

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

Crl.Rev.Pet.No. 875 of 2004 ()

**AGAINST THE JUDGMENT IN Crl. APPEAL NO. 372/2002 of SESSIONS COURT,
MANJERI, DATED 23-10-2003**

&

**AGAINST THE JUDGMENT IN CC 372/1999 of J.M.F.C.,
MALAPPURAM, DATED 12-12-2002**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**MAJEED. S/O.HAMZA, PUTHALATHMATTIL (H),
VENGARA, MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/RESPONDENT/COMPLAINANT/STATE:

**THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, VENGARA POLICE
STATION - THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.**

BY PUBLIC PROSECUTOR SMT. MADHU BEN .M

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
06-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SS

K. RAMAKRISHNAN, J.

.....
Crl. R. P. No.875 of 2004

.....
Dated this the 6th day of January, 2015

ORDER

Accused in C.C.No.372/1999 on the file of Judicial First Class Magistrate Court, Malappuram, is the revision petitioner herein. He was charge sheeted by the Asst. Sub Inspector of Police, Vengara police station, in crime No.238/1998 under Section 379 of the Indian Penal Code.

2. The case of the prosecution in nut shell was that, on 10.04.1998 at about 8.00 p.m. while CW1 was taking bath, the revision petitioner snatched away one gold chain weighing 1^{3/4} soverigns of the fashion 'karimani mala' from the neck of CW1 and thereby he had committed the offence punishable under Section 379 of the Indian Penal Code.

3. After investigation, final report was filed

and the case was taken on file as C.C.No.372/1999 on the file of Judicial First Class Magistrate Court, Malappuram.

When the revision petitioner appeared before the court below, after hearing the Assistant Public Prosecutor and the defence counsel, charge under Section 379 of the Indian Penal Code was framed and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 7 were examined and Exts.P1, P1(a), P2, P3 and MO1 were marked on their side. After closure of the prosecution evidence, the revision petitioner was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that, he has not committed any offence and he has been falsely implicated in the case. No defence evidence was adduced on his side. After considering the evidence on record, the learned magistrate found that the revision petitioner guilty under

Section 379 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for one year. Aggrieved by the same, the revision petitioner filed Criminal Appeal No.372/2002 before the Sessions Court, Manjeri, and the learned Sessions Judge, by the impugned judgment, dismissed the appeal, confirming the order of conviction and sentence passed by the court below. Dissatisfied with the same, the present revision has been filed by the revision petitioner/accused before the court below.

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

5. The counsel for the revision petitioner submitted that, having dis-believed the evidence of PW1 regarding the identity of the accused, the court below should not have believed her case regarding the theft as well. Further the evidence of PW2 regarding the recovery and identification of MO1, as the gold ingot obtained by

melting the alleged stolen chain cannot be believed, as his evidence will go to show that he is conducting business illegally and he had given evidence to please the police and on that circumstances his evidence alone is not sufficient to convict the accused/ revision petitioner. Further there is no evidence adduced on the side of the prosecution to prove the identity of the article alleged to have been stolen, which was later converted to MO1 ingot. Further no complaint was filed by PW1 regarding the alleged theft, that also create doubt regarding the genuineness of prosecution case. So according to the learned counsel, the courts below have not properly appreciated the evidence and the conviction entered is perverse and the revision petitioner is entitled to get acquittal giving him the benefit of doubt.

6. On the other hand, the learned Public Prosecutor submitted that, the evidence of PW1 coupled with evidence of PW2 and Exts. P1 and P1(a) proved the guilt of the revision petitioner beyond reasonable doubt and

courts below were perfectly justified in convicting the revision petitioner for the offence alleged.

7. The case of the prosecution as emerged from the prosecution witnesses was that, on 10.04.1998 at about 8.00 p.m, while PW1, who was working under PW3 as servant maid was taking bath from the bathroom, somebody entered the bathroom and snatched away the gold chain from her neck and when she made hue and cry, PW3 and others came, by the time the thief left the place. There was none to help her. Her husband was not in station and that was the reason why she could not file the complaint immediately. After some time of the incident, police came with the revision petitioner and at that time, she identified him as the person who snatched away the gold chain. PW6 is the Sub Inspector of Police, Vengara, who had arrested the revision petitioner in connection with crime No.234/1998 of the same police station and when he questioned him, it was revealed that, he had committed the

theft of a gold chain and on the basis of Ext.P1(a) statement given by him, he along with the revision petitioner went to the shop of PW2 and both the revision petitioner and PW2 identified each other and PW2 had admitted that some months prior to their coming on that date the revision petitioner came there on two occasions with one 'spiral chain' (pirichain) and one 'karimani mala' and sold the same on two occasions and he had paid ₹7,000/- to him and the 'karimani mala' was having a weight of 1^{3/4} sovereigns, which he melted and made to ingot and identified MO1 as that ingot and produced the same before PW6, which he seized as per Ext.P1 mahazar in the presence of PW4 and 5. Thereafter he came to police station and registered Ext.P2 first information report as Crime No.238/1998 of Vengara police station on 28.10.1998 against the revision petitioner, alleging offence under Section 379 of the Indian Penal Code. Thereafter the investigation was conducted by PW7. He went to the place of occurrence along with revision

petitioner and prepared Ext.P3 scene mahazar and got the revision petitioner identified by PW1. He questioned the witnesses, record the statement and completed the investigation and submitted final report.

