

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.3330 OF 2017

JUDGMENT:

Challenging the confirmation of conviction of accused No.1 for the offences punishable under Sections 379 and 420 IPC and accused No.2 for the offence punishable under Section 411 IPC, by the judgment, dated 15-12-2017, in Criminal Appeal No.738 of 2017 on the file of the learned Metropolitan Sessions Judge, Hyderabad, revision petitioners, who are arraigned as accused Nos.1 and 2, preferred the present Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code').

2. The learned XVI Additional Chief Metropolitan Magistrate, Hyderabad tried accused Nos.1, 2, 4, 5 and 6 for the charges under Sections 420, 380 and 201 IPC. During trial, the prosecution altogether examined 10 witnesses as PWs.1 to 10 and marked 18 documents as Exs.P-1 to P-18, besides exhibiting material objects 1 and 2 as MOs.1 and 2, which are compact disc containing CCTV footage and compact disc containing specimen photographs of suspected person in different angles.

i) The learned Magistrate holding that the prosecution could prove the charges against accused Nos.1 and 2 only and, thus, while acquitting the other accused, convicted accused No.1 for the charges under Sections 379 and 420 IPC and opining that the offence under

Section 411 IPC would only attract accused No.2, accordingly, convicted him for the said offence and inflicted the sentence of imprisonment of three years and to pay a fine of Rs.500/- with default sentence of simple imprisonment for a period of one month for the charges under Sections 379 and 420 IPC respectively, against accused No.1 and sentenced accused No.2 to undergo simple imprisonment for one year and to pay a fine of Rs.500/- with default sentence to undergo simple imprisonment for one month for the charge under Section 411 IPC.

ii) Both of them questioned the conviction as well as sentences of imprisonment and fine by preferring 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; PW.1 - *de facto* complainant is a Journalist and he went to State Bank of Hyderabad ATM Centre,

Mallepally Branch to draw certain amount, but he found that ATM Card was not working. Then he approached the Branch Manager of that branch and informed the same, on which, the Branch Manager having verified his ATM Card informed him that the said ATM card did not belong to him. Then, he took his bank statement which reflected that on 24.04.2016, an amount of Rs.17,300/- was drawn from his account. At that juncture, he could recollect that on 25.04.2016, when he went to the ATM Centre, he found two persons, who were present inside the ATM Centre, informing him that the ATM was not working, engaged him in conversation, diverted his mind and changed his ATM Card with a fake Card which was unnoticed by him. The said persons have withdrawn the money from the account of PW.1 by using his ATM Card, without his knowledge by making use of his stolen ATM Card. Therefore, he gave a report to Habeebnagar Police Station.

ii) Pursuant to the said complaint, a case was registered in Crime No.100 of 2016. During the course of investigation, statements of relevant witnesses were recorded and with the aid of CCTV footage of nearby ATM Centre, they could arrest the accused persons and even retrieved CCTV footage. The report of the Forensic Science Laboratory proved that the photographs of accused No.1 tallied with the physical features of person in CCTV footage. PW.1 has also identified in Test Identification Parade before the Magistrate (PW.8)

and even identified him in Court while in witness box. 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 *panchayatdar* for seizure of fake ATM Card from PW.1, PW.3 is scene of observation *mahazardar*, PW.4 is *panchayatdar* for confession-cum-recovery *panchanama*, PW.5 is the CC Camera Technician working as such in A.G.I.E.S. Automation Indian Private Limited, situated at Bowenpally, Secunderabd, PW.6 is the Deputy Manager of SBH, Mallepally Branch, PW.7 is the Assistant Director of Forensic Science Laboratory (FSL), PW.8 is the learned Magistrate, who held Test Identification Parade, PW.9 is another *panchayatdar* for confession-cum-recovery *panchanama* of accused No.1, and PW.10 is the Investigating Officer.

6. The learned Magistrate believed the evidence of PW.1 as regards identity of accused No.1 as PW.1 not only had the occasion to see accused No.1 at the ATM Centre, Mallepally Branch as he was engaged him in conversation and even identified when Test Identification Parade was held by PW.8, and later even in Court and, thus, the identity of accused No.1 by him constitutes substantive piece of evidence on record. Since he found nothing in the cross-examination of PW.1, discarding the stand taken by defence that PW.1 had no occasion at all to see accused No.1 and even if assumed

that he had occasion to see accused No.1, who was a stranger, it is inconceivable that he would identify him in Test Identification Parade and in Court and even believing the evidence of *panchayatdars* for seizure of fake ATM Card from PW.1 and more particularly, the seizure of PW.1's ATM card, as *panchayatdars* have withstood the rigorous cross-examination and also getting corroboration through the evidence of PW.5 and 7, who are CC Camera Technician and Assistant Director from FSL Department, respectively, found that the prosecution could prove the charges against accused No.1, but not against other accused persons, however, found that the charge punishable under Section 411 IPC gets attracted so far as accused No.2 is concerned, since part of cash involved in this case was recovered, besides the cash relating to other crimes from accused No.2, and thereby convicted them under Section 248 (2) of the Code and recorded the sentences of imprisonment and imposed fine amounts as aforesaid.

