

NOTE:- The Petitioner / Accused was directed to released on bail by the Order of the High Court dated 29.03.2016 in CrI.R.C.No.917 of 2016 in CrI. R.C.M.P.No.1312 of 2016.

[3217]

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

FRIDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

CRIMINAL REVISION CASE NO: 917 OF 2016

Revision filed under Sections 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to set aside the judgment dated 28.03.2016 in Criminal appeal No.734 of 2015 passed by the Honble Metropolitan Sessions Judge, Hyderabad by dismissing the appeal filed by petitioner / accused No.1 and confirming the judgment dated 11.08.2015 CC No.328 of 2014 passed by the Honble XVI Addl. Judge cum XX Addl. Chief Metropolitan Magistrate Court, Hyderabad.

Between:

Deepak Singh @ Kalu, S/o. Rautas Singh, Aged 19 years, R/o. H.No. 14-10-887, Dhoolpet Hyderabad

...Petitioner / Accused No.1

AND

1. The State of Telangana (Andhra Pradesh), Rep. Public Prosecutor High Court at Hyderabad

...Respondent / Respondents

Counsel for the Petitioner(s): Sri T. Bala Mohan Reddy

Counsel for the Respondent: ASSISTANT PUBLIC PROSECUTOR (TG)

The Court made the following Order:-

HONOURABLE SRI JUSTICE N. TUKARAMJI

CRIMINAL REVISION CASE No.917 of 2016

ORDER:

Heard Mr. T.Bala Mohan Reddy, learned counsel for the revision petitioner and Mr. Dr. Surepalli Prashanth, learned Assistant Public Prosecutor for the respondent No.1/State.

2. This revision case under Sections 397 and 401 of Criminal Procedure Code, 1973 (for short, 'the CrPC') is directed against the judgment dated 28.03.2016 in CrI.A.No.734 of 2015 on the file of the Metropolitan Sessions Judge, Hyderabad whereby the judgment of conviction under Section 353 of IPC dated 11.08.2015 in C.C.No.328 of 2014 on the file of the XVI Additional Judge-cum-XX Additional Chief Metropolitan Magistrate, Hyderabad and sentence to undergo simple imprisonment for one year and to pay of Rs.1,000/- in default simple imprisonment for one month, has been confirmed.

3. The prosecution case in brief is that in the intervening night of 11/12.03.2014 while the Prohibition and Excise Inspector/PW-1 along with other staff was on patrolling duty at about 0150 to 0200 hours near Pavan Hotel on seeing the revision petitioner/accused No.1 (hereinafter the accused), who was an absconding accused

in the pending excise cases, apprehended him and while taking him in an auto to the police station, near Jagannath Temple two persons/accused Nos.2 and 3 came on motorcycle, obstructed them and later all the accused by pelting stones, fled away. During investigation the accused were apprehended and during interrogation, they made statements of admission and on completion of investigation, the charge sheet was laid.

4. The trial Court after taking cognizance proceeded with trial and the prosecution examined the witnesses PWs.1 to 9 and marked complaint/Ex.P1 and FIR/Ex:P-2. However no evidence was placed in defence. On appreciation of the materials, trial Court convicted the accused and acquitted accused No.3 on the ground of proof of his identity in committing offence.

5. Assailing the trial Court judgment the accused Nos.1 and 2 preferred appeal i.e., Crl.A.No.734 of 2015. The appellate Court allowed the appeal of accused No.2 by observing that his identity was based on the statement that the accused No.1 had spelt his name at relevant time but in the absence of other material to prove the identity of accused No.2, acquitted him, nonetheless confirmed the conviction of the accused. Thus this revision case by the accused No.1.

6. Learned counsel for the revision petitioner/accused No.1 would vehemently contend that the Courts below failed to appreciate the fact that the identity of the accused No.1 has not been established beyond reasonable doubt. The PW-1 in his cross examination admitted the fact that he had no previous acquaintance with the accused No.1 and this statement itself is falsifying entire prosecution case and the statements of witnesses against the accused No.1. Further the prosecution for the reasons best known has not conducted any test identification parade for proper identification and this fact is unsettling the prosecution case. As all the witnesses are from the investigating agency, they shall be considered as interested and the only available independent witness i.e., the auto driver was not examined. In addition, no material object was seized to establish the occurrence as projected by the prosecution. Further, in the evidence, the PW-3 stated that at relevant time when they were in police station, on receipt of information, they rushed to the spot is contradicting with the prosecution case that while the PW-1 and other witnesses were in patrolling duty, found the accused.

7. To support the pleadings learned counsel placed reliance on *Amrik Singh v. The State of Punjab* – 2022 (9) SCC 402 and

avouched that, it has been held that, when the identity is in dispute and in absence of test identification parade, identifying the accused first time in the Court would be unsafe to rely in recording conviction. Further by citing the judgment in *Sonu v. The State (Govt. of NCT), Delhi* pleaded that, it has been held that it is imperative for the prosecution to cite independent witness who was present at the time of incident and non examination would fail the proof beyond reasonable doubt. Thus prayed for acquitting the accused.

8. Learned Assistant Public Prosecutor would submit that the testimonies of the witnesses are establishing identification of the accused No.1 and while he was being taken to police station, the other accused obstructed, thereafter all the accused acted in concert attacked PW-1 and his staff/other witnesses who were on duty and gone away from there. Thus the accused No.1 using the criminal force and obstructing them from discharge of their duties is obvious. That apart claimed that, as the apprehension of the accused itself is after identifying him, the question of holding test identification parade does not arise. The Courts below had rightly considered the materials on record and rightly concluded

the guilt of the accused No.1 as such there is no reason in the appeal for interference.

