

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C No.2246 of 2017

ORDER:

This Criminal Revision Case under Sections 397 and 401 of Criminal Procedure Code is filed challenging the judgment in Crl.A.No.41 of 2017 passed by the Principal Sessions Judge, Medak, Sangareddy confirming the conviction for the offences punishable under Section 356 and 379 of IPC but reduced the substantive sentence of imprisonment on each count to six months with a direction that substantive sentences shall run concurrently, by exercising power under Section 427(1) of Cr.P.C.

2. The case of the prosecution in brief is that PW1 is victim, house wife with a rural background hails from Saidapur Village, Kondapur Mandal and LW.2 and LW.3 are witnesses. On 17.07.2015 at about 10.30 a.m. Alibada Rajeshwari w/o Pentaiah resident of Saidapur Village washing her clothes at bore well of Shanishwara Temple situated in the outskirts of Saidapur Village. While so, the accused persons were riding the bike and proceeding on the BT road of Kondapur, and when they saw the victim alone, they stopped the bike on the road margin. One of the accused accosted to the complainant and requested her to provide drinking water, stating that they were thirsty. Then she put on (started) the bore well motor and then the accused persons initially drunk water and filled some water in the bottle. In the meanwhile, seeing the victim busy in washing clothes, she is wearing a golden bridal chain in her neck, the accused persons suddenly snatched the golden chain from the neck of the complainant and pushed her forcefully and took heel from the spot with booty on their bike.

Thereupon she gave a complaint in Kondapur Police Station, basing on which the S.I. of Police, Kondapur registered a case in Cr.No.89 of 2015 for the offences punishable under Sections 356 and 379 IPC and issued FIR and took up investigation. During investigation, LW11 examined the witnesses and recorded their statements and arrested the accused and filed charge sheet after concluding the investigation.

3. The Judicial Magistrate of First Class took the case on file, after securing the presence of the accused through PT Warrant. Upon hearing the arguments of both Assistant Public Prosecutor and the counsel for the accused, charges against the petitioners for the offences punishable under Section 356, 379 and 411 IPC were framed, read over and explained to the accused, they pleaded not guilty and claimed to be tried?

4. The prosecution examined PW-1 to PW-13 and got marked as Ex.P-1 to Ex.P-7, during trial. After closure of prosecution evidence the accused was examined under Section 313 of Cr.P.C explaining the incriminating evidence of prosecution witness, they denied, reported no defence evidence.

5. After hearing the arguments of both the counsel, the trial Court found the petitioner guilty for the offences punishable under Section 356 and 379 IPC and convicted and sentenced to undergo simple imprisonment for 8 months for each count, acquitted the accused No.1.

6. Aggrieved by the Calendar judgment, the petitioner/A2 preferred an appeal in CrI.A.No.41 of 2017 on the file of Principal Sessions Judge, Medak at Sangareddy.

7. By judgment dated 27.07.2017, the lower appellate Court reduced the substantive sentence of imprisonment to 6 months from 8 months on each count with a direction that both the substantive sentences shall run concurrently, while confirming conviction.

8. Dis-satisfied with the reduction of sentence, the petitioner preferred the present Revision on various grounds, mainly on the ground that for seizure of MO.1 from the possession of the accused, there is no independent evidence as the panch witnesses turned hostile and did not support the case of the prosecution and that the appellate court did not consider the evidence in proper perspective and committed a serious error in confirming the conviction while reducing the substantive sentence of imprisonment for six months and prayed to set aside the conviction confirmed by the lower appellate Court finding the petitioner/A2 guilty for the offences punishable under Section 356 and 379 I.P.C.

9. During the course of hearing, learned counsel for the petitioner, Sri Banda Prasad Rao, while reiterating the contentions raised before the lower appellate Court, argued on the grounds stated in the grounds of appeal, requested this Court to reduce the substantive sentence of imprisonment as the petitioner is the poor man and not involved in any other crime and prayed to allow the appeal setting aside the conviction and sentence imposed both by the trial Court and appellate court.

10. The Public Prosecutor for the State of Telangana supported the judgments of both the trial Court and Appellate Court and the

sentence imposed against the petitioner for the offences punishable under Section 376 IPC.

11. This Revision is filed under Sections 397 and 401 of Cr.P.C., where the powers of this Court are limited and in general unless the Court finds there is an apparent error in the judgment of the trial Court, the Court shall not interfere with the findings of the fact recorded by the trial Court. Therefore, keeping in view the limited scope of jurisdiction of this Court, the finding recorded by the trial Court against the petitioner A2 for the offences punishable under Section 356 and 379 IPC about snatching away gold bridal chain from the neck of PW1 cannot be denied, since I find no apparent error in the findings recorded by the trial court. Apart from that PW1 is the victim, from whose neck the petitioner snatched away the chain on the pretext to provide some water as they were thirsty. Therefore she is a direct eye witness to the incident and her presence cannot be doubted at any time. Apart from that PW-1 foisting a false case against accused No.2, who is unknown to her and had no earlier acquaintance with her, does not arise. Apart from that she was pushed aside while snatching the chain and she fell down.

