

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE Nos. 550, 553, 557 & 796 of 2007

COMMON JUDGMENT:

These four criminal revision cases are being disposed of by this common judgment, since they all arose out of a judgment dt.16.08.2005 in Sessions Case No.85 of 2005 on the file of the Assistant Sessions Judge, Ramachandrapuram, East Godavari District.

2. The petitioners herein are arrayed as Accused Nos.1 to 4 in Crime No.89 of 2004 of Mandapeta Rural Police Station, along with other accused. They are alleged to have committed the offences punishable under Sections 395, 397 and 324 IPC. Accordingly, a charge sheet was filed by the police. After conducting full-fledged trial, the learned Assistant Sessions Judge, Ramachandrapuram, by his judgment dt.16.08.2005, though not found guilty of the non-petitioners/A5 and A6 and acquitted them fully, however, found the petitioners/A1 to A4 guilty, convicted and sentenced them as under:

“A.1 to A.4 are convicted under Section 235(2) Cr.P.C.,for the offence under Section 395 IPC and sentenced to undergo Rigorous Imprisonment for a period of five years each and to pay a fine of Rs.500/- (Rupees five hundred) each, in default to undergo simple imprisonment for a period of one month each. They are entitled for the benefit of set off the period which they have already undergone, under Section 428 Cr.P.C.”

3. The findings of the trial Court are based upon the evidence of PW.1 to PW.15, Exs.P.1 to P.23 and M.Os.1 to 16. Aggrieved by the said conviction and sentence imposed by the trial Court, the petitioners/A1 to A4 preferred four individual appeals before the VI Additional Sessions Judge (FTC) East Godavari, Rajahmundry. The learned Additional Sessions Judge dismissed all the four appeals, convicted the accused, modified the section of law, and confirmed the sentence of imprisonment imposed by the trial Court. Aggrieved by the same, the petitioners herein preferred the present revisions cases.

4. The case of the prosecution in brief is as under:

On 07.10.2004, PW-1 (Reddy Kishore Kumar Reddy) left Vizag taking his salary from his office, and reached Rajahmundry by bus in the night, and started journey on his motor cycle to go to Mandapeta. At about 12.30 midnight, while he was driving his vehicle and reached Vemagiri Samalakota Canal Road, all the accused armed with iron pipe , waited there on their motor cycles, stopped PW-1. A-1 attacked PW-1, beat him with the pipe and caused injuries. After causing injuries, A1 to A6 robbed cash and personal properties of PW-1, and ran away on their vehicles, having PW-1 tied his hands and shutted his mouth.

After sometime, PW-1 untied his hands, boarded a lorry and reached Z. Medapadu. There, he informed the occurrence to PWs.3 and 4 and reached Mandapeta at about 3.30 a.m. and informed to PW-2 about the occurrence, and with his assistance PW-1 went to Mandapet Rural Police Station and submitted a complaint, on which PW-14, Sub-Inspector of Police registered a case in Cr.No.89 of 2004 and handed over the same to PW-15, Inspector of Police, who investigated the matter and filed charge sheet, concluding that A1 to A6 have conjointly committed robbery of PW-1.

5. Heard both sides and considered the material on record.

6. PWs.1 and 2 are the material witnesses insofar as the prosecution is concerned. Both the witnesses have constantly deposed about the involvement of the accused in the offence. PW-1 has clearly identified A-1 to A-4 before the trial Court, as the persons participated in the robbery, though he could not able to give their respective overt acts. It is also clear that PW-1 could identify the four culprits, as he has seen them in the lighting of his motor cycle and the scooter, as well as that of other vehicles. Admittedly, the entire episode of robbery was not taken within few minutes, but took considerable time, which is sufficient for PW-1 to identify the accused. Moreover, PW-1 clearly mentioned in his report, Ex.P.1 that he can identify the culprits and gave their description.

PW-2 has clearly stated that he noticed the injuries on PW-1, on his forehead and also on his back. PW-12 is the Medical Officer, who clearly deposed about the injuries of PW-1. In Ex.P.1 report also, PW-1 has clearly stated about the injuries sustained by him. Apart from that, there is no delay either in submitting Ex.P.1 report, registering the FIR or submitting the same before the Magistrate concerned. Therefore, there is no possibility to bring

Ex.P.1, with due deliberations. It is also clear from the evidence of PW-1 that he identified A1 to A4 in the Central Jail in the identification parade conducted by the learned Magistrate, PW-7.

7. The learned counsel for the petitioners/accused submits that both the Courts below have committed mistake in holding that the petitioners/accused have committed the offence, and the discrepant evidence has been made the basis. The identification said to have been made by the injured-witness both in the Court and during the course of identification parade, is assailed by the learned counsel contending that even admittedly before the same was conducted, the photographs of the suspects/accused were taken and widely published both in print and electronic media. Therefore, the identification said to have been made by the witness about the involvement of the accused become suspicious.

8. The above contention of the learned counsel is not correct, as it is noticed from the evidence of the material witness-PW-1, who claims that he has seen the assailants for a considerable period of time, while they are committing the crime in the clear lighting of the on coming vehicles. Therefore, the identification made by the prosecution witnesses about the accused cannot be doubted. That apart, the material objects have been recovered at the instance of the accused and the evidence of prosecution witnesses on that aspect is cogent and convincing.

9. After careful scrutiny of the evidence of PWs.1 and 2, and the other prosecution-witnesses, and referring to all the contentions raised by the learned counsel for the petitioners, it is clear that PW-1 did not identify A-5 and A6. Even it is not the case of the victim-PW.1 in his report Ex.P.1 that six culprits attacked him and committed the robbery. When PW-1 identified only A.1 to A.4 as the culprits, who committed the offence of robbery, convicting the petitioners under Section 395 IPC by the trial Court is not correct, as rightly held by the appellate Court and changed the provision of law. Both the Courts below have properly appreciated the entire evidence on record and found the accused guilty of the offence. Hence, there are no merits in the present revisions and they are accordingly liable to be dismissed.

10. The learned counsel appearing for the petitioners/accused herein further submits that all the petitioners/accused are young persons, not involved in any other offences and have personal family responsibilities, and therefore, a

lenient view may be taken while imposing the sentence of imprisonment. It is not in dispute that except this offence, no other offence is committed by the petitioners/accused. Keeping in view the submission made by the learned counsel, I am of the view that the ends of justice will be met if the petitioners/accused are sentenced and imposed a lesser imprisonment.

11. Accordingly, the criminal revision cases are dismissed. However, the sentence of imprisonment is reduced, and the petitioners/A1 to A4 are sentenced to undergo rigorous imprisonment for a period of eighteen (18) months for the offence under Section 390 IPC, with set off of the period already undergone by them. However, the fine imposed by the appellate Court is maintained. Consequently, pending miscellaneous applications, if any, shall stand closed.

M.S.K.JAISWAL,J

Date: 05.10.2015

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THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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