

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

Crl.Rev.Pet.No. 1269 of 2006

CRL.A. 123/2005 of ADDL SESSIONS COURT, KOZHIKODE DIVISION
CC 77/2002 of CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

P.M. SALU VARGHESE
S/O PAPPACHAN @ MANI,
PEKKADANKUZHI HOUSE, VEERPAD, P.O.IRITTY
KANNUR DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA, THROUGH THE
ASSISTANT SUB INSPECTOR OF POLICE
KASABA POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. PUBLIC PROSECUTOR SMT.M.G. LISHA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 18-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

RAJA VIJAYARAGHAVAN.V. J

Crl.R.P.1269 of 2006

Dated 18th August, 2015

ORDER

1. In this revision filed u/s 397 r/w s.401 of the Cr.P.C, the petitioner who is the sole accused in C.C.77 of 2002 on the file of the Chief Judicial Magistrate Court, Kozhikode for offence punishable u/s 457 and 379 of the IPC, challenges the conviction entered and the sentence passed against him concurrently by the Courts below for the aforementioned offenses.

2. The case of the prosecution is that, on 31.1.2002 at 2.00 am in the night while PW2 was sleeping in her house bearing No.25/1310 of Calicut Corporation at Valayanad amsom desom the petitioner had committed theft of a gold chain worn

by her, through the window of the bed room and thus committed the aforesaid offence.

3. On the accused pleading not guilty to the charge framed as against him by the trial Court, prosecution was permitted to adduce evidence in support of its case. PW1 to 7 were examined and Exts.P1 to P4 were marked. MO1 was produced and identified.

4. The learned Magistrate as per judgment dated 28.1.2005, held the prosecution had succeeded in proving that the accused had stolen away MO1 gold chain from the house of PW2 through the window, while she was sleeping in the house and accordingly he was convicted. Appeal preferred against the conviction and sentence was dismissed. The aforesaid concurrent findings are challenged in this

revision petition.

5. I have heard the learned counsel appearing for the petitioner as well as the learned Public Prosecutor.

6. The learned counsel appearing for the petitioner has submitted that there is absolutely no evidence whatsoever to prove that the petitioner had committed the offence as alleged. It was contended that no evidence was let in by the prosecution to prove the identity of MO1 gold chain which allegedly belonged to PW2. It was further argued that the evidence let in by the prosecution contradicts with each other and the conviction based on the same was not sustainable.

7. The learned Public Prosecutor on the other

hand, has argued that the petitioner is an inveterate offender and has been involved in other case as well. It was also urged by the learned Public Prosecutor that the Investigating Officer had found the petitioner with 17 gold ornaments near Ayswarya jewellery situated in M.M.Ali road and he was trying to sell the same to the public.

8. Even though the learned counsel appearing for the revision petitioner assailed the conviction and sentence on various grounds, I do not see any scope for interference. The findings recorded by the Court below are on the basis of appreciation of the evidence let in. Both the Courts have properly and correctly evaluated the evidence of prosecution witnesses. This Court will not be justified in interfering with the concurrent findings entered into by the Courts below. I do not find any error, illegality

or impropriety in the findings recorded by the Courts below.

9. At this stage, the learned counsel appearing for the petitioner has submitted that the petitioner had undergone remand in jail from 26.6.2002 to 29.6.2002 and from 6.9.2003 to 28.1.2005 which amounts to 514 days . It was also submitted that the incident was of the year 2002 and the sentence of 2 years RI is excessively grave. The learned Public prosecutor has submitted on instructions that the petitioner is involved in other cases as well and has even been released in one of the cases under the provisions of the Probation of Offenders Act. In view of the above, I do not think that any further leniency is warranted in the facts and circumstances .

10. The revision petition, in the above facts and

circumstances of the case, is devoid of any merit and is accordingly dismissed, confirming the conviction and sentence passed against the revision petitioner. The petitioner shall be entitled to set off as provided u/s 428 of the Cr.P.C.

Sd/-
RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

//True Copy//

P.S.ToJudge