

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 429 of 2012 ()

Crl.A 43/2007 of ADDL.SESIONS COURT (ADHOC)-II, KOTTAYAM
CC 1750/2003 of J.M.F.C.,CHANGANACHERRY

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

1. BIJU
S/O.RAMAKRISHNAN, MALLUROTHU VEEDU, NATTASSERY KARA
PERUMBAIKADU VILLAGE (VASUDEVA VILASOM, KANDANCHIRA
PEROOR), KOTTAYAM.
2. BIJU K.CHACKO
S/O.CHACKO, KOTTAKANDATHIL VEEDU, THANKAPPAN
MADAM BHAGOM, VIJAYAPURAM VILLAGE, MANGANAM KARA
KANJIKUZH, KOTTAYAM.

BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)
SMT.NISHA JOHN
SRI.ENOCH DAVID SIMON JOEL
SMT.TINA ALEX THOMAS
SRI.S.SREEDEV

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
17-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.429 of 2012

Dated this the 17th day of December 2015

O R D E R

The revision petitioners are the accused in C.C.No.1750 of 2003 on the files of the Court of the Judicial Magistrate of First Class, Changanacherry.

2. The trial court convicted the revision petitioners under Section 379 read with Section 34 I.P.C. The appeal filed against the said conviction and sentence was dismissed. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that on 11.6.2003 at

9.30 a.m., while PW1 was proceeding to her house along the public road, the revision petitioners came near to her in a motor cycle, with the first revision petitioner as the pillion rider and the second revision petitioner as the rider when PW1 reached near to Champakara Government L.P. School, and thereafter, the revision petitioners snatched away the gold chain from her neck.

5. Before the trial court, PW1 to PW7 were examined and Exts.P1 to P3 series were marked for the prosecution, besides identifying MO1 gold chain. No evidence was adduced on the side of revision petitioners.

6. PW1 stated that on the date of incident at about 9.30 a.m., while she was returning to her house from the temple, the revision petitioners came near to her in a motor

cycle with the first revision petitioner as the pillion rider and the 2nd revision petitioner as the rider and asked her about the house of Ravi of Electricity Board. She said that she did not know the house. Then the revision petitioners pointed out one house near to that place as the house of the said Ravi. PW1 turned her face to that house and at that time, her gold chain was snatched away by the first revision petitioner from her neck.

7. PW7 was the Sub Inspector of Police, who conducted the investigation in this case. PW7 stated that the first revision petitioner had given Ext.P3(a) statement while he was in custody and in pursuance to Ext.P3(a) statement and as led by the first revision petitioner, PW7 and the police party reached the shop of PW6 along with

the first revision petitioner and thereafter, PW6 had handed over MO1 gold chain to PW7, who in turn recovered the same as per Ext.P3 mahazar. The witnesses examined to prove the recovery as per Ext.P3 mahazar did not support the prosecution case.

8. PW5 was the gold-smith, who weighed the article recovered in this case. According to PW5, the recovered article in this case was gold ingot. He weighted the said gold ingot. PW5 was not cross-examined on behalf of the prosecution.

9. PW1 identified MO1 before the court. In her examination-in-chief, she stated that MO1 was the gold chain stolen from her neck. However, in her cross-examination, she stated that the police informed her that

her chain was sold by the revision petitioners and the police recovered a gold chain having the same weight. In re-examination, she stated that the police told her that her gold chain was substituted by another gold chain. Having gone through the evidence of PW1, it appears that PW1 was not sure about the identity of MO1 gold chain. PW1 also did not state about the fashion of the gold chain stolen from her. When she was asked as to whether MO1 appeared to be a new chain not used by anybody, she remained silent.

10. PW1 stated that on the date of incident itself she had given a complaint before the police. It was a written complaint. Thereafter, the Police had taken down her statement also. However, no such statement was produced

before the court by the police. PW7 stated that PW1 did not give any such statement before the Police. The further evidence of PW1 is that it was the police who told her that the incident in this case was on 11.6.2003. Her further evidence is that the revision petitioners were shown to her by the police. The revision petitioners were produced in front of her house and shown to her. Thereafter, PW1 was called to the police station and there also, the police had shown the revision petitioners to PW1. PW1 admitted that PW1 did not have previous acquaintance with the revision petitioners. Having gone through the evidence of PW1, PW5 and PW7, I am of the view that the evidence on record is not sufficient to hold that MO1 was the gold chain stolen from the neck of PW1. Since the revision petitioners were

shown to PW1 twice prior to her identification before the court as per the evidence of PW1, the evidence of identification of the revision petitioners by PW1 cannot be given much weight, particularly when the recovery effected in this case is not free from doubt. These aspects were not considered by the courts below in correct perspective. Therefore, the appreciation of evidence by the courts below cannot be said to be correct. Having gone through the relevant inputs, I am satisfied that the evidence available on record is not sufficient to establish that the revision petitioners committed the offence under Section 379 read with Section 34 I.P.C. and consequently, the conviction and sentence passed by the courts below cannot be sustained.

In the result, this revision petition stands allowed, setting aside the conviction and sentence passed by the courts below under Section 379 read with Section 34 I.P.C. and the revision petitioners are acquitted for the said offence. The bail bond of the revision petitioners stands cancelled and they are set at liberty.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

dl/18.12..2015

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PA to Judge