

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2563 OF 2017

JUDGMENT:

The present Criminal Revision Case is directed against the judgment, dated 10.01.2017, in Criminal Appeal No.18 of 2016 on the file of the XII Additional Sessions Judge, Vikarabad, erstwhile Ranga Reddy District, whereby and where-under, the sentence of rigorous imprisonment for one year and fine of Rs.2,000/- with default sentence of simple imprisonment of three months for the charge under Section 379 of the Indian Penal Code, 1860 (for short 'IPC') imposed by the learned Judicial Magistrate of First Class, Tandur in Calendar Case No.200 of 2014, in his judgment, dated 12.04.2016 was confirmed.

2. Heard Sri M. Parma Reddy, learned counsel for the revision petitioner, and the learned Additional Public Prosecutor for the State of Telangana.

3. The facts would show that while the *de facto* complainant (PW.1) - B. Padmamma was returning to her village in Parshya Naik Thanda, some unknown offenders came from behind and snatched gold chain (Pustela Tadu) weighing 3½ tolas, worth Rs.80,000/- from her neck by slapping her and pressing her neck and pushing down her and fled away from there. According to her, the said culprit covered

his face with red towel and did not wear chappal but wore red colour drawer.

4. On her complaint, the Station House Officer, Basheerabad Police Station, registered a case in Crime No.2 of 2014, and on completion of investigation, laid charge sheet alleging the offence punishable under Section 379 IPC against the revision petitioner herein as it was detected that he was the culprit.

5. The learned Judicial Magistrate of First Class, Tandur, when examined the revision petitioner, he pleaded not guilty.

6. Before the learned Magistrate, the prosecution altogether examined nine witnesses as PWs.1 to 9 and marked Exs.P1 to P6, and the Pushelatadu as Material Object (MO) No.1. Amongst the witnesses, PW.1 is the *de facto* complainant, PWs.2 to 5 and 7 are the witnesses to the occurrence, PW.6 is a panchayatdar for scene of offence *panchanama*, PWs.8 and 9 are the panchayatdars for confessional and recovery mahazar.

7. The learned Magistrate, on appraisal of evidence of PWs.1 to 9, holding that the evidence of PWs.8 and 9 so far as recovery of MO.1 is concerned, cannot be disbelieved and since the material object was identified by PW.1 as belonging to her, recorded conviction. The learned Magistrate, in fact, commented on the conduct of PWs.8 and 9 when they expressed that they do not know

the contents of *panchanama* as they were Village Revenue Officer and Secretary of Kothlapur village respectively, being responsible village officers and to the extent of their chief-examination supporting the case of prosecution, is used by the learned Magistrate, thus, recorded the conviction and inflicted the aforesaid sentence for the offence.

8. In appeal, the learned XII Additional Sessions Judge, Vikarabad taken the evidence of PWs.1 to 9 and also commenting on the evidence of PWs.8 and 9 to the extent they resiled, held that recovery cannot be disbelieved as PW.1 identified the MO.1 and also held that the conviction recorded and sentence of imprisonment inflicted are legal and sustainable.

9. Now, in the present Criminal Revision Case, though, an attempt is made by the learned counsel to view the case of the prosecution with suspicion as there was no identity of the culprit, but when concurrent findings have been recorded by the Courts below, unless it is shown that the findings are manifest and patent injustice apparent on the face of the proceedings, it is difficult to withhold the concurrent findings recorded by the Courts below.

10. Now, turning to the sentence of imprisonment, the learned counsel for the petitioner would plead that the rigorous imprisonment of one year inflicted on the petitioner for the offence under Section

379 IPC is too harsh and would submit that the petitioner is the bread-earner of his family and his old aged parents are totally dependant on him and he has been in serving the sentence from 24.01.2017 and, therefore, seeks to take a lenient view.

11. Though, the judgment in Criminal Appeal 18 of 2016 was pronounced on 10.01.2017, but copy of the committal warrant issued by the learned Sessions Court would show that the revision petitioner was sent to serve the sentence by committing him to the Central Prison, Cherlapally, Hyderabad, on 24.01.2017.

12. Keeping in view, the submission made and also the offence being theft punishable under Section 379 IPC, when the material object being one item and no injuries are caused to the *de facto* complainant, while maintaining the conviction recorded by both the Courts below for the charge under Section 379 IPC, sentence of rigorous imprisonment inflicted is reduced to that of the sentence already undergone by the petitioner till date. The petitioner shall be released forthwith.

13. In the result, the Criminal Revision Case is dismissed except to the extent of reducing the sentence of rigorous imprisonment inflicted on the revision petitioner to that of the sentence already undergone by him till date. The petitioner shall be released forthwith.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the criminal revision case, stand closed.

A. SHANKAR NARAYANA, J

November 07, 2017.

Mgr

