

Altaf Vs. the State of Karnataka Represented by Public Prosecutor

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Court : Karnataka Dharwad

Decided On : Oct-24-2013

Judge : The Honourable Dr. Justice Jawad Rahim

Appeal No. : Crl. Revision Petition No. 2190 of 2010

Appellant : Altaf

Respondent : The State of Karnataka Represented by Public Prosecutor

Judgement :

(Prayer: This criminal revision petition is filed U/S 397 R/W 401 seeking to set aside the Judgement dated 16.04.2010 passed by the Presiding Officer, Fast Track Court, Sirsi in Criminal A.No.160/06 by confirming the Judgement dated 16.10.2006 passed by the I Addl. JMFC, Sirsi in C.C.No.979/03.)

1. Convicted accused is in appeal against his conviction for the offence punishable under Section 392, I.P.C. and the consequent sentence of imprisonment for one year and fine of Rs.2,000/-.

2. Heard Sri Sadiq Goodwala for the petitioner and learned Addl. SPP, Sri V.M.Banakar for the respondent- State. Perused records. It reveals:

a) One Ganga-wife of Parameshwar Bhagwat lodged report at the jurisdictional police station at Sirsi seeking police action alleging that on 9.1.2003 she had accompanied her husband-Parameshwar Bhagwat to go over to Dharwad to

attend house-warming ceremony of her relative. At 8.45 p.m. they alighted from the bus at Zoo Circle, Sirsi, to visit their relative's house at Chowkimath. As she was walking with her husband, two boys on a bicycle came from the opposite side and the one seated on the carrier portion of the cycle snatched her Mangalsutra and two gold chains and made good their escape. She screamed seeking help which attracted the attention of several persons nearby; the duo escaped from the spot.

b) Thereafter her husband contacted Hoysala Squad on phone and visited the police station and lodged report. Report was registered in Crime No.5/03 of Sirsi Town police station for the offence punishable under Section 392, I.P.C. against two unknown persons and investigation commenced. Within a short time, petitioner-accused was brought to the police station and Panchnama was prepared, seizing the gold ornaments including Mangalasutra from his custody. However, the 2nd accused is alleged to have escaped.

c) The statement of complainant's husband and other witnesses was recorded and final report was filed raising charge for the offence under Section 392, I.P.C. In the trial that ensued, prosecution examined 10 witnesses and relied on 3 documents and four M.Os. Accused declined to lead evidence in defense.

d) Learned trial judge analyzing the evidence, opined prosecution had failed to establish the charge against the 2nd accused and acquitted him, while convicted the petitioner. Assailing it he was in CrI.A.160/06 reiterating the plea of innocence which found no favour with the learned appellate judge, and the appeal was a failure. e) Assailing both the judgments, he is in revision.

3. Sri Sadiq Goodwala would contend, the trial court has seriously erred in convicting the petitioner who is not involved in the crime in question. He submits, the trial court while giving the benefit of doubt to the 2nd accused, has not applied the same yardstick as projected by the prosecution. Thus he seeks acquittal.

4. Learned Addl. SPP, Sri V.M.Banakar has taken me through the evidence on record and circumstances in which the crime was committed to urge that conviction is justified.

5. I have examined the evidence on record keeping in mind the contentions of the petitioner's counsel.

6. It is material to note, police action has commenced on the report of PW2-Ganga, wife of Parameshwar Bhagwat) through her report in which she has described the ornaments, viz., Mangalasutra and other ornaments. She has also given the description of the persons who committed the crime except their names. So also is the version of PW4-Parameshwar Bhagwat. There is total corroboration in the testimony about the way in which the crime was committed.

7. The question now is, whether the petitioner was the offender. Prosecution has relied on 10 witnesses but amongst them the evidence of PW8 is very material. It must be noticed PW8-Ganapati Shiva Naik is the police officer who claims he was returning to his house on the date of the incident and heard screams of PW2 seeking help and rushed towards the place and saw two persons riding a cycle proceeding in the opposite direction and chased them. Both lost balance and fell; one of them escaped while he detained the other (petitioner) and subjected him to interrogation in the police station; petitioner was found to be in possession of the Mangalasutra and gold chain allegedly robbed from the possession of PW2.

8. The evidence of PW8- Ganapati Shiva Naik, Head Constable, reveals he was working in Sirsi town police station and on 9.1.2003 after completing his duty, when he reached NGO office, he heard screams 'thief, thief' and rushed to the spot; he apprehended the petitioner; interrogation has resulted in recovery of material objects. Though he was thoroughly cross-examined, accused could not salvage anything worthy in his defense to discredit his evidence. It should further be noticed, PW3-Vishwanath Narayan Devadiga and PW7-Ravi Kamalakar Shet, Panchas are witnesses to Ex.P3-Panchnama. Their evidence has also stood the test of cross-examination. However, PW1-Hyder Rahaman Khan has not supported the case of the prosecution. In the circumstances, particularly that of PW3, PW7 and PW8 establishes overt acts of the petitioner in stealing gold ornaments from the neck of the complainant and with such evidence, it is difficult to hold petitioner is entitled to benefit of doubt.

9. As regards the 2nd accused is concerned, he was not arrested from the spot nor anything has been recovered from his possession and therefore his acquittal is justified.

10. Considering all circumstances in which the offence is committed, the fact that petitioner was arrested virtually within 40 minutes of the incident and stolen property was recovered, there is hardly any scope for interference with the finding recorded by the trial court. In the result, I confirm the finding recorded by the trial court in C.,C.979/03 and consequently the judgment confirming it in CrI.A.160/06 dated 16.4.2010.

11. However, the question is, what should be the nature of punishment. The trial court has sentenced the petitioner to undergo RI for one year and to pay a fine of Rs.2,000/-. Learned counsel, Sri Sadiq Goodwala would submit, petitioner was a young boy when the crime was committed and therefore the provision of Section 360, Cr.P.C. be applied to grant him benefit of the Probation of Offenders Act. It is difficult to accept the proposition advanced by the learned counsel or to be liberal. However, the sentence of imprisonment appears to be harsh.

12. In the result, while confirming the order of conviction, the order of sentence is modified. Petitioner is sentenced to undergo imprisonment for 3 months, retaining the amount of fine, in default to undergo SI for two weeks. The revision petition is disposed of accordingly.

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