7. The learned Sessions Judge, reappraised the evidence on record and formulating the point for consideration in paragraph No.7 to the effect 'whether the judgment of the trial Court is based on reliable evidence', and opining that the presence of accused No.1 at the ATM Centre was made out by the CCTV footage as it is amply proved by examining CC Camera Technician and the expert from FSL, and deceitful design on the part of accused No.1 as none would

be present in ATM Centre when a person withdrew the money, but in the instant case, the presence of accused No.1 along with another person under the guise of PW.1 being present besides the amount of Rs.17,300/- being withdrawn from the account of PW.1 after he lost his original ATM Card which is proved from the entries in the passbook of PW.1 and holding that the evidence against accused No.1 was quite reliable, more particularly, when CCTV footage was confirming the presence of PW.1 and deriving a probability that accused No.1 belongs to Haryana State and his presence in Hyderabad and recovery of incriminating material, like silver chip from his possession would go to show his complicity in the offence, and thereby held that the learned Magistrate did not go wrong in convicting him for the offences levelled against him.

i) Concerning accused No.2, the finding that the seizure cannot be disbelieved and it was effected in the presence of mediators and accused No.2 could not account for the cash of Rs.60,000/- in his possession, opining that the learned Magistrate rightly convicted him for the charge under Section 411 IPC, as the amount of Rs.60,000/- includes part of the amount withdrawn by the accused, affirmed the conviction and sentence of imprisonment and dismissed the appeal.

8. The learned counsel for the revision petitioners would reiterate in the present revision case that it is difficult for PW.1 to

identify a stranger when once he met him earlier and a year later in Test Identification Parade as well as in Court.

i) His next submission is, that there is no evidence on record except the confession alleged to have made before the police that the money was with them which represents the stolen money. His further submission according to the learned counsel is that the CCTV footage collected by the police did not bring out the identity of the offenders who alleged to have committed fraud on PW.1. His another submission is that the evidence of PW.2 ought to have excluded since confession of the accused was made in the presence of police and the evidence of PW.1 ought not to have been relied on because PW.1 is an interested witness and ought to have held that his evidence is not reliable when there is no corroboration with other witnesses, and thereby sought to allow the present criminal revision case by setting aside the conviction recorded and sentences of imprisonment and fine amounts imposed on them.

9. At the outset, I would like to observe that, in fact, PW.2 is a *panchayatdar* for confession of an accused. He is only a *mahazardar* for taking over the possession of fake ATM Card from PW1. Therefore, the bar contained in Sections 25 and 26 of the Indian Evidence Act, 1872 (for short 'Act, 1872') would not apply.

10. Now, turning to the submission that PW.1 is an interested witness, even that submission is not worthy of acceptance for the reason that unless PW.1 is interested in his own case, but not in securing conviction as such, but projecting what has been done to him, it cannot be said that he is an interested witness and on that ground his testimony cannot be excluded from record. PW.1's evidence is significantly important in a case of this nature, as already mentioned in the above that ingenious skill is employed by the accused persons in the present case for the reason that a silver chip recovered from the possession of accused No.1 speaks volumes. The said silver chip was employed by accused No.1 to block the ATM Machine by keeping the said silver strip as 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 substituting fake ATM Cards in place of genuine cards without giving scope for the ATM Card holders to suspect them.

11. 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, PW.1's testimony cannot at all be discredited. It is not inconceivable to

identify accused No.1 by PW.1 as he is no other than the victim and noticed immediately when the amount from his account was withdrawn and his card was stolen away by substituting it with fake card and, thus, the identity of accused persons in the Test Identification Parade before PW.8 and also in Court while in witness box, which constitutes substantive evidence corroborated through the evidence of PW.5- CC Camera Technician and PW.7-Assistant Director of FSL, whose evidence touches material particulars in relation to CCTV footage in giving clue to identify the accused No.1 and even a certificate as required under Section 65 (b) of the Act, 1872 being issued, and even recovery of ATM Card from accused No.1 in the presence of *panchayatdars* whose testimony would clinchingly prove recovery. Therefore, it cannot be said that he is an interested witness in securing conviction of accused persons. There is absolutely nothing on record to interfere with the findings recorded by the Courts below.

12. Thus, there is no merit in the present Criminal Revision Case and, consequently, the same is dismissed, confirming the conviction recorded by both the Courts below for the charges under Sections 379 and 420 IPC in so far as accused No.1 and the charge punishable under Section 411 in so far as accused No.2 in view of recovery of amount from the possession of accused No.2 are concerned.

13. So far as the sentences of imprisonment are concerned, in a case of this nature, indulgence of Court to take a lenient view is not desirable as the revision petitioners by employing ingenious skill exchanged fake ATM Card with genuine ATM card from 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.

January 02, 2018.
Mgr

A. SHANKAR NARAYANA, J

