
(2004) 11 AP CK 0120

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1466 of 1999

Marthala Chandra Sekhar Reddy and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 04-11-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 452, 452(1), 452(2), 452(5)
Penal Code, 1860 (IPC) — Section 201, 302, 392, 420

Citation : (2005) 1 APLJ 51

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : T. Niranjan Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

P.S. Narayana, J.—A1, A2 and A3 in Sessions Case No. 224 of 1996 on the file of the IV Additional Sessions Judge, Kurnool, preferred this appeal u/s 454 of the Code of Criminal Procedure (hereinafter in short referred to as "the Code" for the purpose of convenience), aggrieved by the order of the learned Judge in ordering confiscation of M.Os. 15 to 47, 49 to 57- cash to the State after expiry of appeal time.

2. The case of the prosecution is that A1 to A3 were residents of Mothukulapalli village and were close associates. The deceased Modala Venkata Ramana Setty was a resident of Govindapalli village and the deceased used to do Cotton business and he was purchasing Cotton in nearby villages and selling it at Guntur. It is also the case of the prosecution that A1 was also doing Cotton business. On 03.3.1994 the deceased sold a lorry load of Cotton and received a cheque for Rs. 1,03,000/- and encashed it and while going to lodge, A1 saw him and followed him to the lodge and he came to know from the deceased about his selling the load of Cotton and encashment of cheque etc., Again when A1 went to the lodge in the evening, the deceased followed him to go to his native place along with A2 and A3- the associates of A1 and they got down the train at

Bugganipalli railway station in the early morning of 04.3.1994 at 4-30 A.M. and when they reached Sunkulamma Gudi near Yetiladderu valley, among A1 to A3 who hatched a plan to kill the deceased Modala Venkata Ramana Setty and commit theft of cash from him, A3 stabbed the deceased on his back and when the deceased cried, A3 again stabbed him with dagger, on that the deceased fell down. Later when A3 attempted to stab him again, the deceased caught the dagger with his hands, as a result his fingers were cut. Then A1 pulled cash bag from the deceased and A2 took out the dagger from A3 and stabbed the deceased on his neck, and thereafter, all the accused thrown him into nearby bushes and as the deceased was found alive A1 took dagger from A2 and stabbed him twice and on that he died. On 05.3.1994 the dead body was first seen by Talari Subbarayudu and he informed the same to V.A.O. of Bugganipalli and the V.A.O. went to the place where the deceased was found dead along with talaries and thereafter he reported the matter to the police and the police registered a case in crime No. 23 of 1994 u/s 302 of the Indian Penal Code and investigated the case. During the investigation, on 20.3.1994 at 10 A.M. near Nandyal-Nandikotkur junction, the investigating officer arrested A2 and A3 and recovered cash of Rs. 33,200/- from A2 and Rs. 34,000/- from A3. On 28.3.1994 at 7-30 P.M. the investigating officer, at Ayyaluri Metta on Nandyal-Allagadda junction, arrested A1 and recovered Rs. 34,100/-. After completion of investigation, Circle Inspector of Police, Banaganapalli laid charge sheet.

3. The learned Judge recorded evidence of P.Ws.1 to 16 and marked Exs. P1 to P25 and also M.Os. 1 to 59. The learned Judge also examined D.Ws. 1 to 3 and marked Exs. D1 to D10. On appreciation of the evidence available on record, the learned Judge found A1 to A3 not guilty of the offences under Sections 302, 201 and 392 of the Indian Penal Code and recorded an acquittal and further directed M.Os. 15 to 47, 49 to 57-cash ordered to be confiscated to the State after expiry of appeal time. M.Os. 7 to 9 are ordered to be returned to committal Court to hand over them to P.W.5-Modala Ramanamma, wife of the deceased after expiry of appeal time. M.Os. 1 to 6, 10 to 14, 48, 58 and 59 were ordered to be destroyed after completion of appeal time.

4. It is brought to the notice of this Court that the Judgment in question had attained finality, inasmuch as the State had not preferred any appeal against the order of acquittal. However, in view of the order of confiscation of the cash, the relevant M.Os referred to supra made to the State after expiry of appeal time by the learned Judge. A1 to A3 had preferred the present appeal u/s 454 of the Code.

