

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.1919 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.132 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.225 of 2005 by the Judicial Magistrate of First Class, Gadwal, was confirmed.

2. The revision petitioner herein is accused No.1, whereas respondent is the complainant in C.C.No.225 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 08.01.2005 at 12:00 hours, *de facto* complainant/PW.1 lodged a complaint before the Police, Gadwal Town Police Station, stating that on the night of 07.01.2005 at about 21:30 hours, the *de facto* complainant kept the cash of Rs.1,14,000/- in a cover in the cash counter of Kanakadurga Kirana shop, locked the cash counter and the shop, and went to the house. On 08.01.2005 at about 10:00 hours, he opened the shop and found the cash counter was broke open and the cash not available. On further examination, he found a manhole to the rear wall of the shop by the side of staircase. Some unknown culprits entered into the shop making manhole and stolen away the amount. The said complaint was registered by the Investigating Officer-PW.4 as a case in Cr.No.5 of 2005 for the offences punishable under Sections 457 & 380 I.P.C.

During the course of investigation, on 19.08.2005 the police party apprehended accused No.1 and brought before PW.6-Circle Inspector of Police, who recorded his confession in the presence of PW.3. Accused No.1 confessed that he committed the offence along with one Mangali Madhu and one Shaik Basha. The Investigating Officer in pursuance of the confession of accused No.1 got recovered MO.1 cash 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 both the accused for the offences punishable under Sections 457 & 380 I.P.C. During trial, on behalf of the prosecution, PWs.1 to 7 were examined and Exs.P1 to P11 & MO.1 got marked.

5. After closure of the prosecution evidence, accused were examined under Section 313 Cr.P.C putting the incriminatory material deposited against them. The accused denied the same and reported no oral or documentary evidence on their behalf. After hearing arguments and after perusing the evidence available on record, the learned Magistrate convicted both the accused and sentenced each of them 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.132 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 cash was

recovered from accused at their instance and it belongs to the *de facto* complainant; that the accused has neither claimed that amount as their own nor gave any explanation as to how they came to the possession of that money; 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 them 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.132 of 2006 and C.C.No.225 of 2005, accused No.1 preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/ accused No.1 argued that in this case, no eye witnesses were examined by the prosecution to prove the guilt of accused No.1; that the confession of accused No.1 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 accused No.1 has already undergone punishment for more than 1½ year and in case, if this Court comes to a conclusion that accused No.1 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 accused No.1 on the ground that basing on the evidence of prosecution witnesses and basing on the recovery of MO.1 from accused No.1 by the police in the presence of PW.3, both the Courts below rightly gave a concurrent finding that accused No.1 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 *de facto* complainant. He gave Ex.P1 complaint to the police stating that on the night of 07.01.2005, some unknown persons committed the theft of Rs.1,14,000/- from his kirana shop. Thereafter, he identified MO.1 as belonging to him. PW.2 deposed in his evidence that PW.1 is his relative and the accused had stolen the cash of Rs.1,14,000/- from the kirana shop of PW.1. PW.5 acted as a mediator to the scene of offence panchanama and rough sketch under Ex.P10. PW.3 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 No.1 was present and he confessed about committing the theft of the cash from the kirana shop of PW.1, along with one Mangali Madhu and one Shaik Basha. The said cash was seized under the cover of panchanama. PW.5 Circular Inspector of Police after completing investigation, filed charge sheet into the Court.

12. Admittedly, PWs.1 to 3 & 5 are not the eye witnesses to the prosecution case. None of the witnesses have seen accused No.1 committing the offence of theft. Further, there is no evidence to show that accused No.1 intended to take dishonestly the cash 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 accused No.1 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, accused No.1 was convicted by both the Courts as he has not shown as to how came into possession of MO.1. It is not the case of accused No.1 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 accused No.1 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 No.1 is that since last 10 to 11 years accused No.1 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 No.1 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 No.1 by the Judicial Magistrate of First Class, Gadwal, in C.C.No.225 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.132 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 No.1 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.

ANIS, J

Date: 26.02.2015

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