

(2009) 08 AP CK 0007

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 411 of 2004

Meesala Durga Rao

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Arms Act, 1959 — Section 25(1)
Penal Code, 1860 (IPC) — Section 392, 457

Citation : (2009) 2 ALD(Cri) 696 : (2009) 3 ALT(Cri) 301 : (2010) CriLJ 652

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : I. Aga Reddy, for the Appellant; Addl. Public Prosecutor, for the Respondent

Judgement

B. Chandra Kumar, J.—This revision is directed against the Judgment dated 29.01.2004 in CrI.A. No. 58 of 2003 passed by the learned II Additional Sessions Judge, Karimnagar, whereby and whereunder the appeal filed by the petitioner herein was dismissed confirming the conviction and sentence imposed by the learned Judicial Magistrate of First Class, Huzurabad in C.C. No. 165 of 1997, dated 31.03.2003. The petitioner was convicted and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 600/- and in default to suffer simple imprisonment for 20 days separately for each of the offences punishable under Sections 457 and 392 IPC.

2. The petitioner herein shall be referred as accused hereinafter for the sake of convenience.

3. The prosecution case in brief is that on 25.02.1996 at about 08.30 p.m. while PW.1 was taking meals and his wife, two sons and daughter were watching TV, four unknown persons representing themselves as members of the Janarakshana Party came to the house of PW.1, and demanded party find. They forcibly entered into the house and got the almirah opened and committed theft of Rs. 10,000/-, one gold chain (threes rows) wg. 2 tolas, one gold pearls chain, wg.

1/2 tola, and another gold chain wg. 1 tola, which is having locket of Venkateshwara, one gold tuft ring wg. 1/2 tola, 5 tolas silver, one gold chain (pushelathadu) wg. 2 tolas and one gold plain ring wg. 1/2 tola. On the report given by PW.1, the police, Jammikunta registered a case in Crime No. 40 of 1996 u/s 392 IPC and Section 25(1)(a) of the Indian Arms Act.

4. The investigating officer visited the scene of offence, conducted panchanama, drawn the rough sketch and recorded the statements of witnesses. On 31.12.1996, the petitioner/A4 and two others i.e. A1 and A3 were arrested and one gold chain wg. 20 gms with pearls was recovered. The test identification parade was conducted on 15.02.1997. After completing investigation, the police laid charge sheet against the accused.

5. To substantiate the case of the prosecution, PWs. 1 to 13 were examined and Exs.P. 1 to P. 12 and 1 to 4 were marked. No oral and documentary evidence was adduced on behalf of the accused.

6. As referred above, the trial Court convicted the accused and as his appeal was dismissed, the accused filed this revision. The main contention of the learned Counsel for the accused is that there was a delay in holding identification parade and therefore, the Courts below committed an error in convicting the accused. It is also submitted that since the petitioner had already undergone imprisonment for two years, the period of imprisonment already undergone by him may be given set off and the sentence of imprisonment may be reduced to the extent of the period already undergone by him in jail.

7. Learned Additional Public Prosecutor supported the judgments of the trial Court and the appellate Court.

8. As seen from the evidence on record, while PW.1 was taking meals at about 8.30 p.m. in his house and the other family members were watching TV four unknown offenders entered into the house and demanded party fund posing themselves as members of Janarakshana Samithi. Then they demanded keys of the almirah and committed theft of cash and other gold ornaments. According to PW. 1, he lodged Ex.P. 1 - report to the police.

9. As seen from the evidence since the mediators for arrest and recovery turned hostile, prosecution failed to prove the recovery of stolen property from the accused. P.W.1 identified the accused at the time of test identification parade and also identified MOs 1 to 4 Gold ornaments before the trial Court. PW.2 has not identified any of the accused in the test identification parade. PW.4 is the son of PW.1. According to PW.4, he was present at the time of incident in the house and that he had identified the accused at the time of test identification parade. PW.5 is the another son of PW. 1. PW.5 identified A2 and A3 at the time of test identification parade. Thus, the evidence of PW.s.1 and 4 reveals that PW. 1 identified the accused (A4) herein at the time of test identification parade and also in the Court. According to PW.4 he had identified the accused(A4) in the test identification parade. According to PW.3 also PWs. 1 and 4 identified A4 at the

