

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

Cr1.Rev.Pet.No. 3119 of 2004 (D)

AGAINST THE ORDER/JUDGMENT IN CRA 251/2000 of ADDL.SESIONS COURT
(ADHOC)-II, KOZHIKODE DATED 04-04-2003

AGAINST THE ORDER/JUDGMENT IN CC 1284/1994 of J.M.F.C.-IV, KOZHIKODE

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

E.M. SHAJI, AGED 25 YEARS,
S/O. RAMANKUTTY, NADAKKAVU, KOZHIKODE.

BY ADVS.DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENT/COMPLAINANT::

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

R, BY ADV. PUBLIC PROSECUTOR MADHUBEN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 08-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.D.RAJAN, J

.....
Crl.R.P.No.3119 of 2004
.....

Dated 8th April, 2015

ORDER

The revision petitioner is the accused in C.C.No.1284 of 1994 of the Judicial Magistrate of First Class IV, Kozhikode which was filed for the offence punishable under Section 457 and 380 IPC. The prosecution allegation was that on 26.5.1994, between 11 pm and 6 am, the accused committed house breaking of House No.2/547 at P.M.Kutty Road, Kacheri amsom and thereby snatched a gold chain from the waist of a minor child who was sleeping in that house.

2. While conducting investigation in Crime No.316 of 1994 of Nadakkavu Police Station, C.I of Police apprehended the revision petitioner from the KSRTC bus stand, Calicut at 7.15 pm. During interrogation, revision petitioner admitted that he had stolen MO1 from the house of PW1. On the basis of that information, he recorded the statement and registered a Crime and prepared Ext.P4 FIR and also prepared Ext.P1 seizure mahazar. He also prepared Ext.P2 scene mahazar, the disclosure portion was marked as Ext.P2(a). After completing investigation, S.I laid charge before court.

3. To prove the allegation, prosecution examined Pws 1

to 6 and marked Ext.P1 to P4. The incriminating circumstances were denied by the revision petitioner while questioning him. Trial court convicted the accused. Aggrieved by that, he preferred an appeal, 251 of 2000 before Sessions Court, Kozhikode, where the appeal was dismissed. Hence this revision petition.

4. Learned counsel appearing for the revision petitioner contended that there was no complaint from the side of PW1 against the revision petitioner and there is no proper identity of the stolen article. Without proper identity, the conviction against the revision petitioner is unsustainable. According to PW1, a gold chain consisting of one sovereign was stolen from his house. But MO1 having only 6.05 gms. Therefore, the recovery and identity of stolen article were not correlating. In such a situation, revision petitioner is entitled to get the benefit of doubt which was not considered by the courts below.

5. Learned Public Prosecutor strongly opposed the argument and contended that when proper recovery is effected by the Investigating Officer on the basis of the information given by the accused person and the incriminating

article is recovered, automatically the police officer will get right to proceed with the facts discovered. Therefore, there is no reason to doubt the recovery of MO1 on the basis of Ext.P2 (a) disclosure.

6. For ascertaining the legality or irregularity in the findings recorded by the court below, I perused the oral and documentary evidence for the purpose of specifying the correctness and legality and propriety of the finding. PW1 was examined in the trial court who deposed that on 28.5.1994 after 10.30, his daughter's one sovereign of gold ornaments was stolen by some unknown person. On 11.10.1994, at 2.30 pm, the accused was brought before his house and identified MO1 gold chain. But he has not made any complaint to the police after 26.5.1994. But learned counsel for the revision petitioner contended that non filing of the complaint to the police created a doubt in the credibility of the prosecution case. But that was not challenged by the revision petitioner in the trial court. This court in **State of Kerala V. Mohanan** (1987(2) KLT 64) held that non filing of a complaint in a theft case is not fatal to discard the prosecution case.

7. The stolen article was recovered from the shop of

PW2. PW5 deposed that while conducting investigation in Crime No.316 of 1994, the revision petitioner was arrested from the KSRTC bus stand at 7.15 am. During interrogation in Crime No.316 of 1994, he admitted that he committed offence in the crime and on the basis of that information, he proceeded to the shop of PW2 and recovered MO1. For that, he prepared Ext.P1 seizure mahazar and the disclosure portion made during confession in Crime No.316 of 1994 was included in Ext.P1 seizure mahazar. That was marked as Ext.P1(a) which was wrongly marked as Ext.P2(a) at the time of marking in the trial court). He recovered MO1 on the basis of Ext.P1 seizure mahazar. Thereafter he identified MO1 showing it to PW1. The report is marked as Ext.P3. FIR was marked as Ext.P4. Even though PW5 was cross examined by the defence counsel, nothing has been brought out to discredit the above version. He categorically admitted that confession statement in Crime No.316 of 1994 was recorded and the revision petitioner's confession statement was included in that case. The recovery was supported by PW2 and PW3. PW1 identified MO1 gold chain. PW4 attested the mahazar. Analysing the evidence in this case, it is found that trial court properly

considered the evidence and presumed that the person in possession of the stolen article immediately after the theft is either the person who has stolen the article or who has received the goods knowing them to be stolen.

8. The offence was detected by the C.I of Police, Nadakkavu while conducting investigation in Crime No.316 of 1994 of Nadakkavu Police Station. During interrogation, revision petitioner confessed that he committed the offence in this case and he sold MO1 in the shop of PW1. PW2 admitted the above disclosure made by the revision petitioner and recovered the gold chain on the basis of information given by him. He gave a report to PW6, on that report Crime NO.319 of 1994 was registered. Ext.P1(a) disclosure is sufficient which was included along with th seizure mahazar for recovering it from the person in possession of the stolen goods. PW2 admitted that it was entrusted by the revision petitioner. There is some discrepancy in the weight of MO1. PW1 deposed that bears a weight of 8 gms but at the time of recovery, it was found to be 5.650 gms. That discrepancy in the weight of the ornaments is not a ground to discard the prosecution case. Trial court considered those aspects and convicted the

accused. There is no irregularity or illegality in the finding. Therefore, the conviction passed by the trial court is only to be confirmed.

9. Learned counsel appearing for the revision petitioner contended that the revision petitioner was aged 28 years at the time of committing the offence. Even after an elapse of 20 years, imprisonment for a period of one year is too harsh and he prayed for some leniency in the sentence. It is true that long 20 years have elapsed after committing the offence. In the circumstance, considering the nature of the offence and the delay, revision petitioner is sentenced to imprisonment for three months and to pay a fine of Rs.15,000/- under Section 380 IPC. He is also sentenced to undergo imprisonment for another three months under Section 457 IPC. The sentences shall run concurrently. The learned Magistrate shall issue a fresh non bailable warrant.

The CrI.R.P is allowed in part.

P.D.RAJAN, JUDGE

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