
(2001) 07 KAR CK 0092
In the Karnataka High Court
Case No : Criminal Appeal No. 476 of 1999

State	Vs	APPELLANT
Lokesh and others		RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 34

Citation : (2001) ILR (Kar) 4655 : (2001) 5 KarLJ 595 : (2001) 4 KCCR 339 SN

Hon'ble Judges : M.F. Saldanha, J;K.R. Prasad Rao, J

Bench : Division Bench

Advocate : Sri Mohan Shanthan Goudar, State Public Prosecutor, for the Appellant; Smt. G.S. Anasuya and Sri S. Shankarappa, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—We have heard the learned State Public Prosecutor as also the learned Counsel Smt. G.S. Anusuya on behalf of the original accused 1.

2. We need to mention that some of the other accused are absconding and Non-bailable warrants have been issued by this Court but so far not been executed. The difficulty that has arisen is that accused 1 who has undergone more than 5 years in custody has been arrested under the Non-bailable warrant issued and he is at present in custody. The learned Advocate has presented an application for bail. The learned State Public Prosecutor very rightly submitted that normally he would not have opposed the grant of bail, but that the accused persons in those dacoity cases have displayed a tendency of moving from place to place or absconding as a result of which it becomes impossible to dispose of the appeal. His request to the Court was, therefore, that the appeal to the Court was, therefore, that the appeal itself should be heard and disposed of on merits and Smt. Anusuya, the Counsel has agreed to this, pursuant to which, we have heard the learned Advocates on both the sides on merits. The learned State Public Prosecutor submits that the Trial Court was not justified in having essentially

based the acquittal order on the fact that there was no conclusive identification in this case and that there are no infirmities with regard to the recovery evidence. As regards the first aspect, he is absolutely right when he points out that this is a class of cases where a dacoity takes place either at the dead of night or with the accused wearing masks. In this case, the accused had covered their heads and faces completely with monkey-caps and it was for this reason that the witnesses could not personally identify them. Smt. Anusuya submitted that non-identification is fatal to the prosecution in this case. This position is not correct because the law that applies to this class of cases lays down that if the Court is satisfied about the participation of the accused through any other direct or circumstantial evidence that the personal identification aspect becomes secondary.

3. Next, the learned State Public Prosecutor has taken us through the recovery evidence and he relies on the legal position which is now well-settled by the Supreme Court laying down that even if the panchas are not available or unreliable that the relevant documents can be proved through the evidence of the Investigating Officer. Smt. Anusuya has vehemently submitted that the evidentiary value of this evidence gets weakened if this procedure is followed and that consequently the acquittal order will have to be confirmed. A perusal of the record establishes that the recovery evidence was wrongly rejected and once the same becomes acceptable, there is absolutely no ground on which the accused can escape.

4. On a total review of the record, we find that the order of acquittal was unjustified and the same is accordingly set aside, The respondents stand convicted of the offence punishable u/s 395 read with Section 34 of the Indian Penal Code. We have taken into account the fact that all the respondents have undergone a period in custody in excess of 5 years. Consequently, though the learned State Public Prosecutor has submitted that the offence is extremely serious and that it qualifies for a heavier sentence, we confine the sentence awarded to the respondents is to a years R.I. The respondents having undergone this period already, it is directed that they be set at liberty forthwith if not required in connection with any other case.

5. The appeal succeeds to this extent and stands disposed of. The unexecuted Non-bailable warrants to be recalled.