
(2016) 02 KAR CK 0102
In the Karnataka High Court
Case No : Criminal Revision Petition No. 621/2010

Muniraj

APPELLANT

Vs

State by Anekal Police Bangalore Rural District

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 397
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 34, Section 380, Section 457

Citation : (2016) 02 KAR CK 0102

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : H.P. Leeladhar, Advocate, for the Appellant; Rachaiah, HCGP, for the Respondent

Final Decision : Allowed

Judgement

A.V. Chandrashekara, J.—1. Heard the learned counsel for the petitioner and the learned HCGP.

2. The judgment of conviction and sentence passed in C.C. 787/01 by the JMFC, Anekal, and affirmation of the same by the Principal Sessions Judge Bengaluru, in CrI. A. 18/02 dated 11.9.2009 are called in question. Petitioner was 2nd accused in a criminal case in C.C. 787/01 registered by Anekal police for the offences punishable under Sections 457 and 380, I.P.C.

3. As could be seen from the charges leveled against this petitioner and two others framed on 9.1.2002, they had trespassed into the factory belonging to CW-1, Suresh by breaking open the windows and had committed theft of silk cocoons. They had pleaded not guilty and claimed to be tried.

4. In order to bring home the guilt of the accused, prosecution has chosen to examine in all 7 witnesses and 5 exhibits and two material objects, i.e. silk thread. The accused did not adduce any evidence but are examined under

Section 313, Cr.P.C. Ultimately the learned JMFC chose to frame three points for consideration as found in paragraph 5 of the judgment in C.C. 787/01. The points have been answered in the affirmative and consequently accused Nos. 1 to 3 are convicted for the offences punishable under Sections 457 and 380, I.P.C. and sentenced to undergo 2 years RI for the above said offences and to pay a fine of Rs. 1,000/- each.

5. The said judgment had been called in question before the first appellate court, and the first appellate court has dismissed the appeal in CrI. A. 18/02 vide judgment dated 11.9.2009 by framing the following three points for consideration:

"1) Whether the prosecution proves beyond reasonable doubt that within the limits of Anekal police station at N.R. Colony at Anekal pura, the accused have entered the premises of CW-1 thereby committed the offence under Section 457 read with Section 34 of IPC?

2) Whether the prosecution proves that on the aforesaid date, time and place mentioned supra after entering the premises of CW-1 have carried away silk cocoons of 10 kgs. Of CW-1 and sold it at Magadi market, thereby committed offence under Section 380 read with Section 34 of IPC?

3) What order?"

Point Nos. 1 and 2 have been answered in the affirmative and consequently the appeal is dismissed.

6. Learned counsel for the petitioner, Mr. H.P. Leeladhar submits that the judgments passed by the trial court as well as the first appellate court are opposed to law, facts and probabilities and both the courts have ignored the material evidence available on record. It is his case that as per the prosecution case, accused had trespassed into the factory premises of CW-1, Suresh and committed theft of silk cocoons, whereas Ex. P1-first information lodged by CW-1, Suresh discloses that 74 winding raw silk and three rolls of threads were stolen.

7. The material objects have been recovered at the instance of the accused, is the case of the prosecution. No confessional statement in regard to the present petitioner is found. The statement of 1st accused-Jairam and 2nd accused are found in the records. But they are not at all got marked through the I.O. who is stated to have recorded the same.

8. A statement recorded under Section 27 of the Evidence Act leading distinctly to recovery could be marked in evidence, but no such effort is made by the prosecution. PW3-PSI i.e. I.O. has deposed that he recorded the confessional statement of the accused on the basis of which he went to Magadi and recovered the cocoons from the shop of Amjad Pasha-PW4. It is true that PW-4 has deposed that the accused sold the said item to him and therefore he gave it to the police.

9. Just because PW-4 has deposed that the accused gave him cocoons, it cannot be considered as any recovery in the eye of law. Unless the statement of the accused recorded in police custody leading distinctly to recovery is proved in accordance with law as per Section 27 of the Evidence Act, the case of the prosecution will not stand the scrutiny of this revisional court. Accordingly the case of the prosecution suffers from serious legal infirmity and this aspect of the matter has been ignored by both the courts below. Accordingly the revision petition will have to be allowed, invoking the provision of Section 397, Cr.P.C.

10. In the result, the following order is passed:

"ORDER

The revision petition is allowed. The judgment of conviction and sentence passed in C.C. 787/01 on 2.4.2002 and affirmed in CrI. A. 18/02 is set aside. The accused is acquitted of all the charges leveled against him."