

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.673 of 2005

ORDER:

The petitioner-Accused preferred the present Criminal Revision Case by invoking the provisions under Sections 397 and 401 of the Code of Criminal Procedure being aggrieved by judgment, dated 18.03.2005, passed in CrI.A. No.65 of 2004 by the II-Additional Sessions Judge, (FTC), Adilabad, whereby the learned Sessions Judge dismissed the appeal by confirming the conviction and sentence imposed against the petitioners by the Judicial Magistrate of First Class, Adilabad, in CC No.373 of 2003, vide judgment, dated 24.08.2004.

The case of the prosecution is that the de facto complainant lodged a complaint before the police, Adilabad Town PS, stating that he was doing Red Gram business and on 15.04.2003 at 10.00 p.m, LW.2 locked the godown and handed over the keys to him at his house and went away. On the next day morning, LW.2 took the keys from the complainant and went to the godown to open the same and found that the lock of the godown was broken. He immediately informed the same to the complainant and the complainant went to the godown and found that some unknown offenders broke open the lock of the godown and committed theft of 20 red gram bags worth Rs.40,000/- and fled away. Basing on the above report, the police registered a case in Crime No.73 of 2003 for the offences under Sections 457 and 380 IPC and investigated into the matter. During the course of investigation, Accused Nos.1 to 6 were arrested and Accused Nos.7 and 8 were absconding. Showing accused Nos.7 & 8 as absconding, the police filed charge sheet against the accused Nos.1 to 6. Subsequently, on issuance of NBW, A7 & A8 were also arrested.

The case was taken on file for the offences under Sections 380 and 411 IPC against the accused. On appearance of the accused, the

above charges were read over and explained to them, for which, they pleaded not guilty and claimed to be tried.

To substantiate its case, the prosecution examined PWs.1 to 8 and got marked Exs.P-1 to P-15 besides MOs.1 and 2. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C., and they denied the prosecution evidence and reported no defence evidence.

The trial Court, after considering the evidence on record, not found A7 & A8 guilty and found A1 to A6 guilty of the offence under Section 380 IPC and accordingly, acquitted A7 & A8 and convicted and sentenced A1 to A6 to suffer Rigorous Imprisonment for a period of one year each and to pay a fine of Rs.1,000/- each, in default to suffer simple imprisonment for six months. Aggrieved over the same, accused Nos.1 to 6 preferred Crl.A. No.20 of 2004 before the II-Additional District and Sessions Judge, Adilabad, and the learned District & Sessions Judge remanded the matter to the trial Court with a direction to give an opportunity to the accused to cross-examine PW.4, who is the confession and recovery panch and also directed the accused to appear before the trial Court on 10.06.2004 by depositing Rs.200/-. After remand, PW.4 was cross-examined by A1 to A6 and thereafter, the trial Court, after appreciating the material available on record, found A1 to A6 guilty of the offence under Section 380 IPC and accordingly, sentenced them to suffer rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- each, in default, to suffer simple imprisonment for one month each. Challenging the same, accused Nos.1 to 6 preferred appeal in Crl.A. No.65 of 2004 before the II-Additional Sessions Judge (FTC), Adilabad. The learned Additional Sessions Judge dismissed the appeal by confirming the conviction and sentence of imprisonment recorded by trial Court, vide judgement impugned. Aggrieved by the same, the present revision is filed by accused Nos.2, 3, 5, and 6.

Heard and perused the material available on record.

On perusing the judgments of both the Courts below, this Court is of the view that since the findings of both the Courts below are concurrent in nature, this Court is not inclined to interfere with the factual aspects of the case.

When this Court pointed out that there are no merits in the revision, learned counsel for the petitioners-accused Nos.2, 3, 5 & 6 restricted his arguments to the quantum of sentence and prayed that leniency may be shown while imposing sentence.

Considering the facts and circumstances of the case and also the time elapsed, the sentence of imprisonment imposed against the petitioners by the trial Court, as confirmed by the lower appellate Court, can be reduced to that of the period which the petitioners – Accused Nos.2, 3, 5 & 6 have already undergone.

In the result, the conviction recorded by the Judicial Magistrate of First Class, Adilabad, in CC No.373 of 2003 vide judgment, dated 24.08.2004, as confirmed by the II-Additional Sessions Judge (FTC), Adilabad, in CrI.A. No.65 of 2004, vide judgment, dated 18.03.2005, for the offence under Section 380 IPC against the petitioners – A2, A3, A5 and A6 is confirmed. However, the sentence of imprisonment imposed by the trial Court, as confirmed by the appellate Court, against the petitioners for the above offence is reduced to that of the period, which the petitioners – A2, A3, A5 and A6 have already undergone. The fine amount is not interfered with.

Accordingly, the Criminal Revision Case is partly allowed. Miscellaneous applications, pending if any, shall stand closed.

RAJA ELANGO, J

August 02, 2016.
KTL