

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.1923 OF 2007

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ORDER:

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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 13.07.2007, passed by the III Additional District & Sessions Judge, (Fast Track Court), Gadwal, in Criminal Appeal No.136 of 2006, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offences punishable under Sections 457 & 380 of the Indian Penal Code, 1860 (for short, 'I.P.C') vide the judgment dated 29.09.2006 in C.C.No.232 of 2005 by the Judicial Magistrate of First Class, Gadwal, was confirmed.

2. The revision petitioner herein is the accused, whereas respondent is the complainant in C.C.No.232 of 2005 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The case of the prosecution is that on 11.08.2005 at 15:00 hours, *de facto* complainant/PW.1 lodged a complaint before the Police, Gadwal Town Police Station, stating that on 10.08.2005 evening he locked his house and went to his relatives' house at Rangapur village along with his family members. Thereafter, on 11.08.2005 morning at 09:00 hours, when he returned to the house, he found that some unknown culprits broke open the lock, entered the house and stolen away one gold chain of three Tolas worth Rs.18,000/- from the Almyrah. The said complaint was registered by the Investigating Officer-PW.6 as a case in Cr.No.78 of 2005 for the offence punishable under Section 380 I.P.C. During the course of investigation, on 19.08.2005 the police party apprehended the accused and brought before PW.5-Circle Inspector of Police, who recorded his confession in

the presence of PW.4. The accused confessed that he committed the offence along with one Mangali Madhu and one Shaik Basha. The Investigating Officer in pursuance of the confession of the accused got recovered MO.1 gold chain under the cover of panchanama. Thereafter, he sent the accused to judicial remand and after completing the investigation, filed the charge sheet into the Court.

4. The learned Judicial Magistrate of First Class, Gadwal, took cognizance of the case and framed the charges against the accused for the offences punishable under Sections 457 & 380 I.P.C. During trial, on behalf of the prosecution, PWs.1 to 6 were examined and Exs.P1 to P10 & MO.1 got marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C putting the incriminatory material deposed against him. The Accused denied the same and reported no oral or documentary evidence on his behalf. After hearing arguments and after perusing the evidence available on record, the learned Magistrate convicted the accused and sentenced him to undergo Simple Imprisonment for two years and to pay a fine of Rs.500/- and in default of payment to undergo Simple Imprisonment for fifteen days for each offence punishable under Sections 457 & 380 I.P.C.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.136 of 2006 before the III Additional District & Sessions Judge, (Fast Track Court), Gadwal, where the Appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the findings of the trial Court, held that prosecution able to prove that the ornament was recovered from the accused at his instance and it belongs to the *de facto* complainant; that the accused has neither claimed the said ornament as his own nor gave any explanation as to how he has come to the possession of that article; that the evidence of the mediator for

the seizure clearly shows that in his presence police seized MO.1 and held that prosecution has proved the guilt of the accused for the offences alleged against him by drawing a presumption under illustration (a) of Section 114 of the Indian Evidence Act, 1872 and dismissed the appeal by confirming the conviction and sentence given by the trial Court.

7. Being aggrieved by the concurrent finding of both the Courts below, passed in Criminal Appeal No.136 of 2006 and C.C.No.232 of 2005, the accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/ accused argued that in this case, no eye witnesses were examined by the prosecution to prove the guilt of the accused; that the confession of the accused in the police custody is not admissible under Section 25 of the Evidence Act, therefore prayed the Court to set aside the judgments of both the Courts below and finally argued that the accused has already undergone punishment for more than 1½ year and in case, if this Court comes to a conclusion that accused committed the offence, a lenient view may be taken by reducing the quantum of sentence.

9. On the other hand, the learned Public Prosecutor appearing for the State of Telangana opposed for setting aside the conviction and sentence of the accused on the ground that basing on the evidence of prosecution witnesses and basing on the recovery of MO.1 from the accused by the police in the presence of PW.4, both the Courts below rightly gave a concurrent finding that the accused is guilty for the offences punishable under Sections 457 & 380 I.P.C and the said finding needs no interference and prayed the Court to dismiss the revision case.

10. Now, the point for determination is --

Whether the revision petitioner herein is entitled to set

aside the concurrent finding given by both the trial Court and Appellate Court below for the offences punishable under Sections 457 & 380 I.P.C, as prayed for or not?

11. **P O I N T**: A perusal of the evidence produced by the prosecution shows that PW.1 is the complainant. He gave Ex.P1 complaint to the police stating that on the night of 10.08.2005, some unknown persons committed the theft of a gold chain worth Rs.18,000/- from the Almyrah. Thereafter, he identified MO.1 as belonging to him. The evidence of PW.2 has not supported the prosecution case as he turned hostile. PW.3 acted as a mediator to the scene of offence panchanama and rough sketch under Ex.P2. He stated that after knowing the contents of Ex.P2, he signed on it. PW.4 is the retired Government Employee, who clearly stated in his evidence that on 19.08.2005 at 4:30 p.m, police called him and at that time accused was present and he confessed about committing the theft of the gold ornament from the house of PW.1, along with one Mangali Madhu and one Shaik Basha. The said gold ornament was seized under the cover of panchanama. PW.6 Investigating Officer after completing investigation, filed charge sheet into the Court.

12. Admittedly, PWs.1 to 4 are not the eye witnesses to the prosecution case. None of the witnesses have seen the accused committing the offence of theft. Further, there is no evidence to show that the accused intended to take dishonestly the ornament out of the possession of the *de facto* complainant without his consent. The prosecution has not conducted any test identification parade to identify the accused. Further, there is also no evidence to show that the accused had committed house-breaking by night in order to commit the offence of theft. Basing on the recovery of MO.1 and presumption under illustration (a) of Section 114 of the Evidence Act, the accused was convicted by both the Courts as he has not shown the account for his possession. It is not the case of the accused that MO.1 belongs to

him. On the other hand, PW.1 identified MO.1 as it belongs to him.

Therefore, in view of the facts of this case,

I am of the view that both the Courts below rightly convicted the accused for the offences punishable under Sections 457 & 380 I.P.C and gave concurrent finding and the said finding needs no interference by this Court.

13. The main contention of the learned counsel for the revision petitioner/accused is that since last 10 to 11 years the accused is suffering due to this case and he underwent maximum period of imprisonment of 1½ years and therefore, if this Court comes to a conclusion that accused has committed the offence, a lenient view may be taken by reducing the quantum of sentence to that of the period undergone by him. Therefore, taking into consideration the facts and circumstances of the case, I am of the view that the quantum of sentence shall be reduced to one year from two years for each offence punishable under Sections 457 & 380 I.P.C and as such, I am inclined to dispose of the revision as under.

14. The conviction recorded against the revision petitioner/accused by the Judicial Magistrate of First Class, Gadwal, in C.C.No.232 of 2005 for the offences punishable under Sections 457 & 380 I.P.C as confirmed by III Additional District & Sessions Judge (Fast Track Court), Gadwal in Criminal Appeal No.136 of 2006, is hereby confirmed. But, the sentence of imprisonment of two years each for both the offences imposed by both the Courts below is hereby modified and reduced to one year each. The sentence of fine imposed for both the offences is not interfered with. Both the sentences shall run concurrently. The period of imprisonment already suffered by the revision petitioner/accused is directed to be given set off.

15. Accordingly, the Criminal Revision Case is disposed of.

16. Miscellaneous petitions pending, if any, in this Criminal Revision

Case shall stand closed.

Date: 26.02.2015
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ANIS, J