

**HONOURABLE SMT JUSTICE ANIS**  
**CRIMINAL REVISION CASE No.1054 OF 2008**

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**ORDER:**

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This criminal revision case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the revision petitioner herein challenging the judgment dated 08.07.2008 passed by the Metropolitan Sessions Judge, Hyderabad, in Criminal Appeal No.465 of 2007, whereunder and whereby the conviction passed against the revision petitioner herein for the offences punishable under Sections 419 and 379 read with 511 of the Indian Penal Code, vide judgment dated 01.11.2007 in C.C.No.85 of 2004, by the X Additional Chief Metropolitan Magistrate, Secunderabad, was confirmed and the sentence of imprisonment imposed by the trial Court was reduced from one year to six months each for the said offences.

2. The revision petitioner herein is accused No.2 and respondent herein is the complainant in C.C.No.85 of 2004 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The brief facts of the case are that on 05.01.2004 at about 8.30 p.m., when P.W.2, who was an Intermediate student, was proceeding to his house by walk, after getting down the bus of route No.6G at Ramakrishna Matham bus stop, three unknown persons came to him, that one among them dashed against him and picked up a quarrel without any reason and then they demanded him to show his bag and checked his bag stating that they are police personnel, but they did not find any money. In the meantime, P.W.3- S.I. of Police and one Police Constable, who were on patrolling duty, came there and on seeing them, two of the offenders ran away and the police caught hold of accused No.2. On enquiry by the police, accused No.2 revealed his name as Suresh, aged about 23 years and resident of Domalguda, Hyderabad. Thereafter, he was brought to police station. On receipt of

complaint from P.W.2, P.W.4-Investigating Officer registered a case in Crime No.9 of 2014 for the offences punishable under Sections 419 and 379 read with 511 I.P.C. and took up investigation. P.W.4 recorded the confession of the apprehended person-A2 in the presence of two mediators and recovered a screwdriver from his possession under a cover of panchanama. The remaining accused i.e. accused Nos.1 and 3 were apprehended on the next day morning at the instance of accused No.2 and they have also confessed to have committed the offence. P.W.4 recorded their confession in the presence of two mediators and recovered a small knife from the possession of accused No.1 under a cover of panchanama. After completion of investigation, P.W.4 filed charge sheet against accused No.1 for the offences punishable under Sections 419 and 379 read with 511 and 75 I.P.C. and against accused Nos.2 and 3 for the offences punishable under Sections 419 and 379 read with 511 I.P.C.

4. The learned X Additional Chief Metropolitan Magistrate, Secunderabad, took cognizance of the case and framed charges against the accused for the offences punishable under Sections 419 and 379 read with 511 I.P.C. At the time of examination under Section 239 Cr.P.C., accused No.1 admitted the guilt and thereupon, conviction and sentence was recorded against him. A separate charge sheet was filed against accused No.3 in the Juvenile Court, since he was a minor at the time of offence. The revision petitioner herein-accused No.2 pleaded not guilty and claimed to be tried. During trial, to prove the case of prosecution, PWs.1 to 4 were examined and Exs.P1 to P4 and M.Os.1 and 2 were got marked.

5. After closure of the prosecution evidence, accused No.2 was examined under Section 313 Cr.P.C. putting all incriminating material available against him. Accused No.2 denied the same and reported no oral or documentary evidence on his behalf.

6. The trial Court, after hearing the arguments and after perusing the record, convicted accused No.2 for the offences punishable under

Sections 419 and 379 read with 511 I.P.C. and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.300/-, in default to undergo simple imprisonment for a period of three months, for the offence punishable under Section 419 I.P.C. and to undergo simple imprisonment for a period of one year and to pay a fine of Rs.200/-, in default to undergo simple imprisonment for a period of three months, for the offence punishable under Section 379 read with 511 I.P.C. Both the sentences were directed to run concurrently.

7. Aggrieved by the conviction and sentence passed by the trial Court, accused No.2 preferred Criminal Appeal No.465 of 2007 before the Metropolitan Sessions Judge, Hyderabad. The appellate Court, after considering the evidence on record, dismissed the appeal on 08.07.2008, confirming the conviction passed against the revision petitioner, but however, reduced the sentence of imprisonment from one year to six months for both the offences.

8. Being aggrieved by the judgment of the appellate Court dated 08.07.2008 passed in Criminal Appeal No.465 of 2007, accused No.2 preferred the present revision case.

9. The learned counsel appearing for the revision petitioner/ accused No.2 argued that P.W.2, who is the defacto complainant, has not identified the revision petitioner-accused No.2 and that there is absolutely no evidence to connect the revision petitioner to the alleged crime. It is also argued that the evidence of P.W.1, who is the panch witness for the confession of the accused and recovery of M.Os.1 and 2, cannot be relied upon, as he has stated in his cross-examination that when he went to the police station, M.Os.1 and 2 were present on the table of the S.I. of Police. He further argued that both the Courts below have erred in convicting the accused, basing on the evidence of P.Ws.1 to 4, though their evidence is not sufficient to prove the case of the prosecution. He, therefore, prayed the Court to allow the revision case, setting aside the conviction and sentence passed against the

revision petitioner-accused by the Courts below.

