

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2989 OF 2017

ORDER:

Questioning the conviction for the offence punishable under Section 382 IPC and the sentence of rigorous imprisonment of three years and fine of Rs.500/- with default sentence of 15 days inflicted by the XI Additional Chief Metropolitan Magistrate, Secunderabad, in C.C.No.1291 of 2012, dated 16.11.2017, as confirmed by the VII Additional Sessions Judge, FAC Spl. Judge for Trial of offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, in CrI.A.No.979 of 2016, dated 16.11.2017, the petitioner, who is accused No.1, approached this court by this revision.

2. Heard Sri Praveen Kumar Challa, learned counsel for the revision petitioner, and the learned Additional Public Prosecutor appearing for the State of Telangana.

3. For the sake of convenience, certain facts are necessary to be adverted to.

The prosecution case is that when PW2-Smt A.Padma was proceeding towards bus stop besides Paradise Fire Station, two persons came in opposite direction on a Pulsar Motor Cycle wearing a cloth handkerchief mask to face and pillion rider wearing red-shirt came near to her and snatched away her gold double chain with round pusthelu from her neck weighing 4.5

tulas. A report was lodged by her son PW1, before Ramgopalpet police. A crime was registered, and investigation was taken up. During the course of investigation, the revision petitioner was apprehended and he made a confessional statement leading to recovery of the ornaments and revealed the name of A2 and that is how a charge was laid against the petitioners therein.

During the course of trial, as they pleaded not guilty, PWs.1 to 7 were examined and Exs.P1 to P3 and MO1 were marked through PW1. PW1 is the complainant and PW2 is the victim and mother of PW1. PW3 is the receiver of the stolen property. PW4 is a police constable and PWs.5 and 6 are the investigating officers. PW7 is a panch witness. None of them turned hostile. The learned Magistrate basing on the evidence of PWs.1 and 2-prosecution witnesses; and having found from the evidence of PW2 that the material object identified was a changed article; and the recovery having proved, held that the prosecution proved the charge against the accused beyond all reasonable doubt.

4. When the revision petitioner preferred the criminal appeal, the learned appellate Judge, observing that nothing is brought out in the cross-examination of PWs.1 and 2 to discredit their testimony and having accepted the evidence held that the finding recorded by the trial court does not suffer from any legal infirmity and thus, confirmed the conviction as well as the sentence of imprisonment and fine.

5. Learned counsel for the revision petitioner contends that based on the evidence of stock witness, the mediator, the courts below ought not to have recorded conviction and the sentence respectively. He further contends that no test identification parade was conducted and without there being any test identification parade, which is a lapse on the part of the investigating agency, the complicity of the revision petitioner cannot be established. Thus, the courts below went wrong in recording findings in favour of the prosecution.

6. When concurrent findings have been recorded by the courts below on appreciation of evidence in accordance with the evidenciary rule, no interference is warranted unless utter perversity is projected. As can be seen from the evidence on record none of the witnesses have turned hostile and even nothing is brought out to disbelieve the recovery of MO1 at the instance of the revision petitioner. Therefore, the findings recorded by the courts below cannot be interfered with as they do not suffer from any legal infirmity. Hence, the conviction recorded as well as the sentence of rigorous imprisonment of three years and fine of Rs.500/-, is hereby confirmed.

7. The learned counsel for the revision petitioner would submit that the petitioner is committed to the prison and serving out the sentence from 20.01.2015. It is also his submission that he was detained from 18.07.2012 to 05.11.2012, which has to be construed as pre-trial detention.

8. Accordingly, the Criminal Revision Case is dismissed confirming the conviction for the offence punishable under Section 382 IPC and sentence of three years Rigorous Imprisonment and fine of Rs.500/- imposed against the petitioner, by the XI Additional Chief Metropolitan Magistrate, Secunderabad, dated 14.10.2016, in C.C.No.1291 of 2012, as confirmed by the Court of Special Judge for trial of offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, vide judgment, dated 16.11.2017, in CrI.A.No.979 of 2016. Period of remand, if any, undergone by the petitioner during the course of investigation, shall be given set off.

In case, the petitioner has already served out the sentence of imprisonment of three years and paid the fine amount, he shall be released forthwith if he is not required in any other case.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

November 23, 2017
LMV