

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1621 of 2008

JUDGMENT:

1. This appeal is filed by the appellant-accused against the conviction and sentence imposed by the I Additional Sessions Judge, Adilabad in S.C.No.198 of 2007 vide Judgment dated 24.10.2008.

2. The case of the prosecution is as follows:

A1 and A2 are the residents of Lingannapet village. One Kurva Dandu Errappa alias Erraiah (for short, 'the deceased') is a resident of Marikal village of Dhanwada Mandal of Mahabubnagar District. P.W.1 is the elder brother of the deceased. About five days prior to the incident, the deceased along with some others came to Lingannapetsivar along with 1000 sheep for the purpose of grazing. The sheep were kept in the field of Rallabandi Venkataiah by arranging shelter there. On 31.12.2005 in between 5 a.m., and 5.15 a.m., the said Erraiah came into contact to a live electric binding wire while he was proceeding towards the sheep and died on the spot. Prior to that date, A1 and A2 planted wooden pegs with binding wires in the outskirts of Lingannapet village by connecting the live electric wire from the pole nearby in order to catch wild animals. On seeing the dead body of the deceased with an intention to suppress the incident, A1 and A2 shifted the dead body near to maddi tree plantation and concealed the said body in a ditch, 1 k.m., away from the scene of offence. A1 and A2 snatched cash of Rs.20/-, cell phone along with charger and Timex wrist watch from the possession of the deceased. On coming to know about the incident, P.W.1 lodged a complaint to the police. Basing on which, a case was registered and investigated into. After completion of

the investigation, charge sheet was filed against the accused. The learned Judicial Magistrate of First Class, Chennur took the case on file and committed the same to the Court of Sessions. The learned Sessions Judge, Adilabad made over the same to the learned I Additional Sessions Judge, Adilabad for disposal.

3. The trial Court framed charges under Sections 304-II, 201 and 404 IPC, against A1 and A2, read over and explained to them, for which they pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 16 were examined and Exs.P1 to P19 and M.Os.1 to 19 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

5. On appreciation of both oral and documentary evidence, the trial Court having found the appellant-accused No.1 guilty for the offence under Section 404 IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of two months, while acquitting him for the offence under Sections 304-II and 201 IPC and acquitting A2 for the charges levelled against him. Aggrieved by the conviction and sentence imposed by the trial Court, the appellant-accused No.1 filed this appeal.

6. Learned Counsel for the appellant-accused No.1 submitted that the trial Court convicted the accused basing on mere conjectures and surmises and that there is no eye-witness to the alleged crime attributed against the appellant-accused No.1 and the circumstantial evidence would not establish the guilt of the appellant-A1 beyond all reasonable doubt.

7. Learned Additional Public Prosecutor submitted that the conviction and sentence imposed by the trial Court against the appellant-accused No.1 for the offence under Section 404 IPC do not warrant any interference by this Court.

8. The appellant-accused No.1 was convicted by the trial Court for dishonest misappropriation of property belonging to the deceased. Now, it is to be examined as to whether the prosecution has established the commission of the said offence. In this regard, the evidence of P.W.12, who is a panch witness, and P.W.16-investigating officer is to be examined.

9. P.W.12 deposed that he was present when A1 was interrogated and at the instance of A1, the wire bundle, sticks, cell phone, wrist watch, cell phone charger and torn ticket were seized. The evidence of P.W.12 is in corroboration with the evidence of investigating officer-P.W.16. Their evidence goes to show that the cell phone, cell phone charger, wrist watch and the copper ring were recovered at the instance of A1. P.W.1 identified the articles and stated that they belong to the deceased. Nothing was adduced from their cross-examination to disprove the seizure of the said property at the instance of A1.

10. Considering the facts and circumstances of the case and the findings of the trial Court, this Court is of the view that the trial Court has rightly convicted the appellant-accused No.1 for the offence under Section 404 IPC.

11. At this stage, the learned Counsel for the appellant submitted that the appellant was in prison for a considerable period and therefore, a lenient view may be taken.

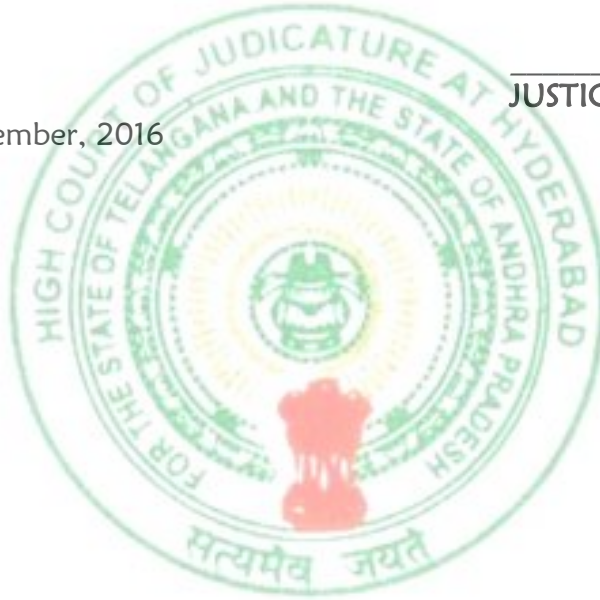
12. In the result, the conviction imposed by the trial Court against the appellant-accused No.1 for the offence under Section 404 IPC in S.C.No.198 of 2007 is confirmed. However, the period of sentence of two years rigorous imprisonment imposed by the trial Court for the said offence is modified to that of the period, which the appellant-A1 has already undergone, while confirming the sentence of fine with default sentence.

13. Accordingly, the Criminal Appeal is partly allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Dated:7th September, 2016

Nn

JUSTICE RAJA ELANGO



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7.9.2016

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