

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.2233 of 2005

ORDER:

The petitioners/accused are challenging the judgment dated 19.12.2005 in CrI.A.No.98 of 2004 passed by V Additional Sessions Judge, Tirupati, dismissing the appeal by confirming the conviction and sentence passed by II Additional Judicial Magistrate of First Class, Tirupati in C..C.No.414 of 2002, convicting the accused for the offence under Section 380 IPC and sentencing them to undergo RI for six (6) months and to pay fine of Rs.500/- and in default of payment of fine to suffer SI for 15 days.

2a) The brief facts of the case are that on 02.10.2001 at about 1.00 PM, A1 and A2 committed theft of human hair from main Kalyanakatta, Tirumala weighing about 3 KGs. worth about 8,000/-. PW2—Attender in TTD, K.Reddappa Reddy (LW3), PW3 and police constable caught hold the accused while they were carrying the stolen hair in a zip bag and produced them along with bag before PW1, who is the Superintendent of Srivari Kalyanakatta. PW1 informed the same to Deputy Executive Officer and gave Ex.P1—report to police. PW5—SI of Police seized the human hair under the cover of Mahazar attested by PW4 and another mediator and registered Cr.No.167 of 2001 against the accused for the offence under Section 379 IPC. During the course of investigation accused confessed that previously they committed theft of human hair from Kalyanakatta and sold the same to one Narayana which theft relates to Cr.No.115 of 2001. After investigation the police filed charge sheet under Section 380 IPC against the accused. On appearance, the trial Court framed charge under Section 380 IPC against the accused and conducted trial.

b) During trial, PWs. 1 to 5 were examined and Exs.P1 to P5 and MO1 were marked. No evidence was adduced was adduced on behalf of defence.

3) PW1—the Superintendent of Kalyanakatta is the *defacto* complainant and he gave Ex.P1—report. PW2 is the Attender in TTD. PW3 is the police constable. PW4 is the mediator for seizure of MO1 under Ex.P5—mediators report. PW5 is the SI of Police who registered the case and investigated into.

4) It should be noted that PW2—Attender in TTD who along with PW3 and another constable said to have seen the accused skulking away with MO1—hair near Kalyanakatta, caught them and produced before PW1, turned hostile and did not support the prosecution. Similarly, PW4 who is said to be one of the mediators for seizure of MO1, also turned hostile. However, the trial Court basing on the evidence of PWs.1, 3, and 5 has held that the prosecution could establish that the accused were found with MO1-stolen hair and thus convicted and sentenced them as stated supra. The appellate Court also came to the same conclusion.

Hence, the instant Crl.R.C.

5) Heard arguments of Sri Masthan Naidu Cherukuri, learned counsel for petitioners and learned Additional Public Prosecutor the State (AP).

6a) Learned counsel for petitioners vehemently argued that both the Courts below committed error in spite of the fact that prosecution failed to prove the theft allegedly committed by the accused by producing cogent evidence. He would submit that in this case, PW1 was not a direct eye-witness for accused committing the theft of hair and retreating with MO1. It

was only on the information of PW2 he came to know about the said fact. However, PW2 did not support the prosecution case and he stated that he did not know anything about the case. In that view, the prosecution cannot claim accused committed theft of MO1—hair and IO seized the same.

b) Learned counsel further argued that PW3—constable claims that he along with PW2 and LW3 witnessed the accused coming from Kalyanakatta along with hair in a zip bag and they caught hold them. His evidence cannot be taken into consideration as he is an interested witness. Learned counsel thus argued in this case absolutely there is no reliable evidence to conclude that accused were caught red-handed with MO1 at Kalyanakatta.

c) He further argued, so also there is no reliable evidence for seizure of MO1 since PW4—the mediator did not support the prosecution case. When the prosecution failed to establish these aspects, accused generally deserves acquittal, but the trial Court and lower appellate Court convicted them on surmises. He thus prayed to allow the CrI.R.C.

7) Per contra, learned Addl.P.P. while supporting the judgments of the Courts below, would argue that in this case PW1 though not an eye-witness to the offence but he was the crucial witness inasmuch as the accused along with stolen hair were produced before him by PW2 and PW3 and basing on their information he gave intimation to Deputy Executive Officer and proceeded along with them to Tirumala Police Station and gave Ex.P1—report. Therefore, the evidence of PW1 certainly established the offence committed by accused. He would further argue that though PW4 turned hostile, PW5—the IO has clearly stated that PW1 and others produced the

accused and MO1 before him and he seized the same under the Mahazar covered by Ex.P5—mediators report. PW4—the mediator through turned hostile, admitted his signature on Ex.P5. Therefore, his evidence with regard to seizure can be held to be duly proved. He thus prayed to dismiss the CrI.R.C.

8) I gave my anxious consideration to the evidence on record. It must be said that prosecution could amply establish the guilt of the accused. It is true, PW1 is not an eye-witness to the offence and he came to know about the same when accused along with MO1 were produced by PWs.2 and 3. PW1 is the Superintendent in Kalyanakatta. As rightly observed by the trial Court, there is no enmity for him to speak ill of accused. Further, the accused have not strongly denied of their being produced before PW1 along with MO1. Their case is total denial of offence. However, in the cross-examination of PW1 they could not shatter his credibility. PW1 a duty minded officer informed about the incident to Deputy Executive Officer and then gave Ex.P1—report to PW5 and produced the accused and stolen hair before him. In my considered view, production of accused along with MO1 could not be shattered in the cross-examination of prosecution witnesses which is a strong circumstance to uphold the guilt of the accused. Sofaras seizure of MO1 is concerned, as rightly argued by Addl.P.P, though PW4 turned hostile, he admitted his signature on mediators report which is marked as Ex.P5. Though he denied police arresting the accused and seizing the property in his presence, he could not account for the appearance of his signature on Ex.P5. It is not his case that police by force obtained his signature on mediators report. Had he not acted as mediator, there was no reason for him to sign on Ex.P5. Mediators, for various

reasons, retreating from their earlier version during trial is not a new phenomenon. The cardinal principle is *men may lie but circumstances will not*. Therefore, it can be said that the IO has seized MO1 in the presence of PW4. This fact has been amply stated by PW5—IO and there is no reason to disbelieve his version merely because he happens to be the IO in this case. When the evidence on record is carefully scrutinized, it establishes the guilt of the accused. The Courts below have rightly convicted the accused.

9) In the result, I see no merits in the Crl.R.C. and the same is accordingly dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 11.12.2018
Murthy

U.DURGA PRASAD RAO, J

