APHC010296702009

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI [3368]
(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL APPEAL NO: 332/2009

Between:

1. THE STATE OF A.P. REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF A.P. HYDERABAD.

...APPELLANT

AND

1. G RAMESH BABU, S/O. KALAIAH BALIJA BY CASTE RTC DRIVER, KAVALI DEPOT, NELLORE DISTRICT.

2. G LAKSHMI SAROJINI, W/O. RAMESH BABU TRUNK ROAD, KAVALI , NELLORE DISTRICT.

3. G SRINIVASA RAO, S/O. RAMESH BABU TRUNK ROAD, KAVALI .

4. SHAIK MUNEER AHAMAD, S/O. DARIYA SAHEB MUSLIM BY CASTE MEDAR BAZAAR, KAVALI, NELLORE DISTRICT. (A-4 IS NOT NECESSARY PARTY AS THE CASE AGAINST A-4 WAS SPLIT UP AND NUMBERED AS CC NO. 547 OF 2007)

...RESPONDENT(S):

Appeal under Section 372/374(2)/378(4) of Cr.P.C praying that the High Court may be pleased to present this Memorandum of Criminal Appeal against the Order of the acquittal in CC No. 876 of 2002 on the file of the Hon'ble Additional Judicial Magistrate of First Class, Kavali , dated 4-10-2007

IA NO: 1 OF 2008(CRLAMP 1964 OF 2008

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 282 days in presenting the appeal against the order of acquittal of the accused/respondents in CC No. 876/2002 on the file of the Hon'ble Additional Judicial Magistrate of First Class, Kavali, dated 4-10-2007

Counsel for the Appellant:

1. PUBLIC PROSECUTOR (AP)

Counsel for the Respondent(S):

1. MULLAPUDI SATYANARAYANA
2. LEGAL AID

The Court made the following:

THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

CRIMINAL APPEAL No.332 OF 2009

O R A L J U D G M E N T:

Heard Sri C.Panini Somayaji, learned Additional Public Prosecutor representing the State/appellant and Sri Mullapudi Satyanarayana, learned legal aid counsel for the respondents/A1 to A3.

2. The appeal is preferred by the State challenging the order of acquittal dated 04.10.2007 delivered in C.C.No.876 of 2002 on the file of the Additional Judicial Magistrate of First Class, Kavali.

3. The learned Magistrate under the impugned judgment found the accused/A1 and A2 not guilty for the offence under Sections 448, 427 and Section 379 r/w 109 IPC, and accordingly acquitted them. However, the learned Magistrate found the accused/A3 guilty for the offence under Section 379 r/w 109 IPC, convicted him, and later, released him under Section 3 of the Probation of Offenders Act, 1958 after due admonition. It appears that the case against the accused/A4 was split up and numbered as C.C.No.547 of 2007, as he was not available for trial.

4. Learned legal aid counsel for respondent/A3 would submit that no appeal was preferred by accused/A3 challenging the order of conviction recorded against him, as mentioned above.

5. For the sake of convenience, the parties hereinafter are referred to as they were arraigned before the learned Magistrate Court.

CASE OF THE PROSECUTION:

6. The case of the prosecution is that the accused/A1 is the owner of a shop premises located at Kavali, Nellore District. PW-1 is the tenant. PW-1 running a medical shop in the said premises in the name and style as Bharathi Medicals. The lease was to expire on 31.03.2002. PW-1 requested the accused/A1 for renewal of the lease. The accused/A1 did not agree to renew the lease. Therefore, disputes arose between PW-1 and A1. Hence, PW-1 filed a suit before the competent Civil Court for permanent injunction to restrain the accused/A1 from evicting PW-1 except under due process of law.

7. On 22.06.2002, PW-1 as usual closed the shop in the night. He came to shop on the morning of 24.06.2002, as 23.06.2002 was Sunday. He found that the lock was broken and a new lock was put on to the shop. He also noticed some liquid, appearing to be syrup, coming out from the shop. He approached the police and intimated the above facts. He also approached the Civil Court with an application to appoint a Commissioner to break open the new

lock. The Civil Court appointed a Commissioner. Therefore, the Commissioner visited the shop on 26.06.2002. He opened the lock and inspected the shop. The furniture and medicines worth of Rs.3,00,000/- (Rupees Three Lakhs Only) available in the shop were not found. Therefore, PW-1 presented a report-Ex.P1 to Sub-Inspector of Police, I Town Police Station, Nellore/PW-7. He registered Ex.P1 as a case in Crime No.50 of 2002 vide Ex.P7-FIR and submitted the original FIR to the jurisdictional Magistrate. He took up the investigation, examined witnesses and recorded their statements. He visited the scene of offence i.e., the shop, and prepared a rough sketch-Ex.P8. He also observed the scene of offence in the presence of PW-5 and another, vide Ex.P4 proceedings.

