SUPREME COURT OF INDIA

K. Venkateshwara Rao @ Venkatal @ I. Rao

Vs.

State Rep. by Inspector of Police, A.P.

(N S Hegde and D Dharmadhikari JJ.)

23.07.2002

JUDGMENT

Santosh Hegde, J.

1. The appellant above named along with 7 other persons was charged for offence under Sections 396, 302 and 412 IPC by the Additional Sessions Judge, Vizianagaram in Sessions Case No. 79/1996. The learned Sessions Judge found the appellant and other co-accused, except A-2 who died before the commencement of trial, guilty of the said offences and convicted and sentenced all of them to suffer life imprisonment with a fine of Rs. 10,000/- each under Section 396 IPC; in default, RI for 5 years. The appellant and A-4 to A-9 were also convicted for offence under Section 412 IPC and were sentenced to suffer RI for 10 years and to pay fine of Rs. 5,000/- each; in default to suffer RI for 3 years. On appeal, the High Court found all the accused including this appellant not guilty of the charge under Sections 302 and 396 and acquitted them while so far as this appellant and some of the accused named above are concerned, the High Court held them guilty of the offence under Section 412 IPC and confirmed the conviction and sentence recorded by the learned Additional Sessions Judge for the said offence. It is against this judgment of the High Court that the appellant is in appeal.

2. Mr. Y. Raja Gopala Rao, learned counsel for the appellant, firstly contended that since the prosecution case of dacoity under Section 396 was disbelieved by the High Court, and the appellant was acquitted of the charge, the High Court could not have convicted the appellant under Section 412 IPC without there being any additional material to establish this charge apart from the one not accepted by the High Court in the appeal. He contended that the prosecution has not produced any other material except what was produced in support of the charge under Section 396 for convicting the appellant independently of the offence under Section 412 IPC. He nextly contended that there was a serious error committed by the trial court while framing the charge under Section 412 against this appellant inasmuch as the material particulars necessary to be stated in a charge against the accused relating to the case against him in respect of the offence under Section 412 IPC were not mentioned. Thirdly, he contended that the alleged seizure of the documents, namely, Ex. P-36 to P-40 from the appellant was not in accordance with law, hence was not proved.

3. Mr. A. Raghuvir, learned senior counsel appearing for the State, defended the judgment of the High Court. He submitted that even in cases where the prosecution case as to dacoity has not been accepted by the court, the court can still rely upon the fats so produced by the prosecution for drawing an inference that the person accused of being in possession of the property had the knowledge that the property was involved in the dacoity to establish an offence under Section 412 IPC. For this purpose he relied upon a statement alleged to have been made by the appellant to the Circle Inspector of Police at the time of seizure of Ex. P-36 to P-40, wherein, according to the learned counsel, the appellant had accepted that the documents seized from him were received by him at the time of the dacoity. In such a situation, he contended that a legitimate inference can be drawn that Ex. P-36 to P-40 were the property involved in the dacoity which was received by the appellant. In regard to the complaint of irregularity in framing of the charge the said learned counsel submitted that if the charge in question were to be read as whole, it would clearly show that the allegation against the appellant was with regard to the property which was in the lorry at the time of dacoity, therefore, the appellant could not complain of lack of material particulars in the charge alleged against him. In regard to the third complaint of the appellant that the seizure in question was contrary to law, the learned counsel for the State contended that the seizure was in fact made on the basis of a statement made by the accused which led to the recovery of Ex. P-36 to P-40 so there was nothing illegal about the same and the court was justified in relying upon the same.

4. To appreciate the contentions of the rival parties it is necessary to note the fact that while the Sessions Court found the appellant and others guilty of offence under Sections 302, 396 and 412 IPC, the High Court on reappreciation of the evidence came to the conclusion that the prosecution has failed to establish the charge under Section 396 against the appellant and others. While doing so the High Court held: "By the above discussion it is evident that prosecution want to rely upon the circumstantial evidence which, according to our opinion, is not properly collected. x x x x x We acquit A3 to A6 and A9 of the charge punishable under Section 302 and 396 I.P.C." Thus, it is seen that the High Court did not accept the prosecution case in regard to dacoity or the involvement of the appellant in the said dacoity. Therefore, it becomes obligatory on the part of the prosecution to establish that the property in question was involved in a dacoity and that the appellant was in possession of the same knowing that the said property was the subject-matter of a dacoity or at least had reasonable ground for believing that the said property had been involved in a dacoity. When the court held that the appellant was not guilty of the offence of dacoity, it should be presumed that the appellant had no knowledge of the dacoity during which offence the documents seized from him were allegedly stolen. In the instant case what the prosecution has established is that the appellant was in possession of Ex. P-36 to P-40 which the prosecution alleges, belongs to a lorry involved in a dacoity but that part of the knowledge of dacoity cannot be presumed by the mere possession of these documents unless the prosecution adduced some evidence to show that the appellant had knowledge of such dacoity. For the purpose of proving that the appellant had knowledge of the dacoity, the learned counsel for the respondent relies upon an alleged statement given by the appellant to the Police at the time of seizure of Ex. P-36 to P-40. That statement, in our opinion, can be used by the prosecution for establishing that these documents were recovered on an information given by the appellant which would be

admissible under Section 27 of the Evidence Act. Beyond that, anything stated which has no direct bearing on the recovery itself cannot be admissible in evidence to bind the appellant. At this stage, it should be stated that the learned counsel for the appellant has rightly pointed out to us that the case of the prosecution that the appellant has made any confession as to the dacoity cannot be believed in view of the evidence of PW-24 who in his evidence before the Sessions Court had stated:

> "The C.I. questioned about the whereabouts of the lorry AHJ 748, Venkati, stated that one Satyanarayana and Goldman took away the lorry to Kakinada and stationed at RTO Office, Kakinada. Except the above words he did not disclose anything to the C.I. of Police."

5. The above extract of the evidence of PW-24 clearly shows that the appellant had in that statement of his, not made any admission that the documents which were taken from his possession belonged to the lorry in question or that he had the knowledge that the said lorry was involved in any dacoity and that he had taken the said documents knowing that the documents involved pertained to a vehicle which was involved in a dacoity. Therefore, we are of the opinion that the prosecution in this case having failed to establish the charge of dacoity against the appellant and assuming that the documents Ex. P-36 to P-40 were recovered lawfully from the appellant, still has not established the fact that the appellant had received these documents knowing that the same or having believed that these documents were involved in a dacoity. Since the onus of proving this knowledge lay on the prosecution and the prosecution having failed to discharge this onus on the material on record we are not satisfied that the appellant could be held guilty of the offence under Section 412 IPC, more so when he has specifically denied the recovery.

6. In the said view of the matter, though we are inclined to accept the appellant's contention that the charge in question was not framed in accordance with law, we will not go into the same to decide as to the irregularity of the framing of the charge or prejudice caused, if any, since this appeal has to succeed on the first ground itself nor is it necessary for us to go into the question of the legality of the seizure.

7. In view of the above finding of ours, this appeal is liable to succeed and the same is hereby allowed, setting aside the conviction and sentence imposed on the appellant by the courts below. However, the appellant shall not be entitled to the possession of Ex. P-36 to P-40 as he has denied that the same were recovered from him.