5. Sri T. Niranjan Reddy, learned counsel representing the appellant made the following submissions:

The learned counsel would submit that while appreciating question of return of property, inclusive of the cash marked as M.Os., not only the version of the defence, the version of the prosecution may have to be taken into consideration and specific allegations had been made by the prosecution in the charge sheet to

the effect that seizure of cash of Rs. 33,200/-, Rs. 34,000/- and Rs. 34,100/- had been effected from A1 to A3. The learned counsel also would submit that it is no doubt true that A1 to A3 had taken a stand that these amounts were paid to the police by the relatives for extraneous reasons and the same had been utilized by the police as case property. The counsel also pointed out that in the course of cross-examination D.W.1 deposed about the seizure of the amount from him. The learned counsel also would point out that the main reason on which the learned Judge was not inclined to believe the version of appellants/accused 1 to 3 was on the ground that these families have no capacity. This is totally wrong approach especially in the light of the clear evidence of D.Ws. 1 to 3 available on record. The learned counsel had taken this Court through the evidence of D.Ws. 1 to 3 in detail and the findings recorded by the learned; Judge in this regard and also placed reliance on certain decisions in relation to the return of property and the principles to be followed by ordering the return of property at the conclusion of the trial.

6. Per contra, the learned Additional Public Prosecutor would contend that this is an appeal preferred u/s 454 of the Code on the ground that the order impugned relating to the confiscation of the cash to the State would fall u/s 452 of the Code. Unless the ingredients of Section 452 of the Code are satisfied, there is no question of ordering return of property to the accused. Learned Additional Public Prosecutor also would submit that this is a peculiar case where specific stand was taken by the defence that ! this was not the case property at all and these amounts were paid by the relatives of the accused to the police for extraneous reasons and the police had used the same as case property and in the light of the specific stand, it cannot be said that these are the amounts seized from the accused and hence the principle of normally returning the property to such persons, from whom the property had been seized, would not be applicable. Learned Additional Public Prosecutor also would submit that normally in a case of rival claims when further evidence may have to be adduced or the question of title or otherwise is involved, the parties may be referred to a competent Civil Court. Here is a case there is no rival claim at all and the relatives of the accused had not putforth any claim and they had not figured themselves as appellants and in such circumstances permitting these parties to approach a competent Civil Court also may not be sustainable. Learned Additional Public Prosecutor ultimately would contend that in the light of the reasons recorded at paras 25 and 26 of the Judgment, which are sustainable reasons, the appeal may have to be dismissed.

7. Heard both the counsel at length.

8. Perused the evidence of D.Ws. 1 to 3 and also findings recorded by the learned Judge. On appreciation of the evidence available on record in general, and also the findings recorded, at paras 25 and 26 in particular, the learned Judge observed as hereunder.

Para 25: The learned Addl. Public Prosecutor argued that the accused have not

stated before the Court that they were beaten in Police station and that their relatives brought money from the houses and handed over it when they were questioned u/s 313 Cr.P.C. so also they did not plead about the harassment that was caused to them by the police when they were produced before the Magistrate and for the first time after a lapse of four years they are coming up with the version saying that the amounts produced before the Court belong to them as it is the amount ! that was handed over to the police for their release.

Para 26: As seen from Ex.D1, income of A1 is mentioned as Rs. 40,000/- per year as issued by the Mandal Revenue Officer, Sirvella. Exs. D.9 and D.10 reveal that A1 and his wife own lands in their names. Exs. D.5 and D.6 reveal that A2 got land of Ac. 1-50 cents at Chennur and Ac. 1-59 cents in Maseedpuram and Ex. D7 is the income certificate issued by V.A.O., Maseedpuram shows that he earns Rs. 50,000/- through agriculture and Ex. D.8 is his income certificate issued by Mandal Revenue Officer, Sirvella and it shows that he earns Rs. 20,000/- per year through agriculture. Ex. D2 reveals that A3 earns Rs. 42,000/- per year through agriculture and Exs. D3 and D.4 show that A3 has land in his name and also in the name of his wife. Admittedly the accused did not gave any complaint after their release or to till this day as to the harassment caused to them by the police and no person will keep quiet if such a huge amount of Rs. 35,000/- are taken from each of them by the police for their release. As contended by the prosecution they did not report the matter to the learned Magistrate when they were produced before him nor they did not even chosen to represent the same before this Court when they were questioned u/s 313 Cr.P.C. and after long lapse of four years they are coming with the version that their relatives handed over the amounts to the police for their release from jail. It is elicited in the cross-examination of the accused that they have no specific reason to say why they alone were taken to police station when several other persons are present in the village. No doubt, the evidence of D.Ws. 1 to 3 show that they own lands. But it is not enough to say that the amounts produced before the Court belong to them unless it is established by the accused that it is the amount that was taken from them. From the attitude and conduct of the accused in representing to the Court that they were harassed by the police for money after lapse of four years, it can be said that in any circumstances the amount is not be long to them as no one will keep quite for such a long time, if such huge amounts were taken by the police. P.W.16 though stated in chief examination that he seized amounts from the accused at the time of arrest, in his cross-examination he stated that he has not taken any precautions to keep the amounts seized from the accused separately and evidence of P.W.16 is not corroborated by any panchayatdar as they turned hostile. Further the evidence of P.W.16 as to the arrest of accused and seizure of amounts from them looks artificial as no person who robbed money and committed murder will sit with money in cross road of Nandyal-Nandikotkur or at three roads junction keeping themselves available for arrest and seizure of money from them. The evidence of P.W.16 is unbelievable. Further there is no corroboration for his evidence. In the

