

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1354 of 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State.

The present revision case is filed against the judgment in CrI.A.No.172 of 2017 dated 13.10.2017 on the file of the learned IV Additional District Sessions Judge, Tanuku, West Godavari District, confirming the conviction and sentence passed in C.C.No.414 of 2015 dated 16.12.2015 on the file of the II Additional Judicial Magistrate of First Class, Tanuku, for the offences under Sections 457 and 380 IPC against the petitioner.

The facts of the case are that the de facto complainant is working in Oriental Insurance Office as Cashier in Tanuku. On 31.05.2014, she locked her house since she went to tour along with her colleagues. When she came back, she noticed that her house door locks were broke open and after verification, she found that theft was committed, wherein gold black beads, two rows of gold etc., were missing. Therefore, she lodged a complaint. Pursuant to the said complaint, Crime No.127 of 2014 was registered for the offence under Sections 457 and 380 IPC and after investigation, charge sheet was filed in the Court of the learned II Additional Judicial Magistrate of First Class, Tanuku. The learned Magistrate, after taking cognizance of the offence, numbered the case as C.C.No.414 of 2015. After producing before the Court, the petitioner was furnished with the documents under Section 207 Cr.P.C. Subsequently, charges were framed for the above said offence against the petitioner.

During the course of trial, the prosecution has examined PWs.1 to 7 and marked Exs.P1 to P6. The material objects M.Os.1 to 9 were also marked. After closure of the prosecution evidence, the petitioner was examined under Section 313 Cr.P.C., and explained the incriminating evidence available against him. The petitioner denied the prosecution evidence. After hearing, the learned Magistrate convicted the petitioner under Section 248(2) Cr.P.C. and sentenced him to undergo simple imprisonment for a period of two years and also to pay a fine of Rs.5,000/- for the offence under Section 457 IPC and in default of payment of such fine, he shall undergo simple imprisonment for a period of six months by judgment dated 16.12.2015. He was also found guilty under Section 380 IPC and convicted under Section 248(2) Cr.P.C. to undergo simple imprisonment for a period of two years and also fine of Rs.5,000/- and in default of payment of fine, he shall undergo simple imprisonment for a period of six months.

Aggrieved by the said judgment, the petitioner filed an appeal in CrI.A.No.172 of 2017 on the file of the IV Additional District Sessions Judge, Tanuku. After hearing, the lower appellate Court dismissed the appeal by confirming the judgment of the trial Court by judgment dated 13.10.2017. Aggrieved by the said judgment, the present revision case is filed.

Learned counsel appearing for the petitioner contended that the judgment of the lower appellate Court is contrary to law, weight of evidence and probabilities of case, since the prosecution failed to examine any neighbour at the scene of offence. There is no independent identification of the petitioner at the time of occurrence of the offence. The lower appellate Court ought to have

seen that there is no evidence to establish the offence punishable under Section 457 IPC and the alleged confession before the police is admissible and there is no seizure of property from the petitioner. The lower appellate Court also ought to have seen that the Court below has not properly appreciated the evidence and material on record and ought to have given the benefit of the provisions of PO Act and the sentence passed by it is too harsh and excessive.

Per contra, the learned Public Prosecutor supported the judgments of both the Courts below and submitted that the prosecution has proved the guilt of the petitioner beyond reasonable doubt on all the offences for which he is charged. In fact, both the Courts below, after appreciating the factual aspects, have categorically held that the petitioner has committed the offences for which he is charged and since the scope of revision is very limited, the revision, as filed, is liable to be dismissed.

After hearing both sides and a perusal of the material on record, the case of the prosecution is that the petitioner committed offence under Sections 380 and 457 IPC and to prove the guilt of the petitioner, prosecution has relied on the evidence of PWs.1 to 7.

PW.1 is the complainant and she narrated the sequence of events that has taken place on the fateful day i.e., on 31.05.2014. After coming from the tour, the complainant noticed that the lock of her house was broke open and after entering into the house, she noticed some unknown persons committed theft of gold black beads, two rows of gold etc., resulting in filing of the complaint (Ex.P1). Pursuant to the said complaint, a crime was registered

and investigation was conducted. PW.2, who is working as VRO, prepared the scene observation report, Ex.P2. PW.3, who is the mediator, deposed that at the time of arrest of the accused basing on his confession dated 17.10.2014, the police arrested him. Whereupon he confessed that he committed theft in another house in Venkatarayapuram and also in the house of PW.1 and sold the articles. He was arrested under cover of mediators report i.e., Ex.P3. According to the evidence of PWs.3 and 5, the accused made confession about committing of offence in their presence and accordingly the police arrested him. During the course of cross examination of PW.3 nothing was elicited to discredit in his testimonies. In those circumstances, both the Courts below have rightly convicted the petitioner.

The scope of revision is very limited, more particularly, when the lower appellate Court confirmed the conviction passed by the trial Court. Unless the petitioner establishes that there is perversity in the findings arrived at by the Courts below and there is a patent illegality on the face of the record and if corrected would result in acquittal of the petitioner, this Court cannot re-appreciate the evidence based on which the findings are given by both the Courts below.

In the case on hand, though the counsel for the petitioner admitted to draw minor inconsistencies in the evidence of the prosecution, the same cannot dislodge the findings arrived at by both the Courts below on factual and legal aspects. In these circumstances, this Court is of the opinion that there are no merits in the revision case and the same is liable to be dismissed.

The petitioner was in remand from 20.11.2014 to 28.08.2015 and 16.11.2015 to 16.12.2015 and after the judgment of the lower appellate Court also he is in remand. In fact, the petitioner is already undergoing sentence in other cases. If the period of remand is calculated from 20.11.2014, the petitioner is already in remand for considerable period. On this the learned counsel for the petitioner pleaded mercy for the petitioner since he is only the earning member of the family and he is inside the jail for a long period.

Taking into consideration the said submissions and also the period for which the petitioner is in remand, the period of remand already undergone by him is sufficient. Hence, this Court hereby set him free on the sentence already undergone, if he is not required in any other case.

Accordingly, the criminal revision case is dismissed confirming the conviction recorded against the petitioner vide judgment dated 13.10.2017 passed in CrI.A.No.172 of 2017 on the file of the learned IV Additional District Sessions Judge, Tanuku, West Godavari District, by modifying the sentence of imprisonment of two years to the extent of the period already undergone by the petitioner as sufficient. Hence, this Court directs that the petitioner may be released forthwith, if he is not required in any other crime.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA RAO, J

Date: 02.07.2018.
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