8. During the course of investigation, on 28.06.2002 at 5:30 AM, he arrested accused/A3 and A4 at Ongole Bus Stand in the presence of PW-6 and another and recorded their statements. The statements made by the accused/A3 and A4 disclosed that the stolen property in the case was kept in a house at Balaji Nagar, Nellore. Therefore, PW-7, along with mediators, visited Balaji Nagar, Nellore and seized property vide Ex.P6 proceedings. Later, he arrested accused/A1 on 22.07.2002. Accused/A2 surrendered before the Magistrate. The property seized was produced before

the Magistrate, and it was returned to PW-1 for interim custody. After conclusion of the investigation, PW-7 laid report before the Magistrate.

9. The accused/A2 to A4 were charged for the offence under Sections 448 and 427 IPC. The accused/A1 to A4 were charged for the offence under Section 379 r/w 109 IPC. The accused denied the charges mentioned above.

EVIDENCE FOR THE PROSECUTION:

10. The prosecution to substantiate the above charges, examined PWs-1 to 7 and got marked Exs.P2 to P8.

11. The accused/A1 to A3 were examined under Section 313 Cr.P.C. regarding incriminating circumstances appearing against them in the prosecution evidence. They denied the same as not true and correct. No evidence was adduced for the defence, but Exs.D1 & D2 were got marked during the evidence of PW-4.

FINDING OF THE SESSIONS COURT:

12. The learned Magistrate considering the above evidence, acquitted accused/A2 and A3 for the offences under Sections 448 and 427 IPC. The learned Magistrate also acquitted accused/A1 and A2 for the offence under Section 379 r/w 109 IPC. But convicted the accused/A3 for the offence under Section 379 r/w 109 IPC and released him under Section 3 of the Probation of

Offenders Act, 1958, after due admonition. Hence, the appeal came to be preferred by the State challenging the Judgment of the Magistrate under Section 378(4) Cr.P.C.

SUBMISSIONS ON BEHALF OF THE APPELLANT/STATE:

13. Learned Additional Public Prosecutor would submit that the trial Court erroneously acquitted the accused for the above offence, and therefore, the State preferred the appeal. He would submit that the evidence on record would prove the offence under Section 448, 427 and 379 IPC against A2 and A3 and the offence under Section 379 IPC against A1. But the trial Court took a lenient view against A3 and let him off with admonition, which is not sustainable in law.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS/ ACCUSED:

14. Learned legal aid counsel representing the respondents/A1 to A3 would submit that there is no evidence on record to prove the offence under Sections 448, 427 or 379 IPC. There is no material on record to connect the accused with the above offence. Therefore, the trial Court rightly found accused/A1 and A2 not guilty. The trial Court, after considering the facts and circumstances of the case, applied Section 3 of the Probation of Offenders Act, 1958 in respect of A3 and released him after due

admonition. There are no grounds to interfere with the judgment of the trial Court.

15. In the light of above contentions, the point that would arise for consideration in this Criminal Appeal is as under:

> **"Whether the judgment of the Trial Court is not sustainable"?**

ANALYSIS:

16. Reading of the evidence of PW-1 would show that A1 is the owner of the shop premises. PW-1 is a tenant and is running a medical shop. The lease was to expire on 31.03.2002. PW-1 requested the accused/A1 to renew the lease period. The accused/A1 asked PW-1 to vacate the premises. Later, PW-1 filed a suit. Subsequently, on 24.06.2002 he visited the shop and noticed that the lock put by him was replaced with another lock. Therefore, he approached the Civil Court to appoint an Advocate Commissioner to break open the new lock. Accordingly, the Civil Court appointed an Advocate Commissioner. He visited the premises on 26.06.2002 and broke open the lock. Then PW-1 verified the shop and noticed that wooden furniture, medicines, etc., available in the shop were missing.

17. It is also brought to the notice of the Court that the suit filed by PW-1 in O.S.No.127 of 2002 on the file of the Principal Junior Civil Judge, (Junior Division) at Kavali against A1 was dismissed.