8. PW1 is the victim in this case. According to her, three year prior to her examination, during night when she was taking bath from the house of PW3 under whom she was working as a servant maid, a person came and snatched away her gold chain and she made hue and cry and at that time PW3 and others came, but by the time the person who snatched away the chain ran away from there with the chain. She had further stated that, after some months of the incident, the police brought the revision petitioner and at that time, she identified him as the person who snatched away the chain. But in the cross examination, she had admitted that she had identified the revision petitioner on the basis of the information given by the police that he was the person who committed the theft. Further

there was no light at that time and the evidence of PW3 who came to the place immediately after hearing the hue and cry also will go to show that though he flashed the torch, he could not see any person there. So under the circumstances, courts below were perfectly justified in not relying the evidence of PW1 for the purpose of identification of the revision petitioner as the person who committed the crime. But there is nothing to disbelieve the evidence of PW1 on this aspect that, on the fateful day, somebody had snatched away her chain. It is true that, she did not file any complaint. Merely because, a complaint was not filed, is not a ground for disbelieving the prosecution case, especially when PW1 is coming from a lower starata i.e, a restricted village woman. Though they have stated that, a complaint was filed, the evidence of PW7/ investigation officer will go to show that no such complaint could be traced out. So under the circumstances, courts below were perfectly justified in relying on the evidence of PW1 only for

the purpose of proving the fact that, theft of 'karimani mala' was committed on the fateful day which she was wearing at that time.

9. As regards the other evidence available to connect the revision petitioner with the commission of the crime is the recovery effected by PW6 of MO1 gold ingot on the basis of the alleged confession statement given by the revision petitioner. He had stated that, when the revision petitioner was arrested in connection with crime No. 234/1998 of the same police station and when he questioned, it was revealed that, he had committed another theft also and he gave Ext.P1(a) confession statement that, if he was taken, he can show the place and the person to whom the chain was sold. On the basis of that statement, he along with the revision petitioner went to the shop of PW2 and both of them identified each other and PW2 had admitted that some time prior to that date, the revision petitioner came on two occasions and he sold two gold

chains, one a 'spiral chain' (pirichain) and other the 'karimani mala' and the 'karimani mala' was having weight of $1\frac{3}{4}$ sovereigns and he had converted the same into ingot and produced MO1 as the ingot obtained by him by melting that 'karimani mala'. Further PW2 also admitted these facts and he had also admitted that when the police came, he had produced MO1 ingot as the ingot obtained by melting the 'karimani mala' and that was seized by the police as per Ext.P1 mahazar and it was signed by PWs 4 and 5. PWs 4 and 5 also admitted that they have signed Ext.P1 mahazar, when PW2 had produced the gold ingot which was seized by the police.

10. It is true that, in cases where there is no evidence to prove that, the ingot was obtained by melting the stolen article, then, it can be said that, the identity of the stolen article has not been proved and that benefit can be given to the accused. But in this case PW2 had categorically stated that MO1 is the ingot which has been

obtained by melting the 'karimani mala' purchased from the revision petitioner and he had identified the revision petitioner, as the person who had sold the same to him as well. The submission made by the counsel for the revision petitioner that, the recovery effected on the basis of a confession statement given by the accused while he was in custody cannot be acted upon, as it hit by Section 25 of the Evidence Act is without any substance as Section 27 of the Evidence Act is an exemption for Section 25 and the statement given by the accused while in custody which led to the recovery of a relevant fact is admissible in evidence. Further the revision petitioner had no explanation, as to how he had come into possession of that article, which he had sold to PW2 also. Merely because, PW2 is not having any licence to conduct purchase and sale of gold ornaments is not a ground to disbelieve his evidence on this aspect. Once it is proved by the prosecution that, the stolen article was found to be in the possession of the revision petitioner

and that was recovered on the basis of the statement given by him, then it is admissible in evidence under Section 27 of the Evidence Act, unless the revision petitioner is able to give satisfactory explanation for coming to the possession of that article. In this case, no such explanation has been given by him. Further, once it is proved by the prosecution that, the revision petitioner was found to be in possession of the alleged stolen article, which was later converted into MO1 gold ingot, then the presumption under explanation 'A' to Section 114 of the Evidence Act will be attracted that he is either the thief or the receiver of stolen article. The revision petitioner had no case that he had received the same from somebody else. So under the circumstances, it can only be presumed that, it was he who had committed the offence and the recovery is effected on the basis of the confession statement given by the revision petitioner will go to show that, the identity of the article stolen has been proved by the prosecution beyond reasonable doubt and

courts below were perfectly justified in convicting the revision petitioner for the offence under Section 379 of the Indian Penal Code and the concurrent findings of the court below on this aspect do not call for any interference.

11. As regards the sentence is concerned, he was sentenced to undergo rigorous imprisonment for one year by the lower court and this was confirmed by the appellate court. It is not known as to what offence he was arrested and crime No.234/1998 of the same police station relates to. Further it is not clear from the judgment, as to whether he was a first offender at that time or he is a habitual offender as well. It is true that, theft of such nature are increasing and punishment must be provided severely in such cases. But at the same time, considering the age of the revision petitioner that he is only 22 years at the time when the incident occurred, this court feels that some leniency can be shown in the case of sentence. Courts below were perfectly justified in not invoking the benefit of Probation of

Offenders Act in this case. But at the same time, the sentence appears to be little harsh and reducing the same to nine months will be sufficient and that will meet the ends of justice. So the sentence of the court below is modified as follows:

The revision petitioner is sentenced to undergo rigorous imprisonment for nine months and the set off was allowed by the court below is hereby confirmed.

With the above modification of the sentence alone, the revision petition 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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