

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.37 OF 2007

JUDGMENT:

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 3.1.2007, in Sessions Case No.208 of 2006 on the file of the III Additional Metropolitan Sessions Judge at Hyderabad whereunder and whereby, appellant herein/A-1 was found guilty of the offence punishable under Section 392 of the Indian Penal Code, 1860 (for short, "I.P.C.") instead of the offence punishable under Section 395 I.P.C. and was convicted under Section 235(2) Cr.P.C. and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.3,000/- and in default of payment of fine, to undergo simple imprisonment for a period of three months.

2. The brief facts that are necessary for disposal of the present appeal may be stated as follows:

On 7.7.2002, at about 4:00 A.M., while C.Hanumantha Sastry/*de facto* complainant along with his family members was sleeping in his house in S.B.H. Colony, Jamai Osmania, Hyderabad, four unknown offenders, who were armed with knives and an iron rod, gained entrance by removing the window grills of the kitchen, put the inmates of the said house under the fear of death and committed dacoity. After the establishment of the identity of the accused and others, charge sheet was filed by the Inspector of Police, A.D.R. Team, C.C.S., Hyderabad in Crime

No.243 of 2002 of Chilkalguda Police Station, Hyderabad against the appellant herein/A-1, V.Samuel/A-2 (accused in Sessions Case No.553 of 2004) and three other absconding accused for the offence under Section 395 I.P.C.

3. The learned XXI Metropolitan Magistrate took the case on file as P.R.C.No.13 of 2004 against A-1 and A-2. Since A-1 absconded, the case against him was split up and numbered as P.R.C.No.18 of 2004. The learned Magistrate committed the case against A-2 under Section 209 Cr.P.C. and the same was registered as S.C.No.553 of 2004, which was later disposed of *vide* judgment, dated 18.8.2005.

4. The learned Magistrate, having satisfied that the case is exclusively triable by the Court of Sessions, committed the same under Section 209 Cr.P.C. to the learned Metropolitan Sessions Judge, Hyderabad.

5. The learned Metropolitan Sessions Judge, Hyderabad, who registered the case as Sessions Case No.208 of 2006 against A-1, made over the same to the Court of the III Additional Metropolitan Sessions Judge, Hyderabad for disposal according to law.

6. The trial Court framed a charge under Section 395 I.P.C. against A-1, read over and explained to him for which, he pleaded not guilty and claimed to be tried.

7. To substantiate the charge, the prosecution examined P.Ws.1 to 10 and got marked Exs.P-1 to P-7 besides case property – M.O.1.

8. After closure of the prosecution evidence, A-1 was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the same. On behalf of A-1, none was examined and no documents were got marked.

9. The trial Court, after appreciating both oral and documentary evidence on record, found A-1 guilty of the offence under Section 392 I.P.C. instead of the offence under Section 395 I.P.C. and accordingly, convicted and sentenced him as stated supra. Challenging the same, the present appeal is filed by A-1.

10. After arguing for sometime, learned counsel for the appellant/A-1 confined his arguments only to the extent of reducing the sentence of imprisonment imposed by the trial Court against the appellant.

11. From a perusal of the record, it is evident that the appellant has suffered substantial period of sentence in the prison. Considering the said fact and in view of the fact that the offence pertains to the year 2002, this Court is inclined to reduce the punishment imposed by the trial Court against the appellant.

12. In the result, the conviction imposed against the appellant/A-1 in the judgment, dated 3.1.2007, in Sessions Case No.208 of 2006 on the file of the III Additional Metropolitan Sessions Judge at Hyderabad for the offence punishable under Section 392 I.P.C. is confirmed. However, the sentence of imprisonment imposed by the trial Court for the said offence is

modified to the period which the appellant/A-1 has already undergone, while maintaining the sentence of fine.

13. Accordingly, the Criminal Appeal is partly allowed.

14. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

19.9.2016
AMD

JUSTICE RAJA ELANGO

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AMD