18. PW-1 presented a report-Ex.P1 to PW-7 on 24.06.2002. It was registered as Ex.P7-FIR and police investigated the case. During the investigation, PW-1 was informed about recovery of the stolen property. He approached the Magistrate for interim custody of the property.

19. The above evidence of PW-1 would only show that unknown persons committed theft in the shop after he closed the shop on the night of 22.06.2002. The evidence does not prove any link to connect the accused with the offence under Sections 448, 427 or 379 IPC.

20. It is pertinent to note down that it is the case of the prosecution that during investigation PW-7 arrested accused/A3 and A4. On 28.06.2002, the stolen property was recovered based on a fact discovered from the statement made by the said accused in the presence of mediators.

21. Surprisingly, the recovered property was not identified by PW-1 soon after its recovery during any test identification parade. It appears that no test identification parade was conducted after recovery of the property. PW-1 was not asked to identify the

property during his evidence before the Court. PW-1 deposed that property was given to him towards interim custody and it was available with him when he was examined before the Court. No reason has been assigned as to why prosecution did not take steps to get the property identified by PW-1 during the trial. PW-6 is the mediator, as per the case of the prosecution, for the arrest of accused/A3 and A4 and recovery of the stolen property. He was also not asked to identify the property recovered in his presence during his evidence before the Court. Therefore, neither PW-1 nor the mediator identified the recovered property before the Court below, to confirm that it is the property belonging to PW-1 and that it was stolen from the shop of PW-1 and later recovered during investigation.

22. PW-1 in his evidence did not give any details of the property alleged to have been stolen from the shop. He simply deposed furniture and medicines were stolen from the shop. He did not give the description of the furniture or the details of the medicines available in the shop on the date of theft. It is the case of the prosecution that he was running a medical shop in the disputed premises. If it is so, he would purchase medicines from companies under proper bills and invoices.

23. Therefore, it is very easy for the prosecution to give details of the medicines available in the shop on the date of theft as per the bills, invoices and account books maintained by PW-1. No such evidence is placed before the trial Court. No reason has been assigned as to why the 'best evidence' was not produced before the Court below to establish that the recovered property is nothing, but the property stolen from the shop of PW-1. As already mentioned above, PW-1 also, either in his report Ex.P1 or in his evidence before the Court, did not give any details of the medicines. In fact, he was not asked to identify the property recovered in the case at any point during investigation or in the trial. Hence, no evidence is available on record leading the Court to say that the property recovered in the case is nothing, but the property stolen from the shop of PW-1. Therefore, no presumption can be drawn that the stolen property was recovered based on the statement made by A3 or A4.

24. Unfortunately, the learned trial Court found the accused/A3 guilty for the offence under Section 379 IPC but released him under Section 3 of the Probation of the Offenders Act, 1958 after due admonition. It appears the trial Court intended to record a moral conviction rather than a legal conviction. hence, later

released him under Section 3 of the Probation of the Offenders Act, 1958, after recording the conviction.

25. Coming to the case against the other accused/A1 and A2, no evidence is coming forth from the witnesses examined for the prosecution mentioned above, leading the Court to come to an opinion that any of the accused trespassed into the shop at any time subsequent to closure of the shop on 22.06.2002, or damaged any items available in the shop, or lifted the items from the shop without consent of PW-1. Therefore, the trial Court rightly concluded that the prosecution filed to prove the offence under Sections 448 and 427 IPC to connect the accused/A1, A2 or A3.

26. The evidence on record also falling short to lead the Court to connect the accused/A1 to A3 with the charge for the offence under Section 379 or 379 r/w 109 IPC. The said opinion of the trial Court is possible from the evidence on record. Therefore, in the light of settled principles of law, that when the opinion of the trial Court is a possible view, based on the evidence, the appellate Court shall not interfere with such findings of the trial Court. Unless it is perverse, or not based on evidence, or if any material evidence is not taken into consideration, while arriving to such an opinion.

CONCLUSION:

27. In the light of foregoing discussion, this Court is of the considered opinion that there are no grounds to interfere with the judgment of the trial Court in any manner. Accordingly, the appeal is liable to be dismissed.

RESULT:

28. In the result, the Criminal Appeal is dismissed.

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

JUSTICE B.V.L.N. CHAKRAVARTHI

09.04.2026
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THE HONOURABLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

CRIMINAL APPEAL No.332 of 2009

Date: 09.04.2026
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