

THE HON'BLE JUSTICE G.SRI DEVI

Criminal Revision Case No.637 of 2019

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner/accused, challenging the judgment, dated 16.05.2019, passed in Criminal Appeal No.342 of 2019 by the Metropolitan Sessions Judge, Hyderabad, whereby, the judgment, dated 24.10.2018, passed in C.C.No.276 of 2018, by the VIII Additional Chief Metropolitan Magistrate, Hyderabad, was confirmed.

2. Heard the learned counsel for the petitioner/accused, the learned Additional Public Prosecutor representing the respondent-State and perused the record.

3. Shorn of unnecessary details, the facts of the case are as follows:

“One P.Pawan Kumar/P.W.1, President of Kota Maisamma Temple, near Dabeerpura Darwaza, Hyderabad, lodged Ex.P.1 report with the police stating that on 19.03.2018, a devotee aged about 25 to 28 years, came to the temple to offer *vodi biyyam* to the presiding Deity. During prayers, P.W.1 went out to bring some items and after prayers, he cleared the temple. On 29.03.2018, when he opened the temple to offer prayers, he found that gold pusthelu-one gold and one silver, gold nose-pin, gold items weighing 3 grams, silver padalu and silver hands weighing 25 tulas, were missing from the presiding Deity. After enquiries and searches, he suspected that the person who came to the temple on 19.03.2018 to offer *vodi biyyam* might

have stolen the missing articles and accordingly, requested the police to take appropriate action against the culprit(s).”

4. Basing on Ex.P.1 report, the Sub-Inspector of Police, Dabeerpura Police Station/P.W.5 registered a case in Crime No.36 of 2018 for the offence punishable under Section 380 of IPC. The petitioner/accused was apprehended on 05.04.2018 and was produced before the Court. The petitioner/accused was examined under Section 239 of Cr.P.C. and a charge was framed against him for the offence punishable under Section 380 of IPC. The petitioner/accused pleaded not guilty and claimed to be tried.

5. During the course of trial, on behalf of the prosecution, P.W.1 to P.W.8 were examined and Exs.P.1 to P.4 and M.O.1 to M.O.3 were marked. After closure of prosecution evidence, the petitioner/accused was examined under Section 313 of Cr.P.C. for the incriminating material available against him for which, he denied his culpability and reported no evidence on his side.

6. On merits, the trial Court held that the complicity of the petitioner/accused is made out for the offence punishable under Section 411 of IPC, which is a minor offence than Section 380 of IPC and, accordingly, convicted the petitioner/accused for the said offence and sentenced him to suffer simple imprisonment for one year four months and to pay a fine of Rs.300/- and in default, to suffer simple imprisonment for one month.

7. Challenging the judgment of the trial Court, the petitioner/accused preferred an appeal in Criminal Appeal No.342 of 2019 before the first appellate Court and the first appellate Court, by

way of the impugned judgment, confirmed the conviction and sentence imposed against the petitioner/accused by the trial Court. Challenging the same, the petitioner/accused has preferred the present Criminal Revision Case.

8. The learned counsel for the petitioner would submit that both the Courts below erred in convicting and sentencing the petitioner/accused, without considering the glaring laches and inconsistencies in the evidence of the prosecution. The trial Court sentenced the petitioner/accused to undergo simple imprisonment for one year four months and to pay fine of Rs.300/-. The petitioner/accused was remanded to judicial custody on 29.03.2018 and since then, he is lodged in prison till date. Thus, the petitioner/accused had served substantial sentence of imprisonment imposed against him. He paid the fine amount of Rs.300/- imposed by the trial Court and ultimately prayed to allow the Criminal Revision Case.

9. The learned Additional Public Prosecutor fairly conceded that the petitioner/accused had undergone simple imprisonment for almost one year three months, out of the total sentence of imprisonment of one year four months imposed by the trial Court.

10. Admittedly, the petitioner was sentenced to undergo simple imprisonment for one year four months by the trial Court, for the offence punishable under Section 411 of IPC. The petitioner was remanded to judicial custody on 29.03.2018 and since then, he is lodged in prison till date. Thus, the petitioner/accused has served substantial period of sentence, i.e., for almost one year three

months, out of the total sentence of imprisonment for one year four months imposed by the trial Court. Having regard to the nature of the allegations levelled against the petitioner/accused and the substantial period of imprisonment already undergone by him, this Court is of considered view that it is a fit case to reduce the sentence of imprisonment imposed against the petitioner/accused by the trial Court to the period of imprisonment already undergone by the petitioner/accused.

11. In the result, the Criminal Revision Case is partly allowed by setting aside the judgment, dated 16.05.2019, passed in Criminal Appeal No.342 of 2019 by the Metropolitan Sessions Judge, Hyderabad, confirming the judgment, dated 24.10.2018, passed in C.C.No.276 of 2018 by the VIII Additional Chief Metropolitan Magistrate, Hyderabad. While maintaining the conviction recorded against the petitioner for the offence punishable under Section 411 of I.P.C. by the trial Court, the sentence of imprisonment imposed against the petitioner/accused is modified to the extent of the period of imprisonment already undergone by the petitioner/accused. The petitioner/accused shall be set at liberty forthwith, if he is not required in any other case.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

JUSTICE G.SRI DEVI

24th June, 2019
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