
(2013) 10 KAR CK 0128

In the Karnataka High Court

Case No : Criminal Revision Petition No. 934 of 2008

Ayub Khan, Adil Ahamed @ Adil, Jabiulla @ Jabi and Haneef
@ Mohammed Haneef

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401
Evidence Act, 1872 — Section 114(a)
Penal Code, 1860 (IPC) — Section 34, 379

Citation : (2013) 10 KAR CK 0128

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : C.M. Jagadeesh, for the Appellant; B. Visweswaraiah, HCGP, for the Respondent

Judgement

N. Ananda, J.—The petitioners arrayed as accused Nos. 1, 4 to 6 in C.C. No. 146/2005 were tried for an offence punishable u/s 379 r/w 34 IPC. The learned trial Judge convicted petitioners and other accused for an offence punishable u/s 379 r/w 34 IPC. Therefore, petitioners were before the I-appellate court in Criminal Appeal No. 98/2006. The learned Judge of I-appellate court on re-appreciation of evidence has confirmed the findings of learned trial Judge. Therefore, petitioners are before this court. This court while exercising revisional jurisdiction u/s 401 Cr.P.C., does not sit as a court of second appeal. This court can interfere with the impugned judgment if the courts below have committed glaring errors in appreciation of evidence or errors of law resulting manifest injustice to petitioner.

2. I have heard Sri C.M. Jagadeesh, learned counsel for petitioners and Sri B. Visweswaraiah, learned HCGP for State.

3. In brief, the case of prosecution is as follows:-

On 20.12.2004, PW 1-N.H. Rajendra had reached Mysore Bus Stand to go to

Bangalore. He was carrying certain gold ornaments in a bag. PW 1 boarded a KSRTC bus and occupied a seat and he alighted from bus to chew betel nut, keeping said bag on a seat of bus. After some time, PW 1 found his bag containing gold ornaments was missing. Therefore, PW 1 lodged first information at about 1.30 p.m. on 20.12.2004. The case was registered in Crime No. 253/2004 by Lashkar Police. On the same day, at about 4 p.m., PW 5 found petitioners and other accused in a shop near Lashkar Mohalla and they were distributing jewels among themselves. PW 5 apprehended them and recovered gold jewellery from possession of petitioners and other accused. On completion of investigation, charge sheet was filed.

4. The learned counsel for petitioners has made following submissions:-

I. The evidence of PW 1 is unnatural. It is hard to believe that PW 1 had got down from bus unmindful of safety of gold ornaments.

II. The evidence of PW 5 relating to recovery of gold jewellery from possession of petitioners and other accused does not inspire confidence.

III. PW 5 had not been instructed to investigate into crime. The evidence of PW 7 does not inspire confidence. PW 7 is a stock witness.

IV. The evidence adduced by prosecution is discrepant. Therefore, learned trial Judge should have extended benefit of doubt. The learned trial Judge as also learned Judge of I-appellate court have not assigned reasons for not extending benefit under the Probation of Offenders Act, 1958 (for short, "the Act") when it is established that petitioners are first offenders.

5. The learned HCGP would justify the impugned judgment.

6. PW 1 had lodged first information against unknown persons. PW 1 had no grudge or grievance against petitioners and other accused. After stolen properties were recovered, PW 1 had identified them. PW 5 has given details of gold ornaments recovered from possession of petitioners and other accused. The gold ornaments bear distinct marks. Therefore, there are no reasons to suspect the evidence of PW 5. It is true that PW 1 was rather careless in keeping bag containing gold ornaments in bus and alighting bus unmindful of thieves operating in bus stands. However, the careless conduct of PW 1 cannot be a ground to discredit his evidence.

7. At the relevant time, PW 5-Venkataswamy was the Assistant Sub-Inspector of Central Crime Branch at Mysore. It is needless to state that whenever an offence takes place, it will be flashed through wireless messages to Central Crime Branch Police. In the circumstances, there was no need for PW 5 to wait for instruction" from the higher officials. The evidence of PW 5 that he had apprehended petitioners and other accused from a shop near Lashkar Mohalla is supported by recovery of gold ornaments from possession of petitioners and other accused. PW 5 has given details of gold ornaments recovered from the possession of each of the petitioners and other accused. The gold ornaments bear distinct marks. It

is hardly possible to conceive that PW 5 had planted stolen properties (gold ornaments) to foist a case against petitioners and other accused.

8. PW 7-David Sundarraj is an independent witness. He had witnessed recovery of gold ornaments from possession of petitioners and other accused.

From cross-examination of PW 7, we do not find that he was a stock witness. PW 7 was aged about 75 years. He was a bookbinder. PW 7 had no reasons to falsely implicate petitioners and other accused. PW 7 had no obligations to seek from the police.

9. The evidence of PW 8-Mohammed Ansar Ali relates to further investigation of case.

10. The evidence adduced by prosecution would reveal that stolen gold ornaments were recovered from possession of petitioners and other accused within few hours from the place of commission of offence. Therefore, u/s 114(a) of Indian Evidence Act, 1872, court may presume that petitioners and other accused, who were found in possession of stolen gold ornaments soon after theft are either thieves or had received gold ornaments knowing them to be stolen, as they had failed to account for their possession. Considering place of recovery and possession of gold ornaments by petitioners and other accused, it can be presumed that petitioners and other accused had stolen gold ornaments.

The petitioners and other accused have not rebutted this presumption by cross-examination of witnesses for prosecution. In the circumstances, courts below were justified in convicting petitioners and other accused for an offence punishable u/s 379 r/w 34 IPC. The learned Judge of trial court as also learned Judge of I-appellate court having regard to the fact that petitioners and other accused have committed the offence in furtherance of common intention and the commission of offence was preplanned and pre-calculated have refused to extend the benefit of the Act.

11. I have secured reports of antecedents of petitioners from learned HCGP. The petitioners are first time offenders. They do not bear criminal antecedents. They have chances to reform themselves. Therefore, I am of the considered opinion that sentence imposed by trial court and confirmed by I-appellate court requires modification. In the result, I pass the following:-

ORDER

The revision petition is accepted in part. The impugned judgment of conviction of petitioners for an offence punishable u/s 379 r/w 34 IPC is confirmed. The period of imprisonment imposed by the trial court and confirmed by the I-appellant court is reduced to period of imprisonment undergone by the petitioners. The petitioners are sentenced to pay fine of Rs. 10,000/- each for an offence punishable u/s 379 r/w 34 IPC, in default to undergo simple imprisonment for a period of three months. Office is directed to send back records along with a copy of this order to trial court.