

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2113 OF 2017

ORDER:

The present Criminal Revision Case is filed by the petitioners / accused Nos.1 to 3, who are lodged in prison in view of the concurrent findings recorded by the trial Court i.e., II-Additional Judicial Magistrate of First Class, Tanuku (FAC. I-Addl. Junior Civil Judge, Tanuku) in Calendar Case No.367 of 2012 in his Judgment dated 10.03.2016 and confirmed by the IV-Additional District & Sessions Judge, Tanuku, in his Judgment dated 19.7.2017 in Criminal Appeal No.116 of 2016 holding that the prosecution could prove the charge under Section 392 of the Indian Penal Code while acquitting the petitioners/accused for the charge under Section 411 of IPC.

2. Heard Sri Manda Venkateswara Rao, learned counsel for the petitioners, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

3. The main grounds agitated by the learned counsel for the petitioners/accused are that, firstly, the prosecution has not conducted Test Identification Parade, second, the best evidence available was not collected as the neighbours were not cited nor examined, and third, the second witness for the prosecution examined as P.W.2, being a V.R.O., is a stock witness and figured in humpty number of cases, and, therefore, to set aside the conviction recorded and the sentence of

imprisonment inflicted by the trial Court and affirmed by the Appellate Court.

4. The learned II-Judicial Magistrate of First Class, Tanuku, having observed all due formalities, examined the petitioners under Section 239 of Cr.P.C. for the charges under Sections 392 and 411 of IPC for which the petitioners/accused denied and pleaded not guilty and thus trial was taken up by examining P.Ws.1 to 4 on behalf of the prosecution and marking Exs.P1 to P5 and Material Objects i.e., MOs.1 and 4

5. Amongst the witnesses, P.W.1 is the *de facto* complainant-victim. P.W.2 is one of the panchayatdars for the confessional statement and recovery made in consequence of the confession said to have made by the petitioners and identifying the case property. P.Ws.3 and 4 are the investigating officers.

6. The learned Sessions Judge on reappraisal of evidence did not agree with the submission of the learned defence counsel that since P.W.1 did not speak to the currency note numbers to view the prosecution case with suspicion, and to disbelieve his evidence. Second ground of attack is the defence set up by the petitioners is that P.W.1 along with the petitioners consumed alcohol at Durga Wines, Tetali village and as disputes arose among them P.W.1 foisted false case against the petitioners. The learned Magistrate recorded reason that in such an event the recovery cannot be affected. As the question

of planting material objects does not arise and believed the version of P.W.1 that while returning on his motorcycle he stopped it in the midway to attend calls of nature and at that juncture the petitioners herein came and closed his month and beat him and robbed Nokia Xpress Cell Phone marked as M.O.1 and Rs.100/- currency notes six in number marked as M.Os.2 to 4. Therefore, he found that the prosecution could prove the charge under Section 392 of IPC and recorded conviction under Section 248 (2) of Cr.P.C. for the charge under Section 392 of IPC and sentenced them to undergo rigorous imprisonment for a period of one year, besides imposing fine of Rs.2,000/- each with default sentence of one month's simple imprisonment. The learned Magistrate, however, acquitted the petitioners for the charge under Section 411 of IPC.

7. When the said conviction recorded and sentence of imprisonment and fine inflicted by the learned Magistrate were questioned by the petitioners before the learned IV-Additional Sessions Judge, Tanuku, the learned Sessions Judge formulated the relevant point and having heard once again resorted to reappraisal of evidence on record and finding that the evidence of P.W.1 is trustworthy and the evidence of P.W.2 cannot be discarded and proves the recovery of MOs.1 to 4, affirmed the conviction and the sentence of imprisonment and fine imposed by the learned Magistrate.

8. In Criminal R.C. M.P. No.3380 of 2017, it is stated that the revision petitioners/accused Nos.1 to 3 are lodged in Sub-Jail, Eluru, West Godavari District.

9. That is how the present petitioners have approached this Court by way of preferring the present Criminal Revision Case.

10. It is now well settled that when concurrent findings have been recorded by the Court below, unless it is shown that the findings are tainted with utter perversity, the High Court in revisional proceedings cannot interfere with.

11. The learned counsel for the petitioners intended to project that for want of Test Identification Parade being held and the best evidence is not produced by examining the neighbours the conviction recorded is liable to be set aside and further submission is that VRO, who is examined as P.W.2, is a stock witness, and, therefore his evidence cannot be believed.

12. Even touching these submissions, invariably, merits are to be looked into by way of looking at the evidence of P.Ws.1 to 4. When their testimony is seen, it is to be found that nothing is brought out in the cross-examination of either P.W.1 or P.W.2 to hold that P.W.1 foisted false case with ill will or false motive against the petitioners or to hold that M.Os.1 to 4 are planted for the purpose of the case. There is nothing else in the cross-examination of P.Ws.1 and 2 to view the case of the prosecution with suspicion.

In such an event, when the findings recorded by the Courts below on facts, more particularly, as the appellate Court is under legal obligation to re-appraise the evidence being a final fact finding Court and no patent illegality is to be found in the findings recorded, there are no grounds to interfere with the findings on facts, and, therefore, the present Revision Case is dismissed confirming the conviction recorded and sentence of imprisonment and fine imposed on the petitioners. Since the petitioners are convicted of the offence of robbery, no lenient view can be taken.

13. Accordingly, the Criminal Revision Case is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Revision Case shall stand closed.

Dt. 30.10.2017
gbs

A. SHANKAR NARAYANA, J