9. I have gone through the materials placed on record.

10. It is well settled proposition that merely basing on the relationship of the witness or witness being part of the prosecution agency shall not be a ground to hold the witnesses' interestedness.

11. The Hon'ble Supreme Court in *Rathna Swarup v. State of U.P.* AIR 2011 SC 218 has held that a witness is independent unless it presents from the source likely to be tainted and it is tainted only if the witness has reason or motive for falsely implicating the accused. Further in *Lala Manjhi v. State of Jarkhand* – 2003 CrLJ 914 held that the evidence of interested witness requires careful scrutiny to discover falsehood, embellishment or an exaggeration which must be eschewed. If necessary, the Court may look for appropriate reassurance before acting upon such evidence.

12. Therefore merely on the ground of all the witnesses are part of the department/investigating agency, their evidence shall not be disregarded on the ground of interestedness unless a motive for false implication by any witness is made out. In the

case on hand, neither pleading nor any suggestion during examination of the witnesses is found in these lines. In the absence of such material, the witnesses shall be considered as independent.

13. The other contention is that the driver of the auto should have been examined. In the present case the driver of the auto was not cited as witness. On this count alone disbelieving or brushing aside the prosecution case would be unjust. However, keeping this in mind, whether the other witnesses are otherwise trustworthy needs examination.

14. The PWs.1 to 6 had asserted in their chief examination on relevant date that they were on patrolling duty and near Pavan Hotel the accused was identified and after his apprehension an auto was engaged for taking him to the excise station. Near Jagannath Temple two persons came across to the auto, attacked them with stones, whereupon they all got down from the auto to save themselves and the accused No.1 also hurled stones against them and left along with the other accused. The statements of witnesses are clear and corroborating with each other.

15. However, the PW-3 has stated that his statement was not recorded by the police and in the cross examination deposed that, on receipt of information by the PW-1 in the police station about the incident he accompanied him.

16. A close reading of PW-3's evidence is disclosing that in the chief examination he had spoken in tune with the other witnesses. However in cross examination in the place of patrolling duty gave a version about receiving information. Nonetheless the investigating officer/PW-9 asserted recording of statement of the PW-3 under Section 161 Cr.P.C. and in his cross examination, the statement of PW-3 as to leaving the police station upon information has not been confronted. Even otherwise if the evidence of PW-3 is forsaken, the statements of other witnesses are cogent and consistent in regard to occurrence.

17. It has been contended that the identification of the accused is doubtful on the ground that PWs.1 and 2 had admitted in their cross examination that they had no acquaintance with the accused. Pertinently the PWs.4 to 6 in one voice deposed that the accused was identified by the PW-1 at relevant time. At this juncture it shall be noted that an acquaintance refers to a casual association which is distinct to a situation of having familiarity to

recognize a person. Therefore, the witnesses' statement as to acquaintance shall not be stretched to say that the accused could not have been identified as there was no acquaintance. Further even as per the complaint/Ex.P-1 the accused was an absconding accused in other cases. Being part of Excise police, PW-1 having familiarity to recognize an accused is not improbable. Therefore, no unlikeliness is found in PW-1 identifying the accused. That apart, after apprehension the accused was with the prosecution witnesses for some time till his escape and the manner of occurrence would definitely gave sufficient time to remember a person. Thus identifying the accused No.1 by the other witnesses without any test identification parade cannot be discounted. Thus this Court is in agreement with the finding of the courts below as to the witnesses identifying the accused.

18. In the given facts and circumstances of the case as the accused No.1 had committed an act of using criminal force by pelting stones on PWs.1 to 5/who were acting in execution of their duty as public servants and escaping from custody is making out an offence within the scope of Section 353 IPC. For this reason, the conviction of the accused No.1 deserves confirmation.

19. In regard to sentence, having regard to the peculiar facts and circumstances of the case and as was no physical assault and the age of the accused No.1 at relevant time and also the lapse of time, this Court is of the considered opinion that limiting the substantive sentence to the period already undergone and in lieu thereof enhancing the fine amount to Rs.10,000/- with default simple imprisonment for six months is found appropriate. Accordingly ordered and the accused shall remit the remaining fine amount after setting of the fine amount paid earlier before the trial Court within two weeks from the date of receipt of copy of this order or shall surrender to undergo default sentence.

20. In the result, the criminal revision case is allowed in part by modifying the sentence as held above.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

//TRUE COPY//

Sd/- B. SATYAVATHI
DEPUTY REGISTRAR

SECTION OFFICER

To,

1. The XVI Additional Judge cum XX Additional Chief Metropolitan Magistrate Court, Hyderabad.
2. The Metropolitan Sessions Judge, Hyderabad.
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana, Hyderabad [OUT].
4. One CC to SRI T. Bala Mohan Reddy, Advocate [OPUC]
5. The Superintendent, Central Prison, CHanchalguda, Hyderabad.
6. Two CD Copies

VC/gh

HIGH COURT

DATED:04/10/2024

ORDER

CRLRC.No.917 of 2016



ALLOWING THE CRLRC IN PARTLY

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K. M. A.
25/11/20