

SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL NO. 1604 OF 2007

J U D G M E N T :

This Criminal Appeal is preferred by the appellant/PW-11 against the order dated 05/11/2007 passed in CrI.MP.No. 151 of 2007 in S.C.No. 152 of 2006 by the III-Additional District and Sessions Judge, [Fast Track Court], Medak, by virtue of which the Court directed proceedings of perjury to be initiated against the appellant, who was examined as PW-11 in S.C.No. 152 of 2006.

2. The appellant herein was examined as PW-11 for recovery of articles/MOs-1 to 4 and for confession of the accused and recovery of MOs-1 to 4. The appellant herein, who was examined as PW-11 is declared as hostile by the prosecution. The court below considered that there was deviation from the story of the prosecution and the evidence of the witness, PW-11 considered that there is a case for perjury and passed the impugned order. Assailing the said order, this criminal appeal is preferred by PW-11 on the ground that the court below erred in convicting the appellant/PW-11 under section 344 [1] Cr.P.C., and the trial Court formed an opinion at the time of delivering judgment that the witness had knowingly or willfully given false evidence. The learned Judge ought to have seen that the appellant/PW-11 was only a panch witness for the alleged confession of the accused and recovery of the ornaments. The learned Judge erred that the evidence of the

appellant/PW-11 is not consistent with the recitals in the panchanama. There is no proof that the recitals in the panchanama are true and his evidence in court is false. The learned Judge ought to have seen that there is no earlier statement of the appellant/PW-11 recorded under section 161 or 164 of Cr.P.C.

3. Heard the learned counsel for the appellant and the learned Public Prosecutor appearing for the respondent/State.

4. The counsel for the appellant takes the attention of this Court to the deposition of the appellant as PW-11. He states that when he was in his office, police called him and PW-9 and by the time he went to the place, the panchanama was already prepared and A-1 and A-2 were in their custody. When they enquired, the accused confessed that they murdered the deceased not only for the property but they have had dispute with regard to selling of 'bajjees', as the deceased was selling bajjees for lesser amount. Because of that public are purchasing 'bajjees' from deceased but not from A-2. As such, A-2 bore grudge, A-1 and A-2 murdered the deceased. The panchanama was prepared and the police also showed them the ornaments that are with them. After declaring the witness, PW-11 as hostile, the Public Prosecutor cross-examined the witness/PW-11. In the cross-examination, PW-11 admits that he affixed his signature after the Police conducted panchanama and recovered the MOs and that the Police also mentioned from whom MOs were recovered. He also stated that he affixed signatures after preparing panchanamas. He admitted that it is not

mentioned in the confession and recovery panchanamas of MOs from A-1 and A-2, that panchanamas were already prepared and that MOs-1 to 4 were with the Circle Inspector of Police. Hence, from the manner in which he admitted the facts which are suggested by the prosecution it can be understood that he did not have any intention to turn hostile to the case of prosecution or to give false evidence. The witness in fact spoke about the substratum of the case by speaking about the confession of the accused and recovery made at their instance. Simply because there is some deviation from the case of the prosecution and the evidence of appellant/PW-11 it cannot be said that he is hostile to the prosecution case. Moreover, the approach of lower court in considering that there was intention on the part of the appellant/PW-11 to give false evidence, though he gives all the basic facts pertaining to the prosecution case, is also not found to be correct.

5. Unless there is total deviation or gross deviation from the case of the prosecution, no intention can be gathered on the part of the appellant/PW-11 that he wanted to resile from the earlier version before the Police. Hence, in view of the above, this Court opines that the order dated 05/11/2007 passed in CrI.MP.No. 151 of 2007 in S.C.No. 152 of 2006 by the III-Additional District and Sessions Judge, [Fast Track Court], Medak, by virtue of which the Court directed proceedings of perjury to be initiated against the

appellant, who was examined as PW-11 in S.C.No. 152 of 2006 is set aside.

6. In the result, this Criminal Appeal is allowed.

7. As a sequel, miscellaneous petitions if any, pending in this Criminal Appeal shall stand disposed of.

JUSTICE T. RAJANI



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[RESULT :: ALLOWED]



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