

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

Cr1.Rev.Pet.No. 3187 of 2006 ()

AGAINST THE JUDGMENT IN Cr1.Appeal 142/2005 of ADDL.SESIONS COURT
FAST TRACK-III (ADHOC), MANJERI DATED 18-07-2006

AGAINST THE JUDGMENT IN CC 20/2004 of CHIEF JUDICIAL
MