

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.36 of 2013

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ORDER :

The petitioners, who are A1 to A4, preferred this Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure (Cr.P.C.), aggrieved by the order dated 31.12.2012, passed in CrI.A.No.146 of 2011 wherein the learned Sessions Judge altered the conviction from Section 394 to 411 of IPC and reduced the sentence of imprisonment from five years to three years.

The facts of the case are as under:

On 20.03.2009 at about 07.30 p.m., the accused are alleged to have attacked one Mohd.Shaw Valli in Jandamanu Street of Rajampet Town and robbed jewellery worth Rs.5 lakhs from him.

In support of the case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P12. The accused got examined DWs.1 to 3. After analyzing the evidence on record, the trial Court convicted the accused for an offence under Section 394 of IPC. As seen from the record, P.W.1 who is an injured lodged a report stating that he was attacked by four assailants and gave descriptive particulars of the four assailants. But no test identification parade was held in respect of the accused. Admittedly, the offence took place at 07.30 p.m. and as per the evidence of PW3, there was no light. Having regard to the said circumstances, the appellate Court while holding that the offence under Section 394 is not made out, convicted the accused under Section 411 of IPC. The evidence of PWs.5 and 6 would show that one Hero Honda Motor Cycle belonging to PW1 was recovered under a Panchanama. The evidence of PW7, who is Panchayat Secretary Sambepalli would disclose that on 21.10.2009, he was called by the Police to act as mediator, pursuant to which he proceeded along with police and intercepted the vehicle near Anjaneya Swamy Temple. They found A1 and A2 in the car and gold ornaments were seized in his

presence. A panchanama to that effect was also drafted. In his evidence, he stated that except Jumkees, he could not identify any other gold articles and could not say what were the other articles that were found in possession of the accused. He further stated that the accused did not state before them as to where they committed theft of articles. PW8 is the then Village Revenue Officer, who in his evidence stated that on 19.10.2009 when he was present in Ramapuram Village, the inspector of police, Rayachoty took him and one Dharma Reddy to Neelakantara Peta cross road on Kadapa-Rayachoty road and on seeing the police, A3 and A4 ran away in motor cycle. The police surrounded them and seized 16 pairs of gold ear studs from the possession of A3 and five pairs of gold ear studs from A4. The accused are alleged to have confessed that they committed theft at Jandamanu Street of Rajampet Town and M.Os.5 and 6 were given to their share. PW.9's evidence is relevant only with regard to the identification of gold articles by PW1. The evidence of PW9 discloses identification of gold articles i.e., M.Os.1 to 10 by PW1 under cover of panchanama.

Though the learned counsel for the petitioners tried to contend that there was no identification of any of the gold articles by the inmates, the same cannot be accepted in view of the evidence of PW9. In support of their case, the accused examined as DWs.1 to 3. DW1 in his evidence deposed that on 18.10.2009 the police of Proddatur, Rajampet and Rayachoty came to their village at about 5.00 a.m. or 6.00 a.m., caught hold of A1 on the ground that he is required for giving evidence in some case but nothing was seized from A1. DW2 stated that he is resident of Khajipalli and A3 belongs to the same village. On 18.10.2009 at about 12.00 noon, the police of Proddatur, Rajampet and Rayachoty came to the village in two vehicles, took away A3 stating that he is required for giving evidence and nothing was seized from A3. DW3 also stated in his evidence that he belonged to Tallamapuram village to which A1 and A2 also belong. On 18.10.2009 at about 06.00 a.m., the police of Rajampet, Rayachoty and Proddatur came by two vehicles, caught hold of A2 and when enquired, the police stated that A2 is required to give evidence in some case but no material was seized from A2.

But the evidence of PWs.7 to 9 and 11 to 14 establish recovery of the stolen articles marked as M.Os.1 to 10 which were identified by PW1 during the

identification parade conducted by PW9 on 03.02.2010 at Mandal Revenue Office complex, Rajampet under cover of panchanama marked as Ex.P6 and no material is elicited to disbelieve the evidence of PW9 and Ex.P6 with regard to identity of M.Os.1 to 10 by PW1 and also no incriminating material is elicited from PW1 to disbelieve his evidence with regard to the identity of M.Os.1 to 10. Hence, it was held that M.Os. 1 to 10 belonged to PW1 and that they are stolen property from the house of PW1.

Since both the Courts have concurrently held against the accused with regard to the recovery of gold articles from the accused, I see no reason to interfere with the findings of the facts arrived at by the Courts below.

Learned counsel for the petitioners submits that the incident took place in the year 2009 and their families will be put to irreparable loss, if they are now sent to jail. Having regard to the said circumstances, he seeks reduction of sentence. He further submits that the accused were in jail for a period of five months and no other cases are there against them except the present case.

The material placed on record reveals that the crime was registered in the year 2009 and the petitioners were going around the Courts since last six years. Having regard to the said circumstances, the sentence of three years imposed on the petitioners is reduced to one year. The sentence undergone by them shall be given set off.

Accordingly, the revision is disposed of with the above modification.

As a sequel, Miscellaneous Petitions, if any, pending in this revision shall stand closed.

JUSTICE C. PRAVEEN KUMAR

01.04.2015.

vhb