10. On the other hand, the learned Public Prosecutor appearing for the State argued that the revision petitioner-accused No.2 is a habitual offender, having past history of involvement in theft cases. He further argued that on the date of incident, the revision petitioner-A2 was caught red handed by the police and, therefore, P.W.2 not identifying him is not fatal to the case of the prosecution. Further, the offence occurred in the year 2004 and as there was a long gap of 3½ years from the date of offence, P.W.2 could not identify accused No.2 during trial, which is quite believable. He also argued that though P.W.2 could not identify accused No.2, he mentioned the name of accused No.2 in his evidence and further after accused No.2 was caught red handed and brought to the police station, M.O.1-screwdriver was seized from his possession, and therefore the evidence of panch witness that M.Os.1 and 2 were on the table of the S.I. of Police by the time he went to the police station, is not fatal to the case of the prosecution. He finally argued that the prosecution could prove the guilt of the accused beyond reasonable doubt and hence prayed the Court to dismiss the revision.

11. Now, the point for determination is --

“Whether the prosecution could bring home the guilt of the revision petitioner-accused No.2 for the offences punishable under Sections 419 and 379 read with 511 I.P.C., with which he is charged?”

12. **POINT:** According to the prosecution, on 05.01.2004 at about 8.30 p.m., when P.W.2 was proceeding to his house by walk, after getting down the bus at Ramakrishna Matham bus stop, the revision petitioner-accused No.2 along with two other persons (accused Nos.1 and 3) came to him, that one among them dashed against him and picked up a quarrel and then they demanded him to show his bag and checked his bag stating that they are police personnel. At that time, P.W.3-S.I. of Police and one Police Constable, who were on patrolling duty, came there and on seeing them the other two persons (accused

Nos.1 and 3) ran away and accused No.2 was caught hold by the police. Then, accused No.2 was brought to the police station and he confessed the offence and M.O.1-screw driver was recovered from his possession, under a cover of panchanama.

A perusal of the evidence of P.W.2 shows that he has stated that on the date of offence, after completion of coaching at 8.30 p.m., he was proceeding to his house by walk near India Park and at that time, three persons dashed him and demanded money and checked his bag stating that they are police personnel. He further stated that he was not having any money and hence, the said persons beat him with hands and that in the meanwhile, patrolling police came there and on seeing them, two of the offenders ran away and the police caught hold of one person and took him to police station. Then he gave a report to police under Ex.P3. P.W.2 further stated that on enquiry by the police, the apprehended person revealed his name as Suresh. Though P.W.2 could not identify accused No.2, he gave reason for the same stating that as the incident occurred long back and there is a long gap of nearly 3½ years, he could not identify accused No.2, but he still remembered the name of accused No.2 as Suresh.

P.W.3 is the S.I. of Police who was on patrolling duty on the date of offence and caught hold accused No.2 red handed at the scene of offence. He stated in his evidence that on the date of incident, he, along with a Police Constable, noticed three persons beating P.W.2 and when they reached near that place, all the accused started running and then they chased them and caught hold of accused No.2. He further stated that on enquiry, P.W.2 revealed that accused No.2 and two other persons tried to snatch his purse and made an attempt to commit theft of money by introducing themselves as police officials. Then he produced accused No.2 before P.W.4-Investigating Officer. Nothing adverse has been elicited in his cross-examination.

P.W.1 is the panch witness for the confession of accused No.2 and seizure of M.O.1-screwdriver from his possession. He also acted

as panch witness for the confession of accused No.1 and seizure of M.O.2-knife from his possession. He deposed about the accused confessing before him about the commission of offence by them and the police conducting panchanama and recovering M.O.1-screwdriver from the possession of accused No.2 and M.O.2-knife from the possession of accused No.1. However, in his cross-examination, he stated that by the time he went to the police station, M.Os.1 and 2 were on the table of the S.I. of Police.

P.W.4 is the Investigating Officer, who registered the case on receipt of Ex.P3-complaint from P.W.2 and conducted investigation. He deposed about recording the confession of accused No.2 and recovering M.O.1 from his possession in the presence of P.W.1 and another panch witness, under a cover of panchanama, and also arresting accused Nos.1 and 3 at the instance of accused No.2 and recovering M.O.2-knife from the possession of A1, under a cover of panchanama. After completion of investigation, he filed the charge sheet into the Court.

Thus, the evidence of P.Ws.1 to 4 clearly establishes the case of the prosecution that accused No.2, along with two others, stopped P.W.2, while he was proceeding to his house on the date of incident, demanded money and attempted to commit theft of money from him, by introducing themselves as police personnel. Though the learned counsel for the revision petitioner-accused No.2 contended that since P.W.2 could not identify the revision petitioner-accused No.2, his evidence cannot be believed, it is to be seen that accused No.2 was caught red handed by P.W.3-S.I. of Police at the time of incident and hence P.W.2 not identifying accused No.2, after a gap of about 3½ years, is not fatal to the case of the prosecution. Further, P.W.2, though failed to identify accused No.2, categorically mentioned the name of accused No.2 as Suresh in his evidence. The evidence of P.W.2 was supported by P.W.3, who was on patrolling duty on the date of incident and caught hold accused No.2 red handed and produced

before P.W.4. Thus, the prosecution could establish the guilt of accused No.2 for the offences punishable under Sections 419 and 379 read with 511 I.P.C. beyond all reasonable doubt and the trial Court, therefore, rightly convicted accused No.2 for the said offences and imposed the sentence of imprisonment of one year for both the offences. The appellate Court, however, took a lenient view and reduced the sentence of imprisonment imposed by the trial Court from one year to six months for both the offences. Having considered the entire evidence available on record and on perusal of the judgments of the trial Court as well as the appellate Court, this Court is of the considered opinion that the revision petitioner-accused No.2 is not entitled for any further lenient view with regard to sentence of imprisonment and there is nothing to interfere with the concurrent findings of the Courts below.

13. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 08.07.2008 passed by the Metropolitan Sessions Judge, Hyderabad, in Criminal Appeal No.465 of 2007.

14. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

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**ANIS, J**

15<sup>th</sup> April, 2015  
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