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**(1995) 10 AP CK 0031**

**In the Andhra Pradesh High Court**

**Case No : Criminal R.C. No. 569 of 1995**

Pallepu Venkati

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

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**Date of Decision :** 10-10-1995

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 395

**Citation :** (1996) 1 ALD(Cri) 427 : (1996) 1 ALT(Cri) 248 : (1996) CriLJ 1458

**Hon'ble Judges :** V. Rajagopala Reddy, J

**Bench :** Single Bench

**Advocate :** I. Aga Reddy and K. Keshavardhan Reddy, for the Appellant; Public Prosecutor, for the Respondent

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## **Judgement**

1. This Revision Case is filed against the Judgment in CrI. Appeal No. 7/94 on the file of Sessions Judge, Karimnagar confirming the Common Judgment passed by the Assistant Sessions Judge, Jagital in S.C. Nos. 300/92 and 51/93, convicting of the Revision-petitioner (A-3 in S.C. No. 51/93) along with five others u/S. 395 I.P.C. and awarding the sentence of R.I. for seven years and fine of Rs. 500/- in default to suffer SI for two months.

2. The case of the prosecution was that the revision-petitioner (A-3 in S.C. No. 51/93) and others on 4-1-1992 at 10 p.m. entered into the rice mill belonging to PW-1. At that time PWs 5 and 6 were in the mill. The petitioner and others demanded PW-5 to give money. PW-5 told them that the money would be in the custody of PW-1 in his house. Then all the accused including the petitioner demanded PW-6 to open the almirah where they found cash of Rs. 1000/-. They also snatched away the wrist watch and others articles from PW-6 and along with PW-5, left the premises. PW-5 was threatened to show the house of PW-1. Accordingly, PW-5 led them to the house of PW-1. PW-1 opened the door. They entered the house of PW-1. PWs. 2 and 3, the wife and daughter of PW-1, were in the house. They demanded PWs-1 to 3 to give them cash and other valuable property at the point of knives. A-1 in the case slapped PW-1. They took PW-1

inside the house, ransacked the almirahs and snatched away all the valuable including wrist watches worth about Rs. 42,000/-. After committing the decoity, they left the premises. The test identification parade has been held wherein the petitioner and other accused have been identified by PWs. 1 to 6. Considering the entire evidence and the articles recovered at the instance of the petitioner and other accused in the case, the trial Court found them guilty and convicted u/s 395 of the Indian Penal Code and sentenced, as stated earlier. The appellant Court on a re-appraisal of the entire evidence on record, confirmed the conviction and sentence.

3. Shri I. Aga Reddy, learned counsel for the petitioner, contended before me that the recovery of wrist watch and "Kamma" alleged to have been made at the instance of the petitioner, cannot be believed inasmuch as PWs-13 and 14 who were the mediators of the panchanama for the recovery, have turned hostile. It is true that this part of the evidence cannot be relied upon since the evidence in support of the recovery from the house of A-3 was based upon the evidence of PWs-13 and 14. When their evidence is not available since they turned hostile, the recoveries at the instance of the petitioner cannot be accepted. The Police Prosecutor also fairly conceded that the recoveries are not acceptable.

4. It is next contended that the evidence with regard to the identification by PWs-1 to 3 cannot be believed. Since the petitioner was arrested on 30-8-1992 and the test identification parade has been conducted on 20-9-1992, there was un-explained delay in conducting the test identification parade. As a part of this argument, it is stated that there was no possibility for identifying the petitioner by PWs-1 to 3 after a long gap of 21 days from the date of his arrest, the petitioner being stranger to the witnesses. This circumstance is fatal to the case of the prosecution, and conviction based upon the sole evidence of identification is illegal.

5. In support of his contention, the learned counsel has relied upon a Judgment in Hari Nath and Another Vs. State of U.P., wherein it was held that "The evidence of the test identification would call for a careful scrutiny. In a case of this kind where the eye witnesses, on their own admission, did not know the appellants before the occurrence, the identification of the accused persons for the first time in the dock after a long lapse of time would have been improper. In Halsbury's Law of England (IV Edn. Volume II, Para 363) this passage occurs and is worth recalling :

"It is undesirable that witnesses should be asked to identify a defendant for the first time in the dock at his trial, and as a general practice it is preferable that he should have been placed previously on a parade with other persons, so that potential witness can be asked to pick him out."

In such cases, it is needless to say, the test identification at an identification parade to test the power of recollection of the witnesses assumes added significance ..... If there is unexplained and unreasonable delay in

putting up the accused persons for a test identification, the delay by itself detracts from the credibility of the test."

