

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.3290 OF 2017

ORDER:

The revision petitioner is the appellant in CrI.A.No.199 of 2015 on the file of learned III Additional Sessions Judge, Bhimavaram, and accused No.2 in C.C.No.108 of 2012 on the file of learned Judicial Magistrate of First Class, Bhimavaram.

2. The learned Judicial Magistrate of First Class, Bhimavaram, tried the revision petitioner along with accused No.1. The offence alleged against them is punishable under Section 392 I.P.C. The learned Magistrate, having examined the accused under Section 239 Cr.P.C. and having framed the charge under Section 392 I.P.C., since they pleaded not guilty, proceeded with trial.

3. During the course of trial, PWs.1 to 7 were examined and Exs.P1 to P11 were marked, besides M.Os.1 to 7.

4. PW.1 is the complainant. PW.2 is the mediator for confessional and recovery panchanama. PW.3 is the finger print expert. PW.4 is another mediator for scene of occurrence panchanama. PW.5 is the Investigating Officer and PW.6 is another Investigating Officer, who registered the crime and recorded the statement of PW.1.

5. The learned Magistrate, having regard to the evidence of PW.1, who identified the revision petitioner, and in view of the

recovery of M.Os., which are valuables, and believing the evidence of PW.2, who is the Village Revenue Officer, Cluster -3, Bhimavaram Town, opined that the prosecution proved the charge against the accused beyond all reasonable doubt and thereby, convicted the accused under Section 248 (2) Cr.P.C. for the offence punishable under Section 392 I.P.C. and sentenced each of them to undergo simple imprisonment for one year and to pay fine of Rs.1,000/-, in default, to suffer simple imprisonment for three months.

6. Aggrieved by the same, accused No.2 preferred Crl.A.No.199 of 2015 on the file of learned III Additional Sessions Judge, Bhimavaram. The learned Sessions Judge again re-appreciated the evidence on record by formulating as many as four points and basing on the identity of the revision petitioner by PW.1 and the recovery panchanama, and having found that the prosecution proved the charge under Section 392 I.P.C. and opining that there was no infirmity in the conviction recorded, affirmed the conviction recorded by the trial Court. But, however, so far as the simple imprisonment of one year inflicted by the trial Court is concerned, the same was reduced to six months with a further modification that the remaining sentence shall be rigorous imprisonment.

7. Having got aggrieved thereof, accused No.2 preferred the present revision case under Sections 397 and 401 Cr.P.C.

8. Heard Sri Mangena Sree Rama Rao, learned counsel for the revision petitioner.

9. Learned counsel for the revision petitioner would submit that both the Courts below went wrong in convicting the revision petitioner, as it was difficult to identify the culprit during the wee hours of that night, that too on seeing them for the first time and PW.1 identifying them in the test identification parade and also in Court, is highly inconceivable and unless the accused was shown, there was no chance for PW.1 to identify them. However, he pleads that the sentence may be reduced, in case, this Court comes to an opinion that there is no merit in the revision case.

10. The concurrent findings recorded by both the Courts below, at the outset, do not suffer from any infirmity nor there is any patent illegality, as could be seen from the nature of offence, as spoken to by PW.1 and brought out in Ex.P1. Both the accused gained entry perforce into the house of PW.1 and when she woke up, at the point of knife armed by the present revision petitioner, she got opened the doors and the accused taken the gold ornaments, silver articles and cash, which were described in the complaint, and fled away from there.

11. No doubt, it appears, monkey cap was used, but that cannot be a ground to disbelieve the testimony of PW.1 in identifying the

revision petitioner as one of the accused persons in the test identification parade and also in Court, while in witness box, which constitutes substantive evidence. There is absolutely nothing in the cross-examination of either PW.1 or PW.2, the recovery witnesses, to disbelieve their testimony. The evidence of PW.2 becomes material for the reason that the material objects from the possession of revision petitioner were recovered in his presence and a panchanama was also drafted in his presence and another mediator. In fact, from the possession of the revision petitioner, 15 items of gold, three silver coins, four silver kumkuma bharinis, one silver glass, one silver gandhapu ginne, one small silver plate and cash of Rs.38,000/- were seized. One more important aspect is that the offence took place in the wee hours of 19.01.2012 and the accused were caught on 22.01.2012 along with the possession of gold items. Thus, it cannot be said that a false case is foisted against the revision petitioner by the Investigating Agency or by PW.1. Thus, viewed from any angle, there is absolutely no merit in the present revision case, as the findings recorded by both the Courts below do not suffer from any patent illegality warranting interference.

12. Hence, the Criminal Revision Case is dismissed confirming the conviction recorded for the offence punishable under Section 392 I.P.C. and the fine amount imposed by the learned trial Court and also

the modified sentence of imprisonment for six months inflicted by the lower appellate Court on the revision petitioner – accused No.2.

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

A. SHANKAR NARAYANA, J

December 19, 2017.
MD