absence of corroboration of his evidence by any independent witnesses, I feel it is unsafe to rely on his evidence. Further no record is available before the Court to say that the deceased encashed his cheque. The prosecution also could not establish that the amounts produced before the Court is the amount that was encashed by the deceased by producing the bank records. Thus, there is no evidence on record to say that the amount produced before the court belongs to the accused or to the deceased, therefore, the amount is ordered to be confiscated to the State."

9. Section 452 of the Code reads as hereunder:

Order for disposal of property at conclusion of trial:

(1) When an inquiry or trial in any criminal court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made u/s (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in Sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order, made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term, "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."

10. The present appeal is preferred u/s 454 of the Code, inasmuch as the appellants-accused 1 to 3 are aggrieved of that portion of the order confiscating M.Os. 15 to 47, 49 to 57 to the State after the expiry of the appeal time. As already referred to supra, the order of acquittal recorded by the learned Judge had attained finality, inasmuch as the State had not preferred any appeal. Three Judge Bench of Apex Court while dealing with disposal of the property and discretion as to and general rule of restoration u/s 517 of the Code 1898 in N.

Madhavan Vs. State of Kerala, the Apex Court at para 10 held thus:

"The words "may make ! such order as it thinks fit" in the section, vest the Court with a discretion to dispose of the property in any of the three modes specified in the section. But the exercise of such discretion is inherently a judicial function. The choice of the mode or manner of disposal is not to be made arbitrarily, but judicially in accordance with sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such a well-recognized principles is that when after an inquiry or trial the accused is discharged or acquitted, the Court should normally restore the property of class (a) or (b) to the person from whose custody it was taken. Departure from this salutary rule of practice is not to be lightly made, when there is no dispute or doubt - as in the instant case - that the property in question was seized from the custody of such accused and belonged to him."

11. There cannot be any doubt or controversy where an acquittal had been recorded and if the property had been seized from the accused, the normal rule is that the return of property should be to the person from whom the property had been seized i.e., accused. In Pushkar Singh Vs. State of Madhya Bharat and Another, where the money found in possession of the accused alleged to have been money stolen from the complainant and money found as belonging to accused and not complainant, accused acquitted payment of money to complainant cannot be ordered, unless it is established that the offence was committed in respect of this sum.

In Gopinath Naik Vs. The State, where certain currency notes recovered from the house in joint occupation of the accused and his father were not proved to be stolen property and the Sessions Judge by his order in appeal directed that the currency notes should be kept in the custody of the trial court for a period of two years during which any member of the accused's family may establish his claim to the same in a competent Court of law. It was held that an order of this type should not be passed in a criminal case. In such circumstances the currency notes should be returned to the persons from they were recovered (It was directed that they should be returned to the accused's father).

12. The applicability and scope of Sections 517 and 523 of the Code of 1898 had been dealt with in detail in TENALI SITIAH v. STATE OF ANDHRA AND ORS AIR 1957 A P 1024. In the said decision currency notes suspected to have been obtained by the accused from prosecution witnesses and accused acquitted for the charge u/s 420 of the Indian Penal Code. The aspect of delivery of notes to witnesses and the principles to be followed in this regard had been discussed in detail in the decision referred to supra. In PRAKASH HALDANKAR v. SHRI BILL CARNEIRO AND ORS. 1997 CLJ 1254 it was held at paras 4 to 6 as hereunder:

" It appears that the Lower Appellate Court has discarded the decision reported in In Re: Anant Virupax Peerant, on the ground that there is a vast difference between the old Section 517 of the Code of Criminal Procedure and the present

Section 452 of Cr.P.C. Learned Counsel Shri Lotlikar has read out before me the two Sections and I am not able to notice any difference in those two Sections. I cannot see any substantial difference in the old Section 517 and new Section 452 of Cr.P.C. Therefore, the reasons to discard the decision of this Court in *In Re: Anant Virupax Peerant*, are not based on sound reasons. I find considerable force in the argument of learned Counsel for the petitioner.

