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**SooperKanoon Citation** : sooperkanoon.com/935050

**Court** : Karnataka

**Decided On :** Feb-29-2012

**Judge** : V. Jagannathan, J.

**Acts** : Indian Penal Code (IPC) Section 380, 454; Post Office Act;

**Appeal No.** : Criminal Revision Petition No.942 of 2009

**Appellant** : K.E. Lokesha and Another

**Respondent** : State of Karnataka

**Advocate for Def.** : R. Krunakar, Adv.

**Advocate for Pet/Ap.** : Dinesh K. Rao; Vighneshwar; S. Shastri, Advs.

**Judgement** :

1. This Criminal Revision Petition is by A-1 and A-2, who have been convicted by the trial court in respect of Sections 380 and 454 of the I.P.C. The sentence passed was three years rigorous imprisonment and Rs.5,000/- fine with six months default sentence for both the offences. The lower appellate court concurred with the trial court.

2. The prosecution case in short is that, on 25.10.2004, complainant Suresha and his wife Girijamma left their house at 7.00 a.m. for coolie work and when they came home at 4.00 p.m., they found the back door of the house opened and the

tiles of the house had been removed and on checking, the found the zip of the suitcase, which was kept under the cot, was opened and they noticed one pair of hangings and one pair of jumky and one silver coin were stolen. One Raju (P.W.2) informed the couple that he saw the accused roaming near their house. Thereafter, mahazar was conducted and the accused were apprehended and charge was submitted.

3. At, the trial, the prosecution examined 10 witnesses and 7 documents were marked with 4 M.Os. The trial court accepted the evidence of the prosecution witnesses and convicted the petitioners as mentioned earlier and so did the lower appellate court by dismissing the petitioners' appeal.

4. Learned counsel Shri Dinesh K. Rao for the petitioners-accused submitted that the evidence on record, even if accepted, will only go to indicate the hand of A-1 but not A-2. Except the evidence of P.W.2 Raju that he saw A-1 and A-2 roaming near the house of P.W.1, there is no other evidence to connect A-2. Even recovery was not effected at the instance of A-2. Therefore, A-2 ought to have been acquitted. As far as A-1 is concerned, the submission made is that, if this court were to agree with the courts below, then, the benefit of Probation of Offenders Act be extended to him.

5. On the other hand, the submission of the learned Government Pleader Shri P. karunakar for the respondent-State is that, the courts below were justified in convicting the two petitioners for the offences under Sections 380 and 454 of the I.P.C. and the sentence imposed also calls for no interference.

6. Having thus heard both sides and after going through the evidence on record, it is observed that the recovery was effected at the instance of A-1 and this is spoken to by the panch witnesses P.Ws.2 and 5. As far as A-2 is concerned, there is nothing to show that none of the M.Os. were recovered at the instance of A-2. Therefore, the trial court could have given the benefit of doubt to A-2. As far as A-1 is concerned, in view of the recover being effected at his instance and A-1 not coming forward with any proper explanation in respect of the stolen items, his conviction, therefore, has to be sustained.

7. As far as conviction is concerned, the learned counsel for the petitioners rightly submitted that in view of the conviction for Section 454 of the I.P.C., separate conviction for the offence under Section 380 of the I.P.C., is not needed as the offence under Section 454 also include Section 380.

8. As far as the sentence is concerned, in view of the decision cited by the petitioners' counsel in the case of Isher Das v. State of Punjab, reported in AIR 1972 SC 1295, taking note of the age of A-1, which is put at 20 years, he could be given the benefit of doubt. In the said decision, the Apex Court has observed that the Probation of Offenders Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. The Act distinguishes the offenders below 21 years of age and those above that age and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. The Apex Court also observed that, as regards the persons under the age of 21 years, the policy of law appears to be that, such a person in spite of his conviction should not be deprived of the advantage of the P.O. Act, which is a beneficial measure.

9. In the instant case, applying the aforesaid law and taking note of the age of A-1, which is put at 20 years, he could be given the benefit of the P.O. Act and hence, the following order is passed:

The conviction of A-1 is sustained. A-1 is given the benefit of the P.O. Act and he shall be released on probation of good conduct and shall executed a personal bond for Rs.20,000/- with one surety to the satisfaction of the trial court and he shall keep peace and good behaviour for a period of one year and if, during the said period, any breach of the condition is brought to the notice of the trial court or the probation officers, A-1 shall undergo the sentence imposed by the trial court.

A-2, however, is acquitted by giving him the benefit of doubt. Fine amount, if any deposited by A-2, shall be refunded to him.

The petition is thus allowed in part in the above terms.

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