12. The Supreme Court in ***Brahm Swaroop and another v. State of Uttar Pradesh***¹ has held as under:

“Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. Convincing evidence is required to discredit an injured witness”.

¹ 2011(6) SCc 288

13. If the above principle is applied to the present case , PW1 who is the witness to the occurrence, fell down while snatching away bridal chain from her neck. Therefore, her evidence cannot be discarded so lightly and get over on any ground unless such evidence is shattered in the cross examination.

14. Counsel for the petitioner elicited nothing in the cross examination of the witness to discard her evidence regarding occurrence of incident i.e., snatching away the gold chain by A2 by pushing her aside. Therefore the evidence of PW1 is highly trustworthy who is victim in the incident. Recovering the chain from the possession of A2 by the police is another strong circumstance to believe that the petitioner is the person who committed the theft by snatching away the gold chain from her neck.

15. As the prosecution proves possession of gold chain by the petitioner/accused No.2 herein, the trial Court draw a presumption that petitioner/Accused No.2 is thief or a person who received a stolen property under Section 114 of Indian Evidence Act, 1872 that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration of A of Section 114 made it clear that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. Though presumption is rebuttable if there is any such circumstance weakening such

presumption, it cannot be ignored by the Court. If the petitioner/accused No.2 is able to dispel such presumption for eliciting in the cross-examination of prosecution witnesses or by examining any independent witness or account such goods which is found in his possession, the Court can come to the conclusion that such presumption is rebuttable. But here no such evidence is brought to rebut the presumption under Illustration of A of Section 114 of Indian Evidence Act.

16. Therefore, basing on the recovery of MO.1 from the possession of PW1 under the cover of Ex.P7 seizure report, petitioner may be presumed as a thief or receiver of stole goods. The trial court rightly concluded the petitioner as a thief, who snatched a chain which belongs to PW 1 without her consent. And in the commission of theft, petitioner pushed aside the victim-PW1, which would fall under Sections 356 and 379 IPC. Therefore, the finding of the trial Court confirmed by the lower Appellate Court that the accused is the person who committed the offences punishable under Sections 356 and 379 IPC and in view of the limited scope of jurisdiction of this Court under Section 379 and 401 of Cr.P.C., I am unable to interfere with the findings of the fact arrived by the trial Court and confirmed by the appellate court in awarding conviction.

17. So far as sentence is concerned, petitioner is found guilty for both offences and sentenced with simple imprisonment for 8 months for each offence. However, this substantive sentence is reduced for 6 months on each count by the appellate Court. But in general, the circumstances for sentencing the accused are aggravating and mitigating circumstances.

18. Aggravating circumstances in this case are that while accused No.2 along with A1 are proceeding on a bike, on the pretext of thirst, they requested PW1 to provide some water. In the meanwhile, hatched a plan to snatch away the gold chain from her neck and committed serious offence punishable under Sections 356 and 379 IPC.

19. No mitigating circumstances are brought to the notice of this Court or before the Trial Court.

20. Normally the mitigating circumstances in which offences were committed, are :

1. The manner and circumstances in and under which the offence was committed, for example extreme mental or emotional disturbance or extreme provocation in contradiction to all these situation in normal course
2. The age of the accused is a relevant consideration but not a determinative factor by itself.
3. The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.
4. The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.
5. The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.
6. Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was

a possibility of it being construed as consequences to the commission of the primary crime.

7. Where it is absolutely unsafe to rely upon the testimony of a sole eye witness though prosecution has brought home the guilt of the accused.

While determining the questions relateable to sentencing policy, the Court has to follow certain principles and those principles are the lead star besides the above considerations in imposition or otherwise of the death sentence.

21. In the present case, petitioner/accused No.2 is a gold chain snatcher and those offences are high in range in the city of Hyderabad and if flee by sentences are imposed, it will encourage offences causing disturbance in the cities. Therefore, It is difficult to take a lenient view against the petitioner. Since no mitigating circumstances are brought to the notice to reduce the sentence of imprisonment imposed by the appellate Court. Hence I find no ground to interfere with the conviction awarded by the trial Court and confirmed by the appellate court while modifying the sentence to six months on each count for the offences punishable under Sections 356 and 379 IPC. Therefore, the Revision is liable to be dismissed as it lacks merits.

22. In the result the appeal is dismissed confirming the conviction and sentence recorded by the trial Court and confirmed by the appellate court.

M. SATYANARAYANA MURTHY, J

Date: 08-08-2017
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