

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2713 of 2017

JUDGMENT:

The petitioners herein are arraigned as Accused Nos.1 and 2 in C.C.No.345 of 2012 on the file of the II-Additional Judicial Magistrate of First Class, Tirupati. They were tried for the charges under Sections 457 and 380 IPC for committing the theft of (1) 57 gold coated leaves with umbrella round sheet (2) gold coated small gandharva figure (3) gold coated two small gandharva figure hands (4) gold coated one small gandharva single hand and (5) gold coated chariot rider's Srichakram, which are all articles of Golden Chariot, by making a hole opening of size 1" x 1" on south-west corner to the sheet enclosure on Golden Chariot on 05.01.2011, which was noticed by the defacto-complainant and others, who were all examined as prosecution witnesses.

2. When the petitioners were examined, they denied the charges and pleaded not guilty. The learned II-Additional Judicial Magistrate of First Class, Tirupati, proceeded with trial.

3. In order to prove the guilt of the accused, the prosecution examined as many as 12 witnesses and exhibited eight documents, besides marking M.Os.1 to 3. The learned Magistrate, on appraisal of evidence, having disbelieved the evidence of PW.9, the finger print expert, in view of the answers he had given in his cross-examination, opined that the prosecution failed to prove the guilt of the accused for

the offences under Sections 457 and 380 IPC. However, the learned Magistrate got himself convinced with the other evidence on record through PWs.1 to 8 and 10 to 12, in view of recovery of the material objects in consequence of the confession made by the petitioners, believing the recovery, as nothing was found in the cross-examination of the mediator examined as a witness, and, pronounced judgment on 24.02.2015 in C.C.No.345 of 2012 holding that the prosecution could prove the offence punishable under Section 411 IPC and recorded conviction under Section 248 (2) of the Criminal Procedure Code (for short, 'the Code') for the said offence, while acquitting the petitioners under Sections 248 (1) for the charges under Sections 457 and 380 of IPC.

4. Questioning as to the quantum of sentence basing on the answers given by both the petitioners, inflicted sentence of simple imprisonment for a period of one year each giving set off to the period already undergone pending trial or pre-trial detention period under Section 428 of the Code.

5. When the petitioners preferred appeal in Criminal Appeal No.60 of 2015, before the V-Additional Sessions Judge, Tirupati, challenging the conviction recorded and sentence of imprisonment inflicted on them by the learned Magistrate, the learned V-Additional Sessions Judge, Tirupati, having formulated the relevant point for consideration, on re-appraisal of evidence on record, agreed with the findings recorded by the learned Magistrate and confirmed the

acquittal as well as conviction, as narrated in the above including the sentence inflicted on both the petitioners.

6. Heard Sri V.Eswaraiah Chowdary, learned counsel for the petitioners, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh appearing for the respondent.

7. The submission of the learned counsel for the petitioners is that the courts below ought not to have believed the evidence of the prosecution witnesses and the documentary evidence marked as Exs.P1 to P3 and record conviction. His further submission is that the prosecution failed to take the assistance of an independent witness holding the office in Governmental Departments to act as mediators. His further submission is that there is no direct evidence to prove that the petitioners have committed the offences. Of course, in the grounds of appeal, a ground is agitated that the courts below ought not to have believed the evidence of PW.9, perhaps without referring to the findings recorded by the courts below, consistently discarding the evidence of PW.9.

8. It is needless to mention that the petitioners herein are absolutely unsuccessful in pointing out the findings recorded by the courts below would suffer from patent illegality warranting interference with the conviction recorded. In fact, cogent reasons have been given by the courts below in accepting and acting upon the evidence of PWs.1 to 8 and in believing the recovery effected. The property was also identified by PW.1 when test identification parade

was conducted. When the recovery is proved and items of theft were identified by the relevant witness i.e., complainant herein, and the testimony of the prosecution witnesses thereon are not shaken, the question of interfering with the concurrent findings recorded by the courts below does not arise. There is no merit in the present appeal.

9. The Criminal Revision Case is, therefore, dismissed confirming the conviction recorded and the sentence of imprisonment inflicted on the petitioners by the trial court and confirmed by the appellate court.

10. In Crl.RC.MP.No.4435 of 2017 filed for suspension of the sentence and consequential release of the petitioners on bail, learned counsel for the revision petitioners mentioned that the petitioners are 'out of jail'. Since the conviction and sentence of imprisonment inflicted by the courts below are confirmed in the present revision case, the learned II-Additional Judicial Magistrate of First Class, Tirupati is directed to secure the presence of the petitioners and put them in prison to serve the sentence of imprisonment.

11. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

JUSTICE A.SHANKAR NARAYANA

31.10.2017

v v