

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1328 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.171 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.439 of 2015 dated 16.12.2016 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 on 15.12.2013, the de facto complainant along with his family proceeded to Satyanarayanapuram Village since his father died. He returned house on 23.12.2013 at 1.30 p.m., to purchase some provisions and went to the same village. Again when he returned back on 27.12.2013 at 10.30 p.m., he noticed that his door locks were broke open and after verification found that theft was committed, wherein black beads chain, two bangles, gold ring and silver articles about ½ kg were found missing. Therefore, he lodged a complaint. Pursuant to the said complaint, Crime No.225 of 2013 was registered for the offence under Sections 457 and 380 IPC. 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.439 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 9 and marked Exs.P1 to P6. 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 16.12.2016. 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.171 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. 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 of accused before the police is inadmissible in law and there is no seizure of the property from the accused. The lower appellate Court ought to have seen that PW.2 is a stock mediator and is planted witness brought for the purpose of the prosecution's case and the benefit of provisions of P.O. Act should be given to the accused and the sentence passed 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 has 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 the 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 9.

PW.1 is the complainant and he narrated the sequence of events that have taken place on the fateful day i.e., on 27.12.2013. After coming from his village, the de facto complainant noticed that the lock of his house was broke open and after entering into the house, he noticed some unknown persons committed theft of black beads chain, two bangles, gold ring and silver articles about ½ kg resulting in filing of the complaint (Ex.P1). Pursuant to the said complaint, a crime was registered and investigation was conducted. PW.2 is the VRO, who prepared the scene observation

report i.e., Ex.P2. PW.3, who is the mediator, deposed that at the request of Circle Inspector of Police, Tadepalligudem, he went to Rajiv Chowk center. At the center, the Circle Inspector of Police found the accused on suspicion and caught him. On enquiry, the accused confessed that his name is Chippada Kedariswara Rao and he committed several offences in their presence and he admitted that he committed the theft in the house of PW.1. PW.4, another VRO, deposed that in the police custody the accused confessed his offences and said that he sold out the ornaments to unknown person. In the cross-examination, all the prosecution witnesses have categorically denied the suggestions put to them. As far as the evidence of PW.1 is concerned, he lost some silver and gold articles. The evidence of the investigating officer has been corroborated with the evidence of PWs.3 and 4. Though cross examination has been conducted, nothing has been elicited to discredit the evidence of nine witnesses. 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 attempted 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 12.11.2014 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 12.11.2014, 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.171 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. KESHAVA RAO, J

Date: 02.07.2018.
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