

THE HON'BLE Dr. JUSTICE G. RADHA RANI

Criminal Revision Case No.17 of 2015

ORDER:

This Criminal Revision Case is filed by the petitioner / appellant / accused No.2 herein under Sections 397 and 401 of Criminal Procedure Code, 1973 assailing the judgment in Criminal Appeal No.508 of 2011, dated 31.07.2013, on the file of IV Additional Metropolitan Sessions Judge, Hyderabad, confirming the judgment of conviction and sentence passed in C.C.No.483 of 2009, dated 02.08.2011, on the file of X Additional Chief Metropolitan Magistrate, Secunderabad.

2. Heard the learned counsel for the revision petitioner, and the learned Public Prosecutor for the respondent.

3. The case of the prosecution in brief was that on 04.01.2008 there was a *Padayatra* of Sri Chinna Jeeyar Swamy at Indira Park, Hyderabad and several devotees participated in the said programme. Out of the said participants, one Sri D.Kumar came to the Police Station and lodged a complaint at about 01:30 P.M. stating that an amount of Rs.30,000/- kept in his pocket was pick-pocketed. The said complaint was registered as Crime No.2 of 2008 by the Police, Gandhinagar, Hyderabad. Subsequently, at about 02:30 P.M., the

husband of one Smt. B. Leela, by name, Sri B.V. Sagar Rao, also came to the said Police Station and lodged a complaint stating that his wife lost her Nokia Mobile phone which was kept in her hand-bag, and that she also participated in the above programme. The said complaint was registered as Crime No.3 of 2008 by the Police, Gandhinagar, Hyderabad; thereafter, the revision petitioner herein and her mother were apprehended at about 05:00 P.M., and cash of Rs.30,000/- and the stolen phone were recovered from their possession in the presence of *panch* witnesses. Thereafter, they were arrested and after completion of investigation, charge-sheet was filed against them under Section 379 of Indian Penal Code.

4. The learned X Additional Chief Metropolitan Magistrate, Secunderabad took cognizance of the case and conducted trial.

5. During the course of the trial, the prosecution examined PWs.1 to 6 and got marked Exs.P.1 to P.4 and M.Os.1 and 2. No evidence on behalf of the defence was adduced.

6. On considering the evidence on record, the Trial Court convicted both the accused for the offence under Section 379 of Indian Penal Code and sentenced them to undergo rigorous imprisonment for a period of one (01) year and also to

pay fine of Rs.1,000/-, and in default of payment of the said fine amount, to undergo simple imprisonment for a period of three (03) months.

7. Aggrieved by the said conviction and sentence, both the accused preferred appeal before the Sessions Court, and the same was referred to the IV Additional Metropolitan Sessions Judge, Hyderabad.

8. The learned IV Additional Metropolitan Sessions Judge, Hyderabad re-appreciated the evidence of the witnesses and the documents marked by the prosecution and observed that, though PWs.1 and 4 stated that unknown persons committed theft of the property from them, as the evidence of the Investigating Officer was corroborated by the evidence of the *panch* witness with regard to recovery of the stolen property which was evidenced by the contemporaneous record of the confession – cum – seizure *Panchnama* marked under Ex.P.2, and the accused did not claim ownership for MOs.1 and 2 and did not account for possession of the said property and did not cross-examine PW.1, who claimed that Rs.30,000/- belonged to him, and by considering the presumption under Section 114, illustration (a) of Indian Evidence Act, which would allow the Court to infer that a person in possession of the stolen property soon after the theft might be presumed either to be a thief or a receiver of stolen property, considered the accused guilty of the offence under Section 379 of Indian Penal Code.

9. The Court, at the same time, also discussed in detail that Smt. B. Leela, whose mobile phone appeared to have been stolen, was not examined, had not identified the property; the mobile phone which was returned to her by the Court was not exhibited through PW.4 and the complaint lodged by PW.4 was also not marked through him, but the same were marked through the investigating officer P.W.6, and that the record would not convey as to how the mobile phone which was returned to PW.4 came into the hands of PW.6, to be exhibited as MO.8, disbelieved the theft of mobile phone by the accused from the hand-bag of Smt. B. Leela; and set aside the judgment of the Trial Court to the said extent.

10. But, however, as the Trial Court framed a composite charge for both the offences and pronounced the sentence in common, confirmed the judgment of conviction and sentence imposed against the appellants by the X Additional Chief Metropolitan Magistrate, Secunderabad in C.C.No.483 of 2009, by dismissing the appeal.

11. The petitioner / appellant / Accused No.2 preferred the present revision on the ground that the judgment of the Courts below was contrary to law, weight of evidence and probabilities of the case; the judgments were based on only presumptions, surmises and conjectures which were not relevant to the circumstances of the case; the Courts below failed to appreciate properly the

evidence of PW.5 *panch* witness, who expressed ignorance of the contents of *Panchnama* Ex.P.2; when the appellate court disbelieved the seizure of mobile phone from the accused, the seizure of cash of Rs.30,000/- from the accused was also false; the prosecution failed to conduct Test Identification Parade (T.I.P.) of the stolen items / property; the non-examination of the denomination of the currency was fatal to the prosecution case; the Courts below failed to see that the prosecution failed to examine another *panch* witness and that the Court could draw an adverse inference against the prosecution that if he was examined he would have deposed against the prosecution; the Appellate Court ought not to have pronounced the judgment without hearing the learned counsel for the appellant, the same was against the principles of natural justice; the sentence was excessive, and prayed this Court to call for the record and to set aside the judgment of the IV Additional Metropolitan Sessions Judge, Hyderabad in Criminal Appeal No.508 of 2011.

