

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.3328 OF 2017

JUDGMENT:

Challenging the confirmation of conviction of accused Nos.1 and 2 for the offence punishable under Section 411 IPC, by the judgment, dated 15-12-2017, in Criminal Appeal No.737 of 2017 on the file of the learned Metropolitan Sessions Judge, Hyderabad, revision petitioners, who arraigned as accused Nos.1 and 2 in C.C. No.773 of 2016 on the file of the XVI Additional Chief Metropolitan Magistrate, Hyderabad, preferred the present Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code').

2. The learned Magistrate tried accused Nos.1, 2, 4, 5 and 6 in C.C. No.773 of 2016 for the offences under Sections 380, 420 and 201 IPC. During trial, the prosecution altogether examined 8 witnesses as PWs.1 to 8 and marked 18 documents as Exs.P-1 to P-18, besides exhibiting 2 material objects as MOs.1 and 2, which are compact disc containing CCTV footage and compact disc containing specimen photographs of suspected persons in different angles.

i) The learned Magistrate holding that the prosecution could not prove the offences punishable under Sections 380 and 420 against accused Nos.1, 2, 4 and 5, acquitted them for the said offences, but, however, since the prosecution could prove the offence punishable

under Section 411 IPC against accused Nos.1 and 2, convicted them by inflicting the sentence of simple imprisonment of one and half years each and to pay a fine of Rs.500/- each with default sentence of simple imprisonment for a period of one month each for the said charge, by a judgment, dated 30.06.2017.

ii) Questioning the said conviction as well as sentences of imprisonment and fine amounts imposed by the learned Magistrate, accused Nos.1 and 2 preferred the aforesaid Criminal Appeal. The learned Sessions Judge holding that the learned Magistrate arrived at the correct conclusion by recording findings based on appreciation of evidence affirmed the conviction as well as sentences of imprisonment and fine amounts inflicted on the revision petitioners.

3. Heard Sri K. Ratna Sagar, learned counsel for the revision petitioners and the learned Special Assistant Public Prosecutor for the State of Telangana.

4. It is a typical case, where ingenious skill is employed by the revision petitioners.

i) The relevant facts are, on 24.04.2016, PW.1 - *de facto* complainant along with her husband while going to hospital, on the way, her husband went to ATM Centre, near Tadband, Habeebnagar, Hyderabad, and drew a sum of Rs.5,000/-; that on 29.04.2016, when she tried for withdrawal of money from ATM, the card was not

working. Then, she approached the authorities of State Bank of Hyderabad, Agapura Branch and enquired about the non-functioning of ATM, on which, the bank officials having verified the ATM Card informed her that the said ATM Card did not belong to her and further informed her about withdrawal of Rs.54,000/- from her account, out of which, Rs.19,000/- was made online transfer from her account. At that juncture, she could recollect that on 24.04.2016, when her husband went inside the ATM Centre to withdraw the amount, two unknown persons entered inside the ATM Centre and on the pretext of helping him, they exchanged the ATM card with fake ATM Card. Thus, she gave a report to Habeebnagar Police Station.

ii) A case was registered in Crime No.96 of 2016. During the course of investigation, statements of the relevant witnesses were recorded and with the aid of the CCTV footage of nearby ATM Centre, they could arrest the accused persons and even retrieved CCTV footage. Pursuant to the confessions made by accused persons in the presence of mediators - PWs.2 and 7, amounts including the amount belonging to PW.1, Cell Phone, silver chips and ATM Cards etc., were recovered from the person of accused persons. Even the husband of PW.1 also identified the accused No.1 in Test Identification Parade before the Magistrate (PW.6) and even identified him in Court by PWs.2 and 7. On completion of investigation, charge sheet was laid.

5. The learned Magistrate has referred to the evidence of prosecution witnesses, amongst whom, PW.1 is the *de facto* complainant, PW.2 is the *panchayatdar* for seizure of fake ATM Card from PW.1, PW.3 is the scene of observation mahazardar, PW.4 is the CCTV Technician, PW.5 is the Assistant Director of Forensic Science Laboratory, PW.6 is the learned Magistrate, who held test Identification Parade, PW.7 is another *panchayatdar* for confessional recovery *panchanama* of accused persons and PW.8 is the Investigating Officer.

