

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**WEDNESDAY ,THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO: 1508 OF 2009

Criminal Appeal Under Section 374(2) Cr.P.C. against the judgment dated 4/11/09 in S.C.No.104/2008 and on the file of the Court of the V Additional Assistant Sessions Judge [Fast Track Court] Ranga Reddy District at L.B.Nagar.

Between:

1. GARDAS SAIDULU ,, S/o. Balaiah, R/o. Near Hundai Show Room, L.B.Nagar, Ranga Reddy District.

...APPELLANT/ACCUSED NO.2

AND

1. The State of Telangana, Rep by Public Prosecutor, High Court for the State of Telangana, Hyderabad.

...RESPONENT

For the Appellant: SRI. V RAGHUNATH, ADVOCATE

For the Respondent: PUBLIC PROSECUTOR

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No. 1508 OF 2009****J U D G M E N T:**

The appellant who is Accused No.2 and Accused No.1 are convicted for the offence under Section 395 of Indian Penal Code and sentenced to undergo six years rigorous imprisonment each and to pay a fine of Rs.1000/- vide judgment in Sessions Case No.104 of 2008 dated 04.11.2009 passed by the learned V Additional Assistant Sessions Judge (Fast Track Court), Ranga Reddy District. Aggrieved by the same, present appeal is filed by Accused No.2.

2. Heard learned counsel for the appellant and learned Assistant Public Prosecutor for the respondent-State.

3. Brief facts of the case are that PW1 filed a complaint stating that on 28.03.2007 at about 11.20 PM while he was coming towards Ghatkesar along with gold ornaments and standing at Uppal bus stand, one unknown person came in a Tata Indica Car and asked whether he would accompany him in the car as he was going to Ghatkesar. PW1 entered into the car and another person was also sitting in the front seat. The person who was sitting in the front seat,

other than the driver attacked PW1, beat him indiscriminately and snatched gold ornaments total weighing 69 grams. After taking the gold ornaments, PW1 was thrown out of the car. Aggrieved by this PW1 filed a complaint at 11.40 AM on 29.03.2007.

4. The police investigated into the said complaint and found that total five accused were involved in the said crime and accordingly filed charge sheet against this appellant and Accused No.1 for the said offence and charge was framed by the learned Sessions Judge. The remaining three persons were juvenile for which reason a separate charge sheet was filed before the juvenile justice board. On completion of trial and the evidence produced by the prosecution, the learned Sessions Judge examined PWs.1 to 11 and marked Exs.P1 to P19 & MOs 1 to 8 and after considering both oral and documentary evidence, the learned Sessions Judge convicted the appellant/Accused No.2 and Accused No.1 as stated supra.

5. Learned counsel for the appellant would submit that there is improvement in the case of the prosecution and what was stated in the complaint that two unknown persons attacked, however, during the course of his examination PW1 had stated that there were five persons in all in the said car. He further argued that there was no

test identification parade which was held to hold that this appellant who was arrayed as A2 was one of the person in the said car. He relied upon a judgment of the Hon'ble Supreme Court in case of *Dana Yadav alias Dahu and others vs. State of Bihar*¹ in which the Hon'ble Supreme Court held that in cases test identification parade is to be held at the earliest and ordinarily if an accused is not named in the first information report, his identification by witnesses in the Court, should not be relied upon. However, there are exceptions to the rule.

6. Learned Assistant Public Prosecutor would submit that PWs 1 and 2 have identified this appellant and Accused No.1 that they are the persons who have committed the offence of dacoity.

7. In view of the aforesaid and on perusal of record, the complaint was made on 29.03.2007 at 11.40 AM stating that PW1 was attacked previous day i.e. on 28.03.2007 at 11.30 PM. In his complaint he has specifically stated that two persons have attacked him. However while deposing before the Court PW1 stated that there were five persons in the car who have attacked him and snatched 69 grams of gold ornaments from him.

¹ (2002) 7 Supreme Court Cases 295

8. PW1 was examined on 06.05.2009 nearly two years and two months after the said incident. The prosecution has failed to state as to how this appellant was identified as the accused, who attacked PW1 in the car. There was no test identification parade which was held when the appellant and others were held on the allegation of being involved in the present crime. In the absence of test identification parade when the incident has taken place night at 11.30 PM and the evidence of PW1 is further discrepant for the reason of stating that there were five persons who attacked him, though at the earliest point of time when the complaint was lodged he alleged that two persons have attacked him. In the said circumstances, PW1 making improvements in the said complaint, the very genesis of occurrence is doubtful since the involvement of two unknown persons were present at the earliest point of time, whereas when PW1 was examined in the Court the statement made by the PW1 was that five persons were involved.

9. In view of the above, the case of PW1 cannot be believed and also the prosecution fails for the reason of the police not conducting test identification parade. Further, the prosecution has examined PWs 6 and 7 who are witnesses to the seizure of gold ornaments

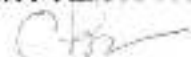
from this appellant, however, both the witnesses have turned hostile to the prosecution case.

10. In the said background, this Court is not believing the version as stated by PW1 regarding the incident and the seizure from this appellant also becomes doubtful.

11. Accordingly, the Criminal Appeal is allowed and the conviction recorded by the learned V Additional Assistant Sessions Judge (Fast Track Court), Ranga Reddy District in S.C.No.104 of 2008 on 04.11.2009 is hereby *set aside* against this appellant.

Miscellaneous applications, if any pending shall stand closed.

Sd/- B.S.CHIRANJEEVI
JOINT REGISTRAR



SECTION OFFICER

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To,

1. The V Additional Assistant and Sessions Judge [Fast Track Court] Ranga Reddy District at L.B.Nagar, Hyderabad (with records)
2. The III Metropolitan Magistrate, Cyberabad at L.B.Nagar
3. The Station House Officer, Ghatkesar Police Station, Ghatkesar Medchal Malkajgiri District.
4. One CC to SRI. V RAGHUNATH Advocate [OPUC]
5. Two CCs to the Public Prosecutor, High Court for the State of Telangana, Hyderabad. [OUT]
6. Two CD Copies
7. One Spare Copy

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HIGH COURT

DATED:07/09/2022

ORDER

CRLA.No.1508 of 2009



ALLOWING THE CRIMINAL APPEAL

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