

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.873 OF 2018

ORDER:

This revision is filed by the petitioners-A1 and A2 under Sections 397 and 401 Cr.P.C. challenging the judgment, dated 23.02.2018 in CrI.A.No.435 of 2017 on the file of the XII Addl. Sessions Judge, Pithapuram, in confirming the judgment, dated 20.09.2017 in C.C.No.608 of 2016 passed by the Judl. Magistrate of I Class, Pithapuram.

2. Heard learned counsel for the petitioners-A1 and A2, learned Assistant Public Prosecutor, representing the State and perused the record.

3. The case of the prosecution is that on 05.06.2016 in the evening hours, some unknown offenders entered into the house of P.W.1-M.Srinivas and committed theft of four gold bangles, one gold necklace and one gold ring etc., Basing on the report lodged with the police by P.W.1, P.W.7 registered a case in Cr.No.92 of 2016 of Pithapuram P.S. After completion of investigation, P.W.8 laid the charge sheet.

4. Charges under Sections 457 and 380 IPC and alternatively u/s 411 IPC were framed against the A1 and A2, read over and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried.

5. In support of it's case, the prosecution examined P.Ws. 1 to 8 and got marked Exs.P1 to P11 besides case property M.Os. 1 and 2.

6. After closure of the prosecution evidence, A1 and A2 were examined under Section 313 Cr.P.C. with reference

to the incriminating circumstances appearing against them in the evidence of prosecution witnesses. They denied the offence. No evidence, either oral or documentary was adduced on behalf of the accused.

7. After considering both oral and documentary evidence, the learned Magistrate, vide judgment, dated 20.09.2017 in C.C.No.608 of 2016, while acquitting A1 and A2 for the offences punishable under Sections 380 and 457 IPC, convicted A1 and A2 for the offence punishable under Section 411 IPC and accordingly, sentenced each of them to undergo Rigorous Imprisonment for two years. Aggrieved thereby, A1 and A2 preferred CrI.A.No.435 of 2017 before the 1st appellate Court and the same was dismissed by confirming the judgment of the trial Court. Hence this revision.

8. Learned counsel for the petitioners-A1 and A2 would submit that the petitioners are nothing to do with the alleged theft. They were not in possession of M.Os. 1 and 2. They were falsely implicated in this case. Both the Courts below committed error in convicting and sentencing A1 and A2 as stated supra. The petitioner-A2 has no criminal background and ultimately prayed to set aside the conviction and sentence imposed against the petitioners-A1 and A2.

9. On the other hand, learned Assistant Public Prosecutor representing the State opposed the same stating that there is ample evidence on record to believe that A1 and A2 were found in possession of stolen property-M.Os. 1 and 2 and the same has been proved by clinching evidence on record. There is nothing to take a different view and ultimately, prayed to dismiss the revision.

10. In view of submission made by both parties, the point for determination is whether the conviction and sentence imposed against the petitioner-A1 and A2 are liable to be set aside?

11. The evidence of P.W.1, who is the owner of the property shows that M.Os. 1 and 2 were stolen on 05.06.2016 and he identified the property. As per the prosecution case, M.Os. 1 and 2 were recovered from the possession of A1 and A2 respectively. A1 and A2 did not explain the circumstances how they came in possession of M.Os. 1 and 2 belong to P.W.1. Though A1 and A2 were charged for the offences under Sections 380 and 457 IPC, both the Courts below recorded conviction for the offence punishable under Section 411 IPC. There is ample evidence to believe that M.Os. 1 and 2 belong to P.W.1. A1 and A2 have denied the prosecution case and did not explain the circumstances appearing against them. Both the Courts below while recording conviction and sentence gave elaborate reasons and found A1 and A2 guilty for the offence punishable under Section 411 IPC. There is no infirmity in the judgments of the both Courts below with regard to conviction.

12. As far as quantum of sentence imposed against the petitioners-A1 and A2 is concerned, it is 2 years Rigorous Imprisonment. It is brought to the notice of this Court that the petitioners-A1 and A2 are in judicial custody from 16.12.2016. The quantum of imprisonment appears to be more than required. In the circumstances of the case, the sentence of 2 years Rigorous Imprisonment imposed against the petitioners-A1 and A2 is reduced to one year four months.

13. With the above modification of sentence, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending in this Revision shall stand closed.

DR.SHAMEEM AKTHER, J

DATED: 03-04-2018.

Hsd