Section 452 says that on conclusion of the trial, the Court may make such an order as it thinks fit for the disposal of or deliver to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence. It is clear from this section that disposal of the property on conclusion of a criminal trial, which is the subject-matter for the prosecution, can be disposed of at the discretion of the Magistrate. Sub-section (2) of Section 452 says that such disposal or delivery of property to such person can be on condition where the claim regarding the property is finally settled or adjudicated by the competent authority. Sub-section (5) deals with that the property need not be one exactly the same that has been stolen, it can be equivalent of the property converted after the theft has been committed, or even the property acquired by such conversion or exchange will also come under the term "property", shown in Section 452 of the Act.

Learned Counsel for the petitioner also brought to my notice the decision of the Gujarat High Court in the case of *Kanchanlal Somalal Chokshi v. The State* (1963 (2) CriLJ 262 (2)) (supra), where exactly a similar question has been dealt with. In that case, stolen property was sold by the accused to J who sold the same to K. K sold that property along with his own property receiving the whole sale proceeds in a lump sum. K gave Rs. 151.40 to the police as the value of the stolen property which he had sold. The Magistrate ordered this amount to be paid to the complainant from whose possession, the property was stolen. It was held in that decision that the Magistrate was not entitled to order to pay the sum to the complainant, as it was not the specific money which the K had received. In that case, the High Court of Gujarat has ordered that instead of delivering the money to the complainant, it should be delivered to the person from whom the police had recovered the money.

I do not think a different view is possible than the taken by this court in the aforesaid decisions in this case also."

13. D.W.1 deposed that he owns Ac.4-00 of land and he gets income of Rs. 45,000/- to Rs. 50,000/- per year and the survey number of the land is 996. Ex. D1 is the income certificate issued by the Mandal Revenue Officer, Sirivella and this witness also deposed that due to police harassment his father brought the money amounting to Rs. 34,000/- from the house and gave it to the police. This witness also denied certain suggestions. It is no doubt true this witness deposed that when he was arrested by police near Allagadda-Giddalur cross road and

during his arrest, police on search seized a sum of a sum of Rs. 34,000/- from him. This witness also relied upon documentary evidence to show his financial capacity. Ex. D1 is the patta passbook of the land standing in his name. Ex. D10 is the patta passbook standing in the name of his wife. D.W.2 also deposed about the aspect of his income and also specifically deposed that his brother Venkata Reddy brought Rs. 35,000/- to police station and handed over the said amount to the police. Certain documents were also marked and this witness also was cross-examined in detail. D.W.3 was also examined in this regard.

14. Be that as it may, here is a peculiar case where the version of the prosecution is that certain specific amounts had been seized from the accused, but except in cross-examination of D.W.1, the general defence is taken that the relatives of the accused paid these amounts, most probably due to police harassment and the version of the defence is that this property subsequently had been utilized as though it is case property. In the light of this version of the prosecution and the defence, this court is of the considered opinion that instead of concentrating and doubting about capacity of the appellants and their relatives in making such payments to police, whether these amounts in fact had been seized by the police as per the version of the prosecution or this property i.e., cash had been delivered by the relatives of the accused to the police which had been utilized as case property, this question would assume crucial importance for the purpose of ordering either refund of the cash-M.Os. 15 to 47, 49 to 57 to the appellant-accused or the same to be confiscated to the State as directed by the learned Judge. No doubt, submissions at length were made relating to the capacity of the families of the appellants also in this regard.

15. Be that as it may, in the light of the nature of the evidence which had been let in and also in view of the peculiarity of the facts and in view of the specific stands taken both by the prosecution and the defence, this court is of the considered opinion that a further opportunity to be given to both the parties, the prosecution and also the defence, as well for the purpose of establishing their respective contentions in this regard and hence the impugned order in so far as confiscation of M.Os 15 to 47, 49 to 57 relating to cash made by the learned Judge is hereby set aside.

16. The appeal is allowed to the extent indicated above and the matter is remanded for the purpose of affording opportunity to both the parties to adduce further evidence also, if the parties choose to do so on the limited aspect referred to supra. Ordered accordingly.