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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 354/2016 & CrI.M.B.983/2016**

SANJAY Petitioner
Through: Mr.Umesh Kumar, Adv.

versus

STATE (NCT OF DELHI) Respondent
Through Mr. Arun Kumar Sharma, APP.
SI Anand Kumar, P.S.Mehrauli.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER
% **02.05.2017**

Sanjay, the revisionist, was convicted under Section 380 of the IPC and was sentenced to undergo RI for 2½ years, to pay a fine of Rs.5000/- and in default of payment of fine, to suffer SI for one month, by the Trial Court vide judgment and order dated 02.12.2015/06.01.2016 in FIR No.576/2009 (P.S.Mehrauli) which was instituted for offence under Sections 380 and 411 of the IPC. In appeal (CrI.Appeal No.6/2016), the aforesaid judgment and order of conviction and sentence was affirmed and upheld by judgment dated 05.03.2016.

The revisionist/petitioner assails the aforesaid two judgments and also questions the correctness/appropriateness of the sentences.

The petitioner is alleged to have stolen a pair of *Charanpaduka* from the Samadhi Sthal of Baba Nagpal on 14.10.2009, making himself liable for prosecution under Section 380 of the IPC.

FIR No.576/2009 was instituted on the basis of complaint lodged by

one Suresh Singh at police station Mehrauli under Section 380/411 of the IPC. After investigation chargesheet was submitted on 22.07.2010. Thereafter charges were framed and the petitioner was put to trial.

The trial Court has examined seven witnesses on behalf of the prosecution.

Suresh Singh (PW-1) who had been residing at the temple for the last 12 years and worked as an attendant, deposed before the trial Court that at the time when Prasad was being distributed near the gate of the temple on 14.10.2009, he found one *Charanpaduka* missing from inside the temple. He raised alarm. He is stated to have seen the petitioner running towards the outer gate of the temple with the *Charanpaduka*. On chase, Thakur Das (PW-2) and Jai Prakash (PW-3) caught hold of the petitioner and recovered the *Charanpaduka* from the possession of the petitioner.

Though neither PW-1 nor PWs.2 and 3 have seen the petitioner stealing the *Charanpaduka* but they have stated that on chase, the petitioner was apprehended and from his possession *Charanpaduka* was recovered.

The manager of the temple, J.P. Pandey (PW-4) had got the *Charanpaduka* released on superdari. (Superdarinama is Exh.PW-4/A).

Deshraj (PW-5), Jaswant Singh (PW-6), ASI Ram Niwas (PW-7), who are constables/head constable and ASI respectively in Mehrauli police station have supported the prosecution version in as much as PW-5 is said to have received a DD number regarding arrest of one person by the priest of the Chattarpur temple and PWs-6 and 7 have testified to the handing over of the petitioner by the Sewadar of the temple, lodging of the first information report, preparation of rukka, site plan etc.

Though none of the witnesses put up on behalf of the prosecution had

seen the act of stealing but they are witnesses to the fact that the petitioner was caught on hot chase and from whose possession the stolen article was recovered.

Section 8 of the Indian Evidence Act, 1972 reads as hereunder:-

“8. Motive, preparation and previous or subsequent conduct.—Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.”

The conduct of the petitioner and the recovery of the stolen article from his possession are, therefore, relevant facts, which have been appreciated by both the Courts below in convicting the petitioner.

Illustration (a) to Section 114 of the Indian Evidence Act provides as hereunder:-

“(a) 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;”

The petitioner did not state anything in his defence nor offered any

explanation whatsoever for being in possession of the stolen article. No defence witness was examined in the case. Thus it stands established that the petitioner committed the offence punishable under Section 380 of the IPC.

There is no reason for this Court to interfere with the concurrent judgments of the Courts below with respect to the conviction of the petitioner under Section 380 of the Indian Penal Code.

Now the only question before this Court is regarding the quantum of sentence.

Learned counsel for the petitioner has submitted that the petitioner is a poor person, a first time offender, unmarried and has participated in the trial which continued for more than five years. The petitioner, it is submitted has been sufficiently punished and has now remained in jail for one year and two months by now. The nominal roll suggests that his conduct in jail has been satisfactory. The counsel for the petitioner, thus, submits that the interest of justice would be sub-served if the sentence imposed on the petitioner is modified to the period which he has already undergone in custody.

The learned counsel for the State submits that the petitioner does not deserve any sympathy and the Courts below have been lenient in awarding sentence to the petitioner. Any undue relaxation to the petitioner would do harm to the criminal justice system and would further embolden the petitioner in committing such crimes in future.

Sentencing of an accused in a criminal case is a serious exercise and there cannot be two opinions about the fact that the quantum of sentence imposed is required to be in consonance with the gravity of the offence. Punishment in criminal cases is both punitive and reformatory. The punitive

aspect of sentencing deals with punishment meant for deterrence from repeating such acts in future. The reformatory aspect of sentencing cares for providing opportunity to the accused to repent for his action and make himself acceptable to the society as a useful social being.

In determining the question of proper punishment, a Court is required to weigh the degree of culpability of the accused, the effects of the crime alleged on the society at large and the desirability of imposing a lesser sentence. A balance between the interest of the individual and the overall concern of the society is required to be struck.

In a case of this kind deterrent sentencing would not be relevant and useful.

Considering the fact that the occurrence is of the year 2009 and that the petitioner has remained in jail for more than a year by now, this Court is of the view that it would only be expedient to sentence the petitioner to the period of custody which he has already undergone. While saying so, this Court has taken into account the status of the petitioner and the fact that theft was committed in a temple.

Thus the conviction of the petitioner is maintained but the sentence imposed upon him is modified to the extent of the period which he has already undergone in custody.

The petitioner is directed to be released from jail forthwith, if not required in any other case.

The revision petition is partially allowed.

ASHUTOSH KUMAR, J

MAY 02, 2017/k