

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

Crl.Rev.Pet.No. 2484 of 2003 ()

**AGAINST THE JUDGMENT IN Crl. APPEAL 165/2003 OF SESSIONS COURT,
KASARAGOD, DATED 17-07-2003**

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**AGAINST THE JUDGMENT IN CC 415/2002 of C.J.M.,
KASARAGOD, DATED 27-03-2003**

REVISION PETITIONER(S):

**V. VICTOR D'SOUZA, AGED 34 YEARS,
S/O. MAURISHA D'SOUZA,
KULATHUVAYAL IN MEENJA VILLAGE, KASARAGOD DISTRICT.**

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENT(S):

- 1. STATION HOUSE OFFICER, MANJESWAR, KASARAGOD DISTRICT.**
- 2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

R1 BY PUBLIC PROSECUTOR SMT. V.H. JASMINE

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
12-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SS

K. RAMAKRISHNAN, J.

Crl.R.P.No.2484 of 2003

Dated this the 12th day of February, 2015

ORDER

Second accused in C.C.No.415/2002 on the file of the Chief Judicial Magistrate Court, Kasaragod, is the revision petitioner herein. The revision petitioner along with another accused were charge-sheeted by the Sub Inspector of Police, Manjeshwar, in Crime No.112/2002, alleging offence under Section 457 and 380 read with Section 34 of the Indian Penal Code.

2. The case of the prosecution in nut shell was that, on 22.03.2002, the accused persons in furtherance of their common intention to commit theft, committed house breaking by night, entered the residential house of PW4 with door No.II/171 in Meeyapadav in Meenja Village and committed theft of one Philips T.V., two cooking gas cylinders, one gas regular, a Maharaja mixie, V-Guard

stabilizer and two woolen blankets and thereby they have committed the offence punishable under Section 457 and 380 read with Section 34 of the Indian Penal Code.

3. After investigation, final report was filed and it was taken on file as C.C.415/2002 on the file of the Chief Judicial Magistrate Court, Kasaragod. When the accused including the revision petitioner appeared before the court below, after hearing both sides, charge under Section 457 and 380 read with Section 34 of the Indian Penal Code was framed and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 7 were examined and Exts.P1 to P6, P3(a), P2(a), P2(b) and MOs 1 to 3 were marked on the side of the prosecution. After closure of the prosecution evidence, the revision petitioners were questioned under Section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against

them in the prosecution evidence and they had further stated that, they had not committed any offence and they were falsely implicated in the case. DW1 was examined on the side of the first accused. Ext.D1 contradiction in the evidence of PW1 in another case was marked. After considering the evidence on record, the court below found both the revision petitioners guilty under Section 457 and 380 read with Section 34 of the Indian Penal Code and convicted them thereunder and sentenced them to undergo rigorous imprisonment for one year and also to pay a fine of ₹10,000/-, in default to undergo six months each for each of them and set off was allowed for the period of detention already undergone by them in this case. Aggrieved by the same, first accused filed Crl. Appeal No.158/2003, while the present revision petitioner filed Crl.Appeal No.165/2003 before the Sessions Court, Kasaragod, and the learned Sessions Judge by common judgment allowed the appeal

filed by first accused and acquitted him of the charge levelled against him, but confirmed the order of conviction passed against the present revision petitioner and reduced the sentence to rigorous imprisonment for six months and also to pay a fine of ₹2,000/-, in default to undergo simple imprisonment for three months more for each offences. Aggrieved by the same, the present revision has been filed by the revision petitioner/ second accused before the court below.

4. Heard the counsel for the revision petitioner and learned Public Prosecutor.

5. The counsel for the revision petitioner argued that, having disbelieved the prosecution evidence, as regards the first accused, who was also arrested along with the present revision petitioner, court below was not justified in confirming the order of conviction as against the present revision petitioner. Further the court below should

not have relied on the alleged confession statement for recovery of the articles. The counsel also submitted that they were arrested much earlier and they have been falsely implicated in the case. So according to the learned counsel, the court below was not justified in convicting the revision petitioner for the offence alleged. The counsel also submitted that the sentence imposed is harsh.

