

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1327 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.98 of 2017 dated 01.05.2017 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.1010 of 2015 dated 14.02.2017 on the file of the II Additional Judicial Magistrate of First Class, Tanuku, for the offences under Sections 457, 380 and 411 IPC against the petitioner.

The facts of the case are that the de facto complainant along with his family was living in Plot No.S1 in an apartment situated beside Bhasyam School. On 20.02.2014, at 6.00 p.m. he along with his family went to Koyyalagudem to attend a marriage and when returned at 12.30 a.m., he noticed that his house door locks were broke open and after verification found that theft was committed, wherein a bag with silver Ashtalakshmi Chembu, Silver Panchapatra, Silver Vuddarini, Harathi Plate, Silver bowl, Silver plates and etc., were found missing. Therefore, he lodged a complaint. Pursuant to the said complaint, Crime No.35 of 2014 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.1010 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 P5. The material objects M.Os.1 to 8 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.2,000/- for the offence under Section 457 IPC and in default of payment of such fine, he shall undergo simple imprisonment for a period of three months by judgment dated 14.02.2017. 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.2,000/- and in default of payment of fine, he shall undergo simple imprisonment for a period of three months.

Aggrieved by the said judgment, the petitioner filed an appeal in CrI.A.No.98 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 01.05.2017. In the said judgment, it is specifically mentioned that the sentence awarded for various offences shall run concurrently with other sentences in C.C.Nos.1041, 994, 975 and 1059 of 2015. 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 appreciated that PW.2 have categorically admitted that the Sub-Inspector of Police did not try to examine any local person at the place of arrest and he failed to mention the denomination of Rs.2,500/-, which is fatal to the prosecution case.

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 6.

PW.1 is the complainant and he narrated the sequence of events that has taken place on the fateful day i.e., on 20.02.2014. After coming from the marriage, 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

silver articles and other gold jewellery resulting in filing of the complaint (Ex.P1). Pursuant to the said complaint, a crime was registered and investigation was conducted. Two months after the complaint, the police have informed PW.1 about the recovery of the said jewellery. PW.3, who was working as VRO, stated that on 09.11.2015 at about 10.30 a.m., the Station House Officer, Tanuku Town police station, called him to police station. He along with LW.9 went to the police station and proceeded to Rajiv Chowk center. At the center they found a person coming with a bag and on seeing the police, he tried to escape. But, however, he was caught by the police. Whereupon he confessed that his name is Chippada Kedariswara Rao and he committed several thefts in many cases in their presence and on opening the bag, they have recovered M.Os.1 to 9 and he admitted that he committed the theft in the house of PW.1. The articles were recovered through mediator report i.e., Ex.P3. In the cross-examination, all the prosecution witnesses have categorically denied the suggestions put to them. It is relevant to mention that in the presence of mediators the petitioner produced the properties. As far as the evidence of PW.1 is concerned, he lost some silver and gold articles, which were recovered from the custody of the petitioner. The evidence of the investigating officer has been corroborated with the evidence of PWs.1 and 3. PW.4, who arrested the accused, seized the property from the possession of the petitioner. Though cross examination has been conducted, nothing has been elicited to discredit the evidence of six 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 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 24.11.2015 to 14.02.2017 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 24.11.2015, 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 01.05.2017 passed in CrI.A.No.98 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.

Date: 02.07.2018.
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P. KESHAVA RAO, J