

(2004) 08 AP CK 0022

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1407 of 2004

The State of A.P.

APPELLANT

Vs

Pedaganti Sreenu and Another

RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 411

Citation : (2004) 2 ALD(Cri) 364

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

Bench : Single Bench

Advocate : Public Prosecutor, for the Appellant;

Final Decision : Dismissed

Judgement

P.S. Narayana, J

1. The State preferred the present appeal against an order of acquittal recorded in C.C. No. 112 of 2003, dated 25-08-2003 by the learned I-Additional Judicial I-Class Magistrate, Kadapa.

2. Heard the learned Additional Public Prosecutor at length.

3. The learned Additional Public Prosecutor would contend that the only ground on which, the evidence of P.W.2 was disbelieved is that he is a stock witness to CCS Police and this view is not the correct view in the light of the view expressed in Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh, . Further, he would submit that the evidence on record is sufficient to convict the accused u/s 411 IPC. The respondents / accused are charged with the offences under Sections 379 and 411 IPC.

4. The case of the prosecution is that P.W.1 is residing in upstairs and he own Bajaj motor cycle bearing No. AP04 C 3573 and that on 16-04-2003, he kept the said vehicle at Medical Agency and slept on the terrace and on the early hours of next day morning, he woke up and found his motor cycle missing and after

searching for the same, P.W.1 lodged a complaint before the II town Police Station and during the course of investigation, on 21-04-2003, on information, the Circle Inspector of CCS Police Station and staff along with mediators proceeded to Ramarajupalli and found the accused in possession of the Bajaj motor cycle and seized the same in the presence of mediators and arrested the accused and thereafter, the Complainant identified the same and after completion of investigation, the charge sheet was filed.

5. In order to prove the case of the prosecution, prosecution examined P.Ws. 1 to 5 and Exs. P.1 to P.4 and M.O.1 were marked. P.W.1 is the Complainant. P.W.2 is the seizure witness. P.W.3 is the Assistant Sub-Inspector of Police, who registered the case. P.W.4 is the Circle-Inspector of Police, who arrested the accused and filed charge sheet. P.W.5 is the Assistant Sub-Inspector of Police. Ex. P.1 is the complaint. Ex. P.2 is the seizure panchanama. Ex. P.3 is the First Information Report. Ex. P.4 is the rough sketch and M.O.1 is the Bajaj motor cycle.

6. P.W.1 deposed relating to his case. P.W.3 is the seizure panch witness who deposed that on 21-04-2003 at about 3.30 p.m., he was called by the CCS police and accordingly, he accompanied the CCS police along with another mediator and they went in a police jeep to Railway station and other places and when they reached built-up junction, found the accused keeping motor cycle and on seeing the police, A.1 and A.2 tried to sulk away and the police apprehended the accused and on interrogation, the accused confessed the offence and police seized M.O.1 under the cover of panchanama and he signed panchanama Ex. P.2 along with another mediator. P.W.2, the other independent witness who is said to be the independent witness admitted that he acted as a mediator in number of cases filed before the I-Additional District Munsif and II Additional District Munsif Courts and it is not more than 50 cases. After recording reasons in detail commencing from paras 9 to 11, the learned Magistrate had arrived at a conclusion that the prosecution was unable to establish the guilt of the accused.

7. In *Trimbak Vs. The State of Madhya Pradesh*, the Apex Court while dealing with the ingredients of Section 411 IPC held:

"It is the duty of the prosecution in order to bring home the guilt of a person u/s 411 IPC to prove, (1) that the stolen property was in the possession of the accused, (2) that some person other than the accused had possession of the property before the accused got possession of it, and (3) that the accused had knowledge that the property was stolen property."

8. Reasons in detail had been recorded to the effect that the seizure of M.O.1 had not been proved and especially, in the light of the fact that the witness P.W.2 is a stock witness, the seizure cannot be believed. The learned Additional Public Prosecutor placed reliance on (1) supra. It is no doubt true. In the said decision, it was observed at para 9 that:

"The mere fact that he was a witness to all the Panchanamas prepared by the

investigating officer is by itself not sufficient to discard his evidence. Even in the case of an interested witness, it is settled law that his evidence cannot be overlooked merely on that ground but at the most it must receive strict scrutiny".

9. There cannot be any dispute about this proposition. In the present case, the learned Magistrate had discussed the evidence on record in detail and he had disbelieved the recovery of M.O.1 from the possession of the accused as alleged by the prosecution. Hence, the ingredients of Section 411 IPC are not satisfied. In the light of the reasons recorded in detail, this Court does not see any reason to interfere with the order of acquittal made by the learned Magistrate.

10. Hence, the criminal appeal is hereby dismissed at the stage of admission.