time of test identification parade. But when PW.4 was examined the accused (A4) was not present before the Court. A petition to condone the absence of A4 was filed and it was allowed. The accused (A4) failed to appear before the Court, when PWs.4 and 5 were examined before the Court. Whatever may be the reason for his absence of accused before the Court when PW.4 was examined. The accused ought to have filed petitions to recall the witnesses and further cross examined with regard to his claim of identifying the accused in test identification parade and before the Court. Having not done so the accused cannot say that the evidence of PW.4 with regard to his identification cannot be believed on the ground that he was not present before the Court when PW.4 was examined the accused cannot take the advantage of his own fault. When the witness had identified the accused in the test identification parade conducted by the Magistrate and he says that he can identify the accused if present before the Court, then the evidence of such witness cannot be brushed aside. Therefore, the version of PW.4 that he could identify A4 has to be accepted,. Moreover, as seen from the evidence of PWs. 1,4 and 5, it is clear that the accused were in their house for considerable time. They demanded money and asked for the keys of the almirah and Opened the almirah and committed theft of cash and gold ornaments. Thus, it is clear that the accused were in the house of PWs. 1, 4 and 5 for sufficient length of time" and that they did not - cover their face. It is not the case of the accused that there was no sufficient light at the time of incident in the house of PW.1. Moreover, PW.1 in his report itself categorically mentioned that he can identify the accused if shown to him. The main point to be considered when the question of identifying the accused arises is that whether the witnesses had ample opportunity to see the accused at the time of incident. If it is clear that the witnesses had good opportunity to observe the accused, their evidence has to be given due consideration where in a case the witnesses had given the descriptive particulars of the accused when they were examined by the police immediately after the occurrence, it gives an assurance that the accused left indelible impression in the mind of the witnesses. The witnesses had categorically denied the suggestion that they were shown the photographs of the accused before holding test identification parade. The circumstance that some of the witnesses could not identify the accused in test identification parade and before the Court gives an impression that the accused or their photos were not shown to the witnesses before the test identification parade. It appears that there is no need for the witnesses to falsely implicate the petitioner/accused in this case. Though, there are minor contradictions in the evidence of prosecution witnesses, but they do not go to the root of the case. It is further submitted that there is delay in holding test identification parade. In this case the accused were arrested on 31.12.1996 and test identification parade was conducted on 15.2.1997. It is true that there is some delay in holding test identification parade. But delay is not fatal always. Each case has to be decided on its own facts and circumstances. Whether there is any motive for the witnesses to speak falsehood, whether there was sufficient light, time and opportunity to enable the witnesses to identify the accused, whether the accused created impressions in

the mind of the witnesses about the features of the accused or not, whether the Magistrate has taken sufficient number of non suspects or not are the some of the important questions, the Courts have to consider, when the question of identification of the accused arise. Wherein a case the witness had ample opportunity to identify the accused and when they had identified in test identification parade and before the Court and when it appears that the accused were not shown to the witnesses before test identification parade, and when there is no enmity or motive for the witnesses to speak false hood their evidence has to be believed and should not be discarded. Wherein a given case the accused had grown beard, to avoid recognition in test identification parade, the Magistrate may get the accused shaves. Any deceitful tactics either by the accused or by the police to frustrate justice should not be allowed.

10. In view of the above discussion, I hold that the prosecution has proved the guilt of the accused and accordingly, the conviction recorded by the lower Court for the offences punishable under Sections 457 and 392 IPC have to be confirmed. However, since this case is pending since more than a decade and the offence took place on 25,02.1996 i.e. about 13 years ago and the petitioner/A4 had already undergone imprisonment for more than two years, I deem it appropriate to consider that it is just and reasonable to modify the sentence. Accordingly, the petitioner is sentenced to suffer rigorous imprisonment for two years for each of the offences punishable u/s 457 and 392 IPC and the sentence shall run concurrently. The sentence of imprisonment already under gone by the petitioner/A4 shall be given set off. Learned Counsel for the petitioner informed that the petitioner/A4 has already paid the fine amount. Since the petitioner/A4 had been in jail for more than two years and the sentence already undergone by him has been given set off, there is no need to commit him to jail once again.

11. Accordingly, the criminal revision case is dismissed subject to the above modification in the sentence.