
(1998) 11 AP CK 0017
In the Andhra Pradesh High Court
Case No : Criminal A. No. 337 of 1994

Gutta Sekhara Naidu

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 25-11-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 392, 396, 411

Citation : (1999) 1 ALD 586 : (1999) 1 ALT(Cri) 276 : (1999) CriLJ 979

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

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

Judgement

1. This appeal is directed against the judgment dated 25-4-1994 rendered in SC No.242 of 1993 on the file of Additional Sessions Judge, Madanapalli under which the appellant herein (A4) has been convicted for the offence u/s 392 IPC and A3 has been convicted for the offence u/s 411 IPC. A4 is sentenced to rigorous imprisonment for four years and a fine of Rs.500A, and in default of payment of fine, to undergo imprisonment for two months, and A3 has been sentenced to R.I. for one year six months (there is no appeal on behalf of A3).

2. It would appear, A1 to A3 along with the appellant herein (A4) were originally charged for the offence u/s 396 IPC; the case against A1 and A2 was separated as they were found absconding. The trial was proceeded with, in respect of A3 and A4.

3. The facts leading to the filing of this appeal may be stated briefly as follows:

On 26-2-1992 the private bus bearing No. TDJ 4699 driven by the driver Shaik Kalandar (PW1) left Madanapalle at 8.45 p.m. for Gurramkonda. The deceased was the conductor on duty in that bus. PWs.2 to 4 along with others were among the passengers travelling in the bus. The four accused persons along with another boarded the bus at Madanapalle as if they were bona fide passengers.

When the bus reached a place between Srinivasapuram and Marrimakupalli at about 9.50 p.m. one of the accused threatened the driver at the point of knife to stop the bus. When the bus was stopped, another accused went to the Conductor Srinivasulu Seiti, the deceased, and threatened him at the point of knife and demanded to hand over the bag containing cash. When he resisted, the said accused stabbed him twice and snatched away the bag containing money. The other accused robbed gold, jewellery and cash from the passengers by threatening them with dagger. The accused and another then got down from the bus and decamped with the booty. The driver drove the bus to Gurramkonda Police Station and gave Ex. P1 report, on which PW8 the Sub-Inspector of police registered a case in Cr.No.16 of 1992 and issued the FIR Ex.P7. According to the Inspector of Police, PW10, on receiving some information, along with police party and panchayatdars he went to Kasiraopet Choultry on 23-4-1992 at about 6.30 p.m. There, A3 and A4 on seeing the police started running away. They were arrested. On search, a gold ring with white stone was seized from A3 and on searching A4, a gold ring from the shirt pocket with the letters "D.S" inscribed over it was seized from his possession under the seizure report Ex.P13 (admissible portion). Earlier, PW8, the S.I. of Police, visited the scene of offence, prepared a rough sketch of the scene of offence Ex.P12 and rough sketch of the inside of the bus Ex.P9. He also conducted inquest over the dead body. Post-mortem examination was conducted on the dead body by the doctor PW5. PW10 gave a requisition Ex.P5 to PW7 for conducting identification parade in respect of A3 and A4. PW7 conducted identification parade under proceedings Ex.P6. PW6, the Village Administrative Officer, got the articles seized from A3 and A4 identified by them after mixing them with other similar articles. The identification mahazar prepared by PW6 was Ex.P3. It is stated that PW2 identified A4 in the parade and PW3 identified A1 and A4 in the parade. Thus, for establishing the case, PWs.1 to 10 have been examined Ex. P1 to P13 and M.Os 1 to 7 have been marked on behalf of the prosecution. The accused has not chosen to examine any witness in his defence.

4. On this evidence, the trial Court acquitted both A3 and A4 for the offence u/s 396 IPC but convicted A4 for the offence u/s 392 IPC.

5. The question for consideration is, whether the judgment of the Trial Court can be sustained as far as A4 is concerned?

6. The prosecution relies on the evidence of PW2 Doddapu Surendra, one of the passengers in the bus at the time of incident, it is in his evidence that, after the bus left Tarigonda person sitting by his side covered his mouth and ears with a kerchief; another person sitting just in front of them also tied a kerchief on seeing the person by his side; there were two others in the front portion of the bus near the Conductor; out of them, one was sitting by the side of the Conductor; the fourth man was sitting in the seat behind the back of the driver; the two persons who were sitting in the front side went to the driver when the bus was in between Srinivasapuram and Marrimakulapalli and asked the driver to

stop the bus; one person put a knife on the cheek of the conductor, demanding him to hand over the cash; the conductor refused and there was a tussle; then that man stabbed the conductor on the left cheek and also on the chest; the conductor fell down in the bus; the other three accused collected valuables and cash from the passengers; thereafter they got down from the bus and threatened the driver to proceed immediately; the driver took the bus to Gurramkonda Police Station, where report was lodged.