6. On the other hand, learned Public Prosecutor supported the concurrent findings of the court below on this aspect.

7. The case of the prosecution as emerged from the prosecution witnesses was that, PW4 is the owner of the stolen articles and she was residing in the quarters allotted to her in her official capacity as Junior Public Health Nurse. According to her she went to her native district around 5.00 p.m., on 22.03.2002 after locking the house and she came back around 2.00 p.m., on 30.03.2002 and at that time, she

found that somebody had opened the front door by unscrewing the bolt used for locking the door and committed theft of MO1 T.V., MO2 stabilizer and MO3 Mixie, and two gas cylinders and a gas regulator and two woolen blankets, all worth ₹18,000/- and immediately she gave Ext.P3 statement, on the basis of which Ext.P3(a) first information report was registered as Crime No 112/2002 of Manjeshwar police station by PW6. PW7 had undertaken the investigation of the case. He arrested both the accused at 6.30 p.m., on 30.06.2002 from a public road margin near Hosangadi Junction, when he came there on getting information that two persons were trying to sell certain articles. According to PW7, A1 was holding a suitcase, while the second accused was holding a plastic bag and the suitcase contained MO3 Mixie and plastic bag contains MO2 stabilizer. They were seized as per Ext.P1 mahazar. Thereafter he reached the police station at about 7.45 p.m.,

and registered Crime No.230/2002, which is the first information report in C.C.No.344/2002. When the accused persons were questioned separately, first accused gave Ext.P2(a) statement and second accused had given Ext.P2(b) statement and it was on that basis, he went to the house of the second accused as led by him and seized MO1 T.V. and other articles from his house, as per Ext.P2 mahazar in the presence of PWs 1 and 2. MOs 2 and 3 were seized as per Ext.P1 mahazar in the presence of PW5. PW4 had produced Ext.P4 cash bill for the purchase of the T.V., which was seized as per Ext.P6 seizure mahazar. The articles were identified by PW4 from the police station later. He questioned the witnesses and record the statement. He completed the investigation and submitted final report. PW4 is the owner of the articles stolen. She had deposed in tune with her statement in Ext.P3 first information statement and identified MOs 1 to 3 as the articles stolen

from her house between 5.00 p.m on 22.03.2002 and 2.00 p.m., on 30.03.2002.

8. It is true that, she may not be able to prove the person who had committed the theft, but her evidence is sufficient to prove that these articles belong to her and they were stolen from her house. The accused have no claim over these articles. So it can be safely concluded that, the prosecution has proved beyond reasonable doubt that MOs 1 to 3 were stolen from the house of PW4 by breaking open her house, when she was not there in the house. It will be seen from the evidence of PW7 that, on the basis of Ext.P2(b) statement given by the second accused, the articles were seized from his house, evidenced by Ext.P2 mahazar in respect of seizure of T.V. and the Mixie and stabilizer were seized from the possession of first accused and the revision petitioner respectively as per Ext.P1 mahazar.

9. It is true that, independent witnesses to the arrest and seizure turned hostile. The evidence of DW1 will go to show that, the articles were seized from the house of the second accused, though he was examined to prove that the articles were not seized from the possession of the first accused. Merely because the attester to the mahazar did not support the case of the prosecution is not a ground to disbelieve the seizure as such. There is nothing wrong for the court to believe the evidence of seizing officer to prove the seizure, if the court is satisfied with his evidence. Though PW7 was cross examined at length, nothing was brought out to discredit his evidence on this aspect. Revision petitioner also had no explanation, as to how these articles had come to his possession and also in his house. Once it is proved by the prosecution that, the revision petitioner was found to be in possession of the stolen articles, then explanation-a to Section 114 of the Evidence

Act will be attracted and it can be either presumed that, he is the thief or the receiver of the stolen articles. He had no case that, he had purchased these articles in a bona fide belief. So under the circumstances, courts below were perfectly justified in coming to the conclusion that, the prosecution has proved beyond reasonable doubt that the revision petitioner had committed theft after entering the house and thereby he had committed the offence punishable under Section 457 and 380 of the Indian Penal Code and rightly convicted him for the said offence. No illegality has been committed by the courts below in convicting the revision petitioner on the basis of the evidence available, which requires interference of this court, using the revisional power.

10. As regards the sentence is concerned, though the trial court had sentenced him to undergo rigorous imprisonment for one year and also to pay a fine of

₹10,000/-, in default to undergo rigorous imprisonment for six months each for each crime, the same was reduced to six months and fine of ₹2,000/- with default sentence of three months by the appellate court. However there is no evidence to show that, he is a habitual offender, though such an observation is made by the court below. Considering the circumstances, this court feels that converting the nature of imprisonment to simple imprisonment from rigorous imprisonment and reducing the substantive sentence to five months will be sufficient and that will meet the ends of justice, as the appellate court had shown maximum leniency in reducing the period of sentence imposed by the court below. So the sentence is modified as follows:

The revision petitioner is sentenced to undergo simple imprisonment for five months and also to pay a fine of ₹2,000/-, in default to

undergo simple imprisonment for three months each for each offence. The sentences are directed to run concurrently. The period of detention already undergone by him in this case is given set off under Section 428 of the Code of Criminal Procedure.

With the above modification of the sentence alone, the revision is allowed in part and disposed of accordingly. Office is directed to communicate this order to the concerned court, immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE

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P.A. to Judge

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