

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 80 OF 2003

SHAFIKUTH HUSSAIN @ RAVI

.....

APPELLANT

VERSUS

STATE OF A.P.

.....

RESPONDENT

O R D E R

1. This appeal by way of special leave arises out of the following facts:-

1.1 At about 3:45p.m. On 19th September, 1991, A1 armed with a country made revolver and A2 and A3 armed with knives reached the first floor of the Engineering Construction Company belonging to one S.V. Laxmipathi Rao in Ram Nagar, Vishakapatnam. They enquired from P.W. 1 about the whereabouts of the owner. He replied that he would come the next day. A1 then asked P.W. 1 to get some drinking water and as she went inside the residential premises to do so, A1 followed her and entered the house. On seeing that A1 was following her, P.W. 1 raised an alarm, but he threatened her by showing a knife and when she tried to run away he caused an injury to her with the knife. A1 also

forcibly removed the chain which P.W. 1 was wearing around her neck. In the meantime, one Swarajya Laxmi accosted the accused as to who he was, but A1 came to her side as well holding out a knife and forcibly pushed her down by placing his hand on her chest. In the meanwhile A2 also entered the building carrying a revolver and when P.W. 2 tried to rescue P.W. 1, A2 forcibly pushed her, due to which she fell down. The neighbours in the meanwhile gathered outside and on hearing the commotion the accused attempted to run away. P.W. 6, however, chased the accused and apprehended A1 and a folding knife with blood stains was recovered from him. A1 was also interrogated and information was extracted with regard to the identities of A2 and A3 and they too were arrested and two rounds of ammunition were recovered from A2 and a knife from A3. After the completion of the investigation, a charge sheet was filed against the accused for offences punishable under Sections 442, 393, 394, 397 and 398 of the IPC. It appears that the trial of the accused was separated with respect to the accused and A3 is the only accused before us today. The trial court on a consideration of the evidence primarily that of P.W. 6, convicted the accused appellant for offences punishable under Sections 452 and 393 of the IPC and sentenced him to undergo

imprisonment for 3½ years and to pay a fine of Rs. 500/- (Rupees five hundred only) and for 2 months for the offence under Section 393 of IPC both sentences to run concurrently. An appeal was thereafter taken to the High Court which confirmed the judgment of conviction but reduced the maximum sentence to one year on both counts. The matter is before us by way of special leave.

2. We have heard the learned counsel for the parties and gone through the record. We find that the only witness with regard to the involvement, if any, of the appellant is P.W. 6, as he was the one who had chased all the three accused but apprehended only A1 who is not before us. It is clear from the record that the appellant was arrested subsequent to the arrest of A1 on the basis of information provided by A1 to the police. The trial court and the High Court have disbelieved the evidence of P.W. 1 and P.W. 2, the star witnesses of the prosecution, on the ground that it lacked credibility as there were many contradictions therein. The courts, accordingly, have relied on P.W. 6 alone. We have gone through the evidence of P.W. 6 and this is what he has to say in his examination in chief:

“I can only identify the person who was chased by me. I did not participate in

the test identification parade. Accused present in the Court was not among the 3 persons we chased. My statement was recorded by the Police."

3. A perusal of the evidence of P.W. 6 surprises us that the trial court and High Court still thought it fit to rely on this evidence for purposes of the appellants conviction in the light of the fact that P.W. 1 and P.W. 2 have been disbelieved by both the courts below and had failed to identify the appellant even in court, whereas P.W. 6 has completely discarded the prosecution story as well. We, thus, have no option but to allow the appeal. We, accordingly, reverse the judgments of the courts below.

4. The appeal is allowed, the appellant is acquitted. His bail bonds are discharged.

JUDGMENT

.....J
[HARJIT SINGH BEDI]

.....J
[J.M. PANCHAL]

NEW DELHI
DECEMBER 10, 2009.