7. PW2 is the only witness who identifies A4, the appellant herein, in the Court. The learned Additional Sessions Judge accepted the evidence of PW2 as to identification of A4 relying on the fact that in the test identification parade also he had identified A4 correctly.

8. The learned Counsel for the appellant-accused seeks to discredit the evidence of PW2 as to identification of A4 firstly by pointing out that the test identification parade was held on 8-6-1992, almost 3-112 months after the incident which occurred on 26-2-1992. The contention is that in the absence of any remarkable identifying features of the accused, such an identification after a lapse of 3-1/2 months cannot be depended upon. Learned Counsel further points out that as admitted by PW2 and as stated by the investigating Officer PW10, this witness has not given any descriptive particulars of the accused in his statement to the police. On this basis, it is contended that P\\V2"s claim in the Court that he identified A4, is unworthy of belief. The further contention of the learned Counsel for the appellant-accused is that according to the evidence adduced by the prosecution the accused including A4 had their faces and ears covered by a handkerchief and as such their identification by the witness is all the more improbable.

9. But, a careful scrutiny of the evidence of PW2 would reveal that one of the accused was sitting by his side and the other one (A4) was sitting just in front of him. It appears PW2 boarded the bus at Madanapalli and one of the accused was sitting by his side and the other in front of him on the seat immediately in front of his seat. Apparently, the faces of the accused were not covered initially. It was only after they travelled for considerable time and when the bus left intermediary stage of Tarigonda that they covered their faces with handkerchief. It is in the evidence of PW1, the driver, that at the time of incident the lights in the bus were switched on. Thus, it is obvious that PW2 had a fair opportunity of seeing the accused for considerable time before the incident. PW2"s evidence on identification in the Court is corroborated by his identification of A4 in the test identification parade as recorded in the relevant proceedings, Ex.P6. It is significant to note that the evidence of the Magistrate PW7 and the identification proceedings Ex.P6 disclose that before sending the witnesses for identification their statements were recorded. It is seen that PW2 has mentioned some descriptive particulars of A4. It is pertinent to note that what PW2 had witnessed was a ghastly and an extraordinary event involving a murder of the Conductor and robbery of the bus passengers. Such frightful experiences tend to make very

deep impressions on the persons involved in the incident in regard to the culprits who participated in the offence. Under these circumstances, identification of A4 by PW2 cannot be brushed aside. The fact that the accused had complained that they were shown to the witnesses is usual complaint made by the accused in all such cases. The evidence of the Magistrate PW7 shows that he has taken adequate precautions to ensure that identification proceedings were conducted in an effective manner.

10. Further, the participation of A4 in the incident also appears to be corroborated by the evidence relating to the recovery of ring, M.O.6, from the possession of the accused No.4. It is in the evidence of the Inspector of Police, PW10, that on information when he went along with police team to the choultry, the accused saw them and tried to run away, but they were arrested and from the possession of A4 a gold ring M.O.6 was recovered under the Mahazamama Rx.P13. It is significant to note that the M.O.6 ring has distinct identification mark by way of inscription of letters "D.S" on it. PW2 identified M.O.6 as the ring which was snatched away during the incident of robbery in the bus. Thus, the recovery of the ring M.O.6, which was snatched away from PW2, from the possession of A4 further strengthens the evidence of PW2 that A4 participated in that offence.

11. Under these circumstances, the trial Court rightly took the view that the prosecution has succeeded in proving that A4 was among the culprits involved in the robbery in that bus. Under the circumstances, the Trial Court while acquitting the accused for the offence u/s 396 IPC has convicted A4 for the offence u/s 392 IPC. I find no reason to disagree with the conclusions arrived at by the trial Court. The accused has been sentenced by the Trial Court to undergo R.I. for a period of four years.

12. Learned Counsel for the appellant-accused submits that while admitting the appeal, a conditional bail was granted to the appellant under which he was required to report at the police station on the first of every month, which the appellant has been doing as directed. The submission is that in spite of grant of bail the appellant was in fact under considerable restraint due to the requirement of reporting at the police station every month, and that this circumstance may be taken into consideration in imposing the sentence.

13. It is true that the requirement of reporting at the police station in someway curtails the freedom of the accused. Taking into consideration this aspect and the circumstance that no violent acts are attributed to the appellant herein, the sentence of rigorous imprisonment for four years is modified and it is directed that the appellant-accused shall undergo rigorous imprisonment for a period of three years for the offence u/s 392 IPC for which he has been found guilty. It is obvious that (he appellant-accused shall be entitled to set-off for the period during which he has been detained either as an undertrial or after conviction.

14. With this modification of the sentence, the appeal is dismissed.