

THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY THIS THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE MRS JUSTICE ANIS

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CRIMINAL REVISION CASE No.9 of 2008

Between:

Bagaothula Swamy

..... PETITIONER

AND

The State of A.P.

Through Public Prosecutor,

High Court of A.P

.....RESPONDENT

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The Court made the following:

HON'BLE MRS JUSTICE ANIS

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CRIMINAL REVISION CASE No.9 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 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 14.12.2007, passed by the VI Additional District & Sessions Judge (Fast Track Court), Nizamabad at Kamareddy, in Criminal Appeal No.72 of 2003, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 394 of

Indian Penal Code, vide the judgment dated 01.09.2003 in C.C.No.13 of 2003 by the Special Judicial First Class Magistrate for trial of Prohibition & Excise Offences, Nizamabad, was confirmed.

2. The revision petitioner herein is Accused No.1 in C.C.No.13 of 2003 before the trial Court. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the C.C. before the trial Court.

3. The case of the prosecution in brief is that the petitioner/A1 is resident of Bhavanipet, PWs 1 and 2 are also residents of the same village. On midnight of 9/10.10.1998 A1 and A2 went to the house of PWs 1 and 2, covering their faces with clothes and knocked the door of PWs 1 and 2 on the pretext of purchasing beedies, PW 1 replied that there were no beedies in his shop, then A1 and A2 asked him to give a match box. When PW 2 opened the door, A1 snatched gold chain from her neck. When PW 1 tried to catch hold of A2, A1 assaulted him with stick and caused injuries and bitten the hand of PW 2 and fled away. On hearing galata, PW 3 woke up and found that his door was locked from outside. On the next day morning at 9.30 a.m. PW 1 lodged a report with the police, the police registered a case and referred PWs 1 and 2 to the Government Hospital for treatment. PW 4, after examining PWs 1 and 2, issued wound certificates. The Investigating Officer took up investigation and on 14.07.1999 arrested A2-Chinthala Sathyam in the presence of mediators and recovered gold chain from the possession of his sister basing on his confessional statement, under cover of mediators report. A1 himself surrendered before the trial Court on 01.12.1999. As per requisition of police, the learned Magistrate conducted test identification parade for A1 and A2 by PWs 1 and 2, who identified them as culprits. After completing the investigation and after receiving necessary reports, the Investigating Officer filed charge sheet into the Court for the offence punishable under Section 394 of IPC against the accused.

4. The case against A2 was split up, as he was absconded. The

learned Magistrate took cognizance of the case against A1 and framed a charge for the offence punishable under Section 394 of IPC against A1, for which, A1 pleaded not guilty. During trial, to prove the case of the prosecution, PWs 1 to 7 are examined and marked Exs.P1 to P12, and M.Os.1 to 5.

5. After closure of the prosecution evidence, A1 was examined under Section 313 Cr.P.C putting all incriminating material available against him. A1 denied the material evidence and reported no defence evidence on his behalf.

6. The trial Court, after hearing on either side and after considering the oral and documentary evidence, found A1 guilty of the offence punishable under Section 394 of IPC, convicted him for the said offence and sentenced him to undergo rigorous imprisonment for a period of 1½ year and to pay a fine of Rs.100/-, in default, to undergo Simple Imprisonment for a period of one month.

7. Aggrieved by the conviction and sentence passed by the trial Court, A1 preferred Criminal Appeal No.72 of 2003 before the VI Additional District & Sessions Judge (Fast Track Court), Nizamabad at Kamareddy, where the Appellate Court after reappraisal of the evidence and material on record, dismissed the appeal while confirming the conviction and sentence passed by the trial Court.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.72 of 2003, the petitioner/A1 preferred the present revision case.

9. The learned counsel for the revision petitioner/A1 argued that PWs 1 and 2 failed to identify A1, as they covered with the mask, and the Courts below failed to take note that M.O.1 was recovered from A2. The learned counsel further argued that the Courts below erred in not considering the evidence of PW 5, who opined that the injuries mentioned in Ex.P7 are possible by fall. The learned counsel further argued that the Courts

ought not to have considered the evidence of PW 3, who is an interested witness. The learned counsel further argued that the Courts below failed to observe that the prosecution has failed to prove the ingredients of Section 394 of IPC.

10. A perusal of the evidence of PWs 1 and 2 shows that on 9/10.10.98 during night time, when PWs 1 and 2 were sleeping in their house, the petitioner along with A2-Chinthala Sathyam, went to their house and asked them to give Beedies, when PW 1 replied that no Beedies are available in their shop, then they asked match box. When PW 2 opened the door, the accused snatched away the gold chain from the neck of PW 2 and when PWs 1 and 2 tried to catch hold of the accused, they attacked them with stick and caused injuries and A2 bitten the hand of PW 2.

11. The main contention of the petitioner/A1 is that as per the prosecution the petitioner covered his face with cloth at the time of the alleged offence, therefore, the question of identifying him by PWs 1 and 2 does not arise.

12. In the present case, it is the contention of the prosecution that PWs 1 and 2 have identified the accused, as they are also residents of the same village. During pendency of the trial, as per requisition of the police, the learned Magistrate conducted test of identification parade to identify the accused by PWs 1 and 2, and PWs 1 and 2 identified the accused during the said test of identification parade. So the contention of the learned counsel for the petitioner that A1 was not identified by PWs 1 and 2 cannot be accepted, in view of the identification proceedings.

13. The evidence of PWs 1 and 2 is supported by the evidence of Doctor, who treated them and stated that PWs 1 and 2 received simple injuries and to that effect he issued Exs.P6 and P7 wound certificates. As per the evidence of the Investigating Officer, M.O.1 chain was recovered from the possession of the sister of A2 basing on the confessional statement of A2 about the commission of offence. At the time of recovering M.O.1, a panchanama was conducted in the presence of the

mediators. Ex.P9 is the admissible portion of the confessional statement of A2, which clearly shows that A1 and A2 committed the offence.

14. On appraisal of oral and documentary evidence, both the Courts below gave concurrent finding that the prosecution has proved the guilt of the petitioner/A1 for the offence punishable under Sec.394 IPC. I find no infirmity or illegality warranting interference with the said findings.

15. At this stage, the learned counsel for the petitioner/A1 submitted that the petitioner/A1 was in jail for about two months, he has to maintain his family and old parents, and he is the only person to maintain them and therefore, prayed the court to take lenient view.

16. Considering the evidence and considering the facts and circumstances of the case, this Criminal Revision Case is dismissed, confirming the conviction recorded by the Courts below against the petitioner/A1 for the offence punishable under Section 394 I.P.C, but the sentence of 1½ year imprisonment is modified and reduced to the period six months rigorous imprisonment. The trial Court shall take steps, in accordance with law, for apprehending the accused for serving the sentence.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

ANIS, J

Date: 18.03.2015

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