

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY, THE TWENTY SECOND DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO: 890 OF 2009

Criminal Appeal Under Section 378(3) & (1) of CrI.P.C against the Judgment dated 23.05.2007 in S.C. No. 281 of 2006 on the file of the Court of the II Additional Sessions Judge (FTC), Adilabad.

Between:

The State of A.P., Rep. by the Public Prosecutor, High Court of A.P., Hyderabad.

...Apellant/Petitioner

AND

1. Laxman Surya Vamsi @ Laxman, S/o Madhav Rao Surya Vamsi, R/o Dharurwadi (V), Umri Tq., Nanded Dist., Maharashtra State.
2. Ramrao Rathod @ Ramu Kale, S/o Shankar Rathod @ Kale, R/o Mukhandi Thanda, Nandi Village, Nanded Dist., Maharashtra State.

...Respondent/Accused

Counsel for the Appellant: PUBLIC PROSECUTOR

Counsel for the Respondent No.1: SRI S. SURENDER REDDY

Counsel for the Respondent No.2: NONE APPEARED

The Court delivered the following: JUDGMENT

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.890 OF 2009****J U D G M E N T:**

This Criminal Appeal is filed by the State under Section 378(3) and (1) of Code of Criminal Procedure (for short "Cr.P.C.") aggrieved by the acquittal of the respondents/Accused Nos.2 and 5 recorded by the learned II Additional Sessions Judge (FTC), Adilabad in S.C.No.281 of 2006 dated 23.05.2007 for the offence punishable under Section 396 of Indian Penal Code (for short "IPC").

2. Heard learned Assistant Public Prosecutor for the Appellant-State. Perused the record.

3. The State is questioning the acquittal of the respondents/Accused Nos.2 and 5 for the offence under Section 396 of IPC.

4. Briefly the case of the prosecution is that on the intervening night of 16/17.02.2004 the respondents were arrayed as A2 and A5 along with three others stopped PWs1 to 3 who were proceeding on a motor bike and attacked them. They also robbed Rs.60/- from PW2, Rs.5/- and one copper ring from PW1. Thereafter

within a gap of 30 minutes one Madhav Rao Deshmukh who was coming on a motor cycle was fell down and the respondents allegedly attacked him and robbed Nokia Cell phone and Casio Wrist Watch. On the basis of the said complaint, the police conducted investigation and identified these two respondents have been involved in the offence and accordingly prosecuted them.

5. The learned Sessions Judge having examined the witnesses PWs 1 to 25 and marked Exs.P1 to P19 found that the respondents were not guilty for the offence as alleged. The main grounds on which the learned Sessions Judge found the respondents not guilty are i) even according to the evidence of PWs 1 to 3, their evidence shows that there are 3 or 4 persons who caused injuries to them, however to attract the offence under Section 396 of IPC five or more persons should have participated in the offence, ii) the alleged seizure of money was made from one Madhav Rao Deshmukh and not from these respondents, iii) there are several discrepancies in the statements of PWs 1 to 3 suggesting the very nature of offence that has been committed and when the amount was recovered from one Madhav Rao Deshmukh the very case against these respondents cannot be believed.

6. As found by the learned Sessions Judge an offence of Dacoity is made out by the participation of five or more members. In the evidence it is apparent that there were three or four members and further there is no specific identification as far as these respondents are concerned. No seizures are effected from these respondents.

7. In the said circumstances when the incident had occurred in the night and according to the prosecution there was no light to identify these respondents who were allegedly strangers to PWs 1 to 3. As seen from the record the findings of the learned Sessions Judge are based upon the oral and documentary evidence adduced during the course of trial and the same are reasonable.

8. In cases of appeals against acquittals unless the findings of the trial Court on the basis of record are unreasonable or untenable, the Court in appeals against acquittal cannot be interfered to the said findings.

9. In view of the above discussion, I do not find any reasons to interfere with the well reasoned judgment of the learned Sessions Judge which is based on record and findings are found to be reasonable.

10. Accordingly, the Criminal Appeal filed by the State fails and the same is dismissed.

As a sequel thereto, miscellaneous applications, if any, shall stand closed.

//TRUE COPY//

SD/- K.SRINIVASA RAO
JOINT REGISTRAR


SECTION OFFICER

To,

1. The II Additional Sessions Judge, Adilabad (**with records**)
2. The Judicial First Class Magistrate, Bhainsa, Adilabad District.
3. The Station House Officer, AD Cell CID Police, Hyderabad.
4. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad [OUT]
5. One CC to Sri S. Surender Reddy, Advocate [OPUC]
6. Two CD Copies

GJ



HIGH COURT

DATED:22/09/2022

JUDGMENT

CRLA.No.890 of 2009



DISMISSING THE CRL.A

(8) 19/12/22
19/12/22