

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2986 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 one month inflicted by the XI Additional Chief Metropolitan Magistrate, Secunderabad, passed in C.C.No.1493 of 2012, dated 10.08.2016, as confirmed by the VII Additional Metropolitan Sessions Judge, FAC Spl. Judge for Trial of offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, in Crl.A.No.919 of 2016, dated 16.11.2017, 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 advert.

The prosecution case is, when PW1 along with her husband and their daughter were on morning walk at Paradise grounds and reached S.B.H. Cross Roads at 06:15 AM, two unknown persons came on a motor cycle near to her and snatched away two rows gold pusthela

thadu from her neck and sped away towards Patny cross roads. On the complaint lodged by her, a case in Crime No.83 of 2012 for the offence under Section 382 IPC was registered and took up investigation. On 10.01.2012, when PW2, a resident of Adaiah Nagar came to SBH Cross Raods by RTC Bus Route, in the meantime one unknown persons wearing a helmet came on a motorcycle in the opposite direction and snatched gold mangalasutram chain with locket wg.30 gms from her neck. On the complaint lodged by PW2, a case in Crime No.11 of 2012 for the offence under Section 382 IPC was registered and took up investigation. During the course of investigation, the revision petitioner was apprehended and he made a confessional statement about commission of offences along with A2 and thereby the police seized MOs.1 and 2 and that is how a charge was laid against the petitioners therein.

During course of trial, as they pleaded not guilty, PWs.1 to 8 were examined and Exs.P1 to P12 and MOs.1 and 2 were marked through PW1. PW1 is the complainant in Crime No.83 of 2012 and PW2 is the complainant in Crime No.11 of 2012. PW3 is a circumstantial witness. PWs.4 and 5 are the mediators. PW7 is the Inspector of Police and PW8 is the Additional Inspector of Place.

4. The learned Magistrate basing on the evidence of PWs.1 and 2- prosecution witnesses; and having found from the evidence of PWs.1 and 2 that the MOs.2 and 1 are their respective gold chain and gold

mangalasutram chain; and the recovery having been proved, held that the prosecution proved the charge against the accused beyond all reasonable doubt.

5. When the revision petitioner preferred the criminal appeal, the learned appellate Judge, having held 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.

6. Learned counsel for the revision petitioner contends that based on the evidence of stock witnesses, the courts below ought not to have recorded conviction and confirmed the conviction 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. It is to observe that holding test identification parade is not absolutely mandatory and, therefore, the said submission is without merit.

7. When concurrent findings have been recorded by the courts below on appreciation of evidence in accordance with the evidentiary 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 MOs.1 and 2 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 inflicted and fine of Rs.500/-, imposed is hereby confirmed.

8. The learned counsel for the revision petitioner would submit that the petitioner is committed to the custody of the Superintendent of prison on 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. Therefore, the sentence is also completed.

9. 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 10.08.2016, in C.C.No.1493 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.919 of 2016. Period of remand, if any, undergone by the petitioner shall be given set off.

In case, the petitioner has already undergone 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