6. The learned Magistrate believing the evidence of PWs.2 and 7, who are *panchayatdars* as their evidence is in tune with the evidence of PW.8 - Investigating Officer to the effect that pursuant to the confessions made by accused Nos.1 and 2, amounts were recovered from their person as well as from the person of other accused relating to the present crime as well as other crimes, and that since nothing was found in their cross-examination, discarding the stand taken by the defence, drawn presumption under Section 114 (a) of the Indian Evidence Act, 1872 (for short 'Act, 1872'), and thereby convicted accused Nos.1 and 2 under Section 248 (2) of the Code and recorded the sentences of imprisonment and imposed fine amounts as aforesaid, while the prosecution failed to prove the offences punishable under Section 380 and 420 against accused Nos.1, 2, 4 and 5 and offence punishable under Section 201 against accused No.6.

7. The learned Sessions Judge, reappraised the evidence on record and formulating the point for consideration in paragraph No.8 to the effect 'whether the judgment of the trial Court is based on legal evidence', and opining that though, there is an apparent lacunae in the case of prosecution so far as the evidence of PW.1 is concerned, still, keeping in view, the complicity of accused Nos.1 and 2 and seizure of amount from them under Exs.P5 and P6, which are admissible as per Section 27 of the Act, 1872, and by drawing presumption under Section 114 (a) of the Act, 1872, and deriving probability that accused Nos.1 and 2 belong to Haryana State and their presence in Hyderabad and recovery of incriminating material, like silver stripe from their possession would go to show their complicity in the offence, and thereby held that the learned Magistrate did not go wrong in convicting them for the offence under Section 411 of CPC against them.

8. The learned counsel would reiterate in the present revision case that there is no identification of accused Nos.1 and 2 by PW.1 as she did not participate in the Test Identification Parade, and on the other hand, her husband participated in it, but he was not examined in Court.

i) His next submission is, that there is no evidence on record except the confessions alleged to have made before the police that the money was with them which represents the stolen money. His further

submission is that CCTV footage collected by the police did not bring out the identity of the offenders who alleged to have committed fraud either on PW.1 or on her husband. His another submission is that the evidence of PWs.2 and 7 ought to have excluded since confession of the accused was made in the presence of police and they are stock witnesses, and thereby sought to allow the present criminal revision case by setting aside the conviction recorded and sentence of imprisonment and fine amounts imposed on them.

9. Perused the judgments passed by both the Courts. On perusal of the judgments, the silver strip was employed by accused No.1 to block the ATM Machine by keeping the said silver strip whenever customers try to withdraw the amounts, the customers cannot withdraw the same and they all used to pretend that they were helping the customers and were substituting the fake ATM Cards in place of genuine cards without giving scope for the ATM Card holders to suspect them.

10. Now, looking at the evidence let in by the prosecution though, it is unnecessary to look into as the concurrent findings have been staring at the revision petitioners and no infirmity at all is to be found in the findings recorded, more particularly, any patent illegality creeping in the findings recorded by both the Courts below, still, when examined the evidence and probabilities in this case, the testimonies of PWs.2 and 7 cannot at all be discredited. Further, recovery of

silver strip and the amounts pursuant to the confession made by accused Nos.1 and 2 in the presence of PWs.2 and 7, which constitutes substantive evidence corroborated through the evidence of PW.8 - Investigating Officer, and even a certificate as required under Section 65 (b) of the Act, 1872, being issued, and even recovery of ATM Card from accused persons in the presence of *panchayatdars* whose testimony would clinchingly prove the recovery. Therefore, it cannot be said that they are either interested witnesses or having any animosity, in securing conviction of accused persons. There is absolutely nothing on record to interfere with the findings recorded by the Courts below.

11. Thus, there is no merit in the present Criminal Revision case and accordingly, the same is dismissed confirming the conviction recorded by both the Courts below for the charge under Section 411 IPC against accused Nos.1 and 2.

12. So far as the sentence of imprisonment is concerned, in a case of this nature, indulgence of the Court to take a lenient view is not desirable as the revision petitioners by employing ingenious skill substituted fake ATM Card in place of genuine ATM card without the knowledge of the husband of PW.1. Therefore, even the sentences of imprisonment inflicted on accused Nos.1 and 2 by the Courts below are confirmed including the fine amounts.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the criminal revision case, stand closed.

A. SHANKAR NARAYANA, J

January 02, 2018.
Mgr

