

**HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA**

**CRIMINAL REVISION CASE No.839 OF 2005**

**JUDGMENT:**

The present Criminal Revision Case is preferred by accused No.2 viz., Malli Siddaiah alias Bujjodu challenging the conviction recorded under Section 248(1) of the Code of Criminal Procedure, 1973, for the offence punishable under Section 394 read with Section 34 of Indian Penal Code, 1860.

2. The learned Judicial Magistrate of First Class, Venkatagiri, by the judgment dated 24.09.2004 in C.C. No.111 of 2001, convicted accused Nos.1 and 2 and sentenced them to undergo Rigorous Imprisonment for two years each and to pay a fine of Rs.200/-, in default to suffer Simple Imprisonment for a period of three (3) months each. The material object, MO-1, was ordered to be retained by PW.1 permanently which was earlier given to her towards interim custody.

3. When the revision petitioner questioned conviction as well as sentence of imprisonment and fine in appeal, the learned III Additional District and Sessions Judge, Nellore, by the judgment dated 17.02.2005, in Criminal Appeal No.146 of 2004, confirmed the conviction and the sentence of imprisonment and fine imposed on him by the learned Magistrate dismissing the Criminal Appeal.

4. The said concurrent findings and conclusion arrived at by both the Courts below are questioned by the revision petitioner in this

revision. In fact, the revision petitioner filed the present Criminal Revision Case in the year 2005 and it was admitted on 10.06.2005. It appears, no suspension of sentence was sought for and granted by this Court.

5. In the appeal before the first appellate Court, the learned Sessions Judge observed that since the revision petitioner was in detention from 29.09.2000 to 11.10.2000 and has undergone sentence of imprisonment imposed by the trial Court from 24.09.2004 to 28.09.2004, directed him to undergo the remaining period of imprisonment imposed against him. At the bottom of the judgment, the learned Sessions Judge recorded that since the revision petitioner was absent, directed the learned Judicial Magistrate of First Class, Venkatagiri, to issue fresh committal warrant against him in order to serve the remaining period of imprisonment. Perhaps, it indicates that the learned Magistrate shall issue non-bailable warrant and secure his presence. But, what had happened subsequently is not forthcoming. In fact, at the stage of admission, the petitioner seeking the relief ought to have projected in the grounds of appeal whether the accused was committed to prison or not.

6. Be that as it may, when the grounds are looked at, what all it contains is that the evidence of PWs.1 to 4 is not corroborating with each other and they suffer on account of contradictions with each other's evidence. He raised the ground that PW.1, who is the wife of PW.2, did not see the accused while inflicting blow on PW.2.

He would also agitate that the medical report shows that PW.2 was beaten by unknown person. Lastly, he pleads that the sentence imposed by the learned Magistrate is excessive and severe. Stating that the judgments of the Courts below are based on surmises and conjectures, sought to set aside the same.

7. It is unnecessary to refer to the analysis of evidence resorted to by the learned Judicial Magistrate of First Class. It would be suffice, if the judgment of the lower appellate Court is examined.

8. At the outset, it is to be stated that where concurrent findings are recorded, unless the revision petitioner is successful in showing that the findings are tainted with patent illegality, or can be construed as utterly perverse, no interference at all is warranted.

9. Even, looking at merits, the evidence of PWs.1 and 2, who are wife and husband, cannot be discarded merely on the ground that PW.1 did not identify the revision petitioner. The evidence of PW.2 in identifying the accused, who was holding an iron rod at the relevant time and striking a blow on his forehead, when accused No.1 snatched away the 'gold sarudu' and as his attempt to snatch the gold chain from the neck of PW.1 was unsuccessful, resorted to snatch away the 'gold sarudu' perforce causing injury to PW.1 and accused No.2, who stood nearby PW.2 with an iron rod to strike a blow in case, he woke up. When PW.1 raised shouts having woke up, PW.2 woke up and then accused No.2, who was standing nearby PW.2, struck a blow on

the forehead of PW.2, and that was how the identity of accused No.2 is proved.

10. Medical evidence also cannot be lost sight off. The medical officer, on examination, found injuries on the person of PWs.1 and 2 indicating that unless, accused Nos.1 and 2 snatched 'gold sarudu' perforce and dealt blows on PW.2, respectively, as projected by the prosecution, there is no other reason, PWs.1 and 2 sustaining injuries on their person.

11. The defence theory advanced by the accused that there was land dispute and thereby they were falsely implicated does not find support from the evidence of PWs.1 and 2.

12. Further, the recovery of MO-1 which is 'gold sarudu', which was snatched from the person of PW.1, was identified by PW.1 as belonging to her and the recovery being effected by the investigating agency consequent to confessional statements made by the accused persons, cannot be thrown away; when the evidence of PWs.1 to 4, more particularly, the evidence of PWs.1 and 2 is clear, cogent and beyond reproach, the findings recorded by the Courts below convicting the revision petitioner cannot be faulted and cannot be held as utterly perverse warranting interference. Thus, there is no merit in the revision.

13. Therefore, the present Criminal Revision Case is dismissed confirming the conviction and sentence imposed on the revision petitioner by the Courts below.

14. As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision stand dismissed.

15. The revision petitioner is directed to surrender before the learned Judicial Magistrate of First Class, Venkatagiri, on or before 12.12.2017. In case, he fails to surrender to serve out the remaining sentence of imprisonment, the learned Magistrate is directed to put him in prison by securing his presence.

November 13, 2017.  
PV

A. SHANKAR NARAYANA, J