In the above case, the learned Judges held that lapse of four months after the arrest of the accused in conducting the identification test which was not explained, was held to be fatal to the case.

6. The learned counsel further relied on a decision in the case of State of Andhra Pradesh Vs. Dr. M.V. Ramana Reddy and others, . The facts in that case are as follows :

at Page 2712, of Cri LJ.

"The evidence of PW-1 is that when she heard the cries of her father she woke up and saw accused No. 1 and six or seven others be-labouring him. This means that she did not know and could not identify the companions of accused No. 1. However, when she tried to raise an alarm, three of the assailants approached her and pinned her down to the bed, and one of them threatened to stab her. He did carry out his threat as is evident from the injuries sustained by her. She was able to identify two of them at the identification parade held on May 23, 1975. This is proved through the evidence of PW-14 who conducted the test identification parades."

In view of the delay of ten days in holding the identification parade and in view of the special features presented by the facts of the case and in view of the invalid explanation for the delay the Supreme Court did not rely upon the test identification parade. In the case of Puttan alias Kamal Prasad Vs. State of U.P., the identification parade was held more than six months after the arrest of the accused and there was no possible explanation regarding the said inordinate delay in holding the identification parade. Hence, the Supreme Court found fault with the Courts below for relying upon the identification evidence. What emerges from the above cases is that the evidence of test identification would require great scrutiny and that the un-reasonable and unexplained delay in putting up the accused for test identification detracts from its credibility.

7. Now the point to be determined in the case is whether the identification evidence of PWs-1 to 3 could be relied upon to form the basis of conviction of the petitioner. The evidence of PWs-1 to 3 shows that the petitioner and other accused entered the house at about 10 o'clock in the night on opening the door by PW-1. They demanded money from PW-1. He was slapped by A-1 when he said that there was no money in the house. They went inside the house. The wife and daughter were there PW-2 was slapped by the petitioner. They started looting and ransacking the almirahs and other places inside the house where they suspected that they (PWs-1 to 3) might have secreted the cash. One of the accused had snatched away the gold chain tied around the neck of PW-2. The accused fled away after looting valuable articles. Though they were armed with knives, nobody received any serious injuries. These three witnesses have stated in their evidence that they had identified A-3 (the petitioner). PW-16 is the

Judicial Magistrate of 1st class. He stated that PWs-1 to 3 identified the petitioner and others. The credibility of identification evidence rests upon the facts of each case. The chances of identification from case to case differs, depending upon the length of time, age of the witness, state of mind one was placed in, at the time of occurrence etc., This is not a case where a solitary witness has identified the accused. P.Ws. 5 and 6 also have identified the other accused on the basis of which they were convicted. It is also significant to note that they have chosen not to question their conviction. The facts in State of Andhra Pradesh Vs. Dr. M.V. Ramana Reddy and others, reveals that the witness had only too brief a time to identify the accused and she was put to mortal fear, which was evident from the fact that she received injuries by them. In such a situation she could not have properly identified the accused. The situation in the instant case is totally different, as seen above. The chances of identification of the petitioner are more since the accused spent considerable time in the house and they were not put to mortal fear.

8. The other circumstances which has to be considered is whether there was any un-explained delay in conducting the identification parade. The petitioner has been arrested on 30-8-92. The requisition (Ex.P-19) to conduct the identification parade has been given on 3-9-92 i.e., on the third day of the arrest. The Magistrate took his time to fix the date of the parade and held it on 20-9-1992. It is seen that practically there was no delay in conducting the identification parade. Even otherwise it can be held that the short delay of 20 days in conducting the test identification parade was properly explained.

9. I am, therefore, of the opinion that the evidence of identification of PWs-1 to 3 was rightly relied upon, for basing the conviction of the petitioner, by the Courts below.

10. It is next argued that Section 395 of the Indian Penal Code is not attracted to the facts of the case since the petitioner has not caused any hurt. Section 395 of the Indian Penal Code speaks of not only causing hurt but also causing or attempting to cause any person fear of instant death, or instant hurt or of instant wrongful restraint. In this case, PWs-1 to 3 have been threatened at the point of knives, by closing the doors. They demanded money and finally succeeded in looting the entire house by taking away all the valuables in the house. It is clear case which falls u/s 395 of the Indian Penal Code.

11. For the above reasons, I am of the opinion that the conviction and sentence passed by the Courts below are justified and the Judgments of the Courts below do not suffer from any infirmity.

12. The Criminal Revision Case is, therefore, dismissed.

13. Revision dismissed.