12. On a perusal of the record, it could be seen that the record would disclose that before the Appellate Court, the counsel for the appellants did not choose to appear nor felt any legal obligation to pursue the appeal despite the conditional orders made by the Court and, as such, the appellate court considered that there were no arguments for them and by hearing the learned Additional Public Prosecutor, passed the judgment on merits.

13. Though the learned counsel for the appellants failed to argue the matter, the Appellate Court considered the judgment of the Trial Court in detail and observed that the impugned judgment to the extent of theft of mobile phone by the accused from the hand-bag of Smt. B. Leela was not proved, and set aside the judgment of the Trial Court to the said extent. As such, no prejudice was caused to the appellants though they failed in their duty to prosecute the appeal. Hence, this Court does not find any merit in the contention of the learned counsel for the revision petitioner / appellant / Accused No.2 raised in the grounds of Revision in the present case.

14. Another contention raised by the learned counsel for the Revision Petitioner in the Grounds of Revision was that the *panch* witness expressed ignorance of the contents of the *Panchnama* Ex.P.2. The same was also considered by the appellate Court and observed as under :

“... .. It is true PW.5 expressed ignorance of the contents of the panchnama. However, all the facts he deposed and the admission of him that he signed it and his statement that what all occurred in his presence was recorded makes it very clear that his evidence about the fact of his ignorance of contents of Ex.P.2, which are similar to what he deposed makes no difference.”

15. With regard to the contention of the counsel for revision petitioner that the Court can draw adverse inference for non-examination of the other *panch*

witness, it is to be observed that when one out of the two *panch* witnesses was examined before the Trial Court and he supported the case of the prosecution, it is not necessary to examine the other *panch* witness to prove the same fact. As per Section 134 of the Indian Evidence Act, no particular number of witnesses is required to establish the case. As such, the prosecution might have given up the evidence of the other *panch* witness. In the said circumstances, the Court could not draw any adverse inference against the prosecution for not examining the other *panch* witness. Both the Courts below had examined the evidence of the *panch* witness in detail and as the same corroborated with the evidence of the Investigating Officer and was also supported by the contemporaneous record prepared under Ex.P.2, recorded the conviction against the petitioner. As such, this Court does not find any merit in the contentions raised by the petitioner / Accused No.2 in the Grounds of Revision.

16. Non-conduction of Test Identification Parade of the stolen items / property is not fatal, as the currency cannot be identified by way of Test Identification Parade.

17. Learned counsel for the Revision Petitioner contended that the F.I.R. in Crime No.2 of 2008 was ante-dated and there was no charge under Section 411 of I.P.C. to attract the presumption under Section 114 illustration (a) of the Indian Evidence Act. But, she fairly admitted that no such grounds were taken

in the Grounds while preferring the Revision. The Appellate Court rightly relied upon the presumption under Section 114 illustration (a) of the Indian Evidence Act to draw inference against the accused person. It was for the accused to rebut the said presumption, but the accused failed to adduce any evidence. The record would also disclose that PW.1 stated about the denominations of the currency in his complaint. The Appellate Court by taking into consideration that the Court may presume that a man who is in possession of the stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession; and the accused person failed to account for the possession of the stolen goods, considered them as having committed theft. Only when they were considered as having received the stolen property, there might be a requirement of framing the charge under Section 411 of I.P.C. The contention of learned counsel for the Revision Petitioner was that there was no direct evidence to show that the Revision Petitioner had committed theft of the cash, as such, the Trial Court ought to have framed the charge under Section 411 of I.P.C. But, considering the fact that the function of *presumption* is to fill the gap in the evidence and to remove lacunae in the chain of direct evidence before it and Section 114 illustration (a) permits the Court to presume that a person in possession of the stolen goods soon after the theft can be considered as a thief unless he / she can

account for the said possession; the lower Appellate Court rightly convicted the accused for the offence under Section 379 of I.P.C. and confirmed the conviction and sentence passed by the Trial Court against the accused. Unexplained possession of the stolen goods would create a strong presumption, and the burden of proof would lie on the accused to prove his / her innocence. The revision petitioner / accused failed to discharge the said burden laid upon her.

18. On considering the judgment of the lower Appellate Court, this Court does not find any illegality or infirmity in the said judgment. In the result, the Criminal Revision Case is dismissed confirming the conviction and sentence recorded by the Appellate Court against the revision petitioner / appellant / Accused No.2. No costs.

19. As a sequel, miscellaneous petitions pending if any in this Revision, shall stand closed.

Dr. G.RADHA RANI, J

Date : 01.09.2022
Ndr