

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.3555 of 2018

ORDER :

The accused is the revision petitioner impugning the concurrent findings of the trial Court and the lower appellate Court in finding him guilty for the offence under Section 411 IPC, he filed the present revision.

2. PW.1-*de facto* complainant presented Ex.P.1-report stating that the accused now and then working as a driver under him of his Hyundai Accent car bearing No.AP 09 CM 1881 and he kept his Nokia Cell Phone in his car in the dashboard without SIM and he found it missing and he suspects the accused having access being driver of the car committed theft of the same (used the word as lifted the phone). It is therefrom, PW.3-police constable, stated while on patrolling duty on 19.01.2014 along with another constable at about 7.30 hours at Site-III, N.R.R. puram, found the accused under suspicious circumstances and produced him before the Sub Inspector of Police-PW.4. PW.4-Sub-Inspector of Police, who stated that having received the report-Ex.P.1 of PW.1 on 17.01.2014, registered Crime No.63 of 2014 under Section 379 IPC and issued Ex.P.3-FIR and in the course of investigation recorded the statement of the *de facto* complainant as PW.1, visited the scene of offence and on 19.01.2014 while on patrolling duty by PW.3 and another, they found the accused under suspicious circumstances and caught hold of him

and produced and when he questioned the accused made a disclosure and shown the Nokia Cell Phone that was seized from him in the presence of PW.2 and LW.2 under the cover of disclosure and seizure panchanama, which is Ex.P.2. PW.1 was not cross-examined by accused even he made a clear statement of accused was the driver having access to the taking away of the cell phone and suspecting as lifted the phone and to take action.

3. PW.2 in his chief-examination categorically deposed that on 19.01.2014 at 7.15 p.m. at Jubilee Police Station, the police called and accused was in custody, he made a disclosure and the Nokia Cell Phone was seized from him by the police in his presence covered by Ex.P.2. In the cross-examination he stated that he is driver by avocation, he went to the police station on some work, he was called there and he does not know whether the *de facto* complainant identified the cell phone or not and denied the suggestion of he is a stock witness to the police. There is nothing even to discredit the evidence of PW.2 with reference to PW.4 regarding accused was apprehended and he is in custody of the said Cell Phone and the same was seized from his disclosure. So far as PW.3's evidence, there is a cross-examination by accused that regarding the place where apprehended the accused by him and another in confirmation to the chief-examination and there is no specific information about accused and he did not disclose his identity as Home Guard on apprehension and thereby took him to police station, thereby there is nothing even

to discredit the evidence of PW.3. Now, it is pointed out that from PW.3's evidence he stated about the apprehension at 1930 hours i.e., 7.30 p.m. Where as PW.2 stated he was called to the Police Station and found the accused at 7.15 p.m. and it is the contention that impossible to believe. Both the Courts on concurrent finding of fact more particularly the trial Court having fresh in mind by recorded the evidence appreciated the same that nothing is an impossibility from mistake in mention of any time to disbelieve the entire case. Once such is the case, for the revision Court, there is nothing to interfere on the concurrent findings of fact.

4. Now even from PW.4 cross-examination, there is nothing to discredit regarding the disclosure and seizure. Once the Nokia Cell Phone is with him and the Nokia Cell Phone is identified by PW.1 even no Test Identification separately conducted for the identification of the property even for the first time in Court, there is nothing to disbelieve that too it is not the explanation of the accused in custody of the said Nokia Cell Phone identified as belongs to the complainant/PW.1 of it belongs to him. There is no explanation from him that too he says and not in dispute about accused worked as a driver and driven his car and phone was kept in the dashboard. Having regard to the above, once there is the concurrent finding of facts in this regard, there is nothing for this Court to interfere.

5. The learned counsel for the revision petitioner/accused placed reliance on the expression of the Apex Court in **Kusal Toppo and another vs. State of Jharkhand**, dated 07.08.2018, in Crl.A.No.1691 of 2010 placed reliance on para 22, where it is the observation referring to Section 27 of the Indian Evidence Act that on the factual aspects on the basis of confession of A.3 only recovery made was a rope allegedly used in commission of offence as pointed out by learned counsel for the accused, the rope is available in open market. Thereby, the facts are different to the case on hand and it is not even the case that Nokia Cell Phone is purchased by him in open market. Having regard to the above, there is nothing to interfere, much less by admission of the revision with the said appellate Court's concurrent finding in reducing the sentence of one year of the trial Court to six months.

6. Accordingly, the revision is dismissed before admission by confirming the lower appellate Court judgment.

Miscellaneous petitions pending, if any, shall stand closed.

2nd January 2019

mar

Dr. B. SIVA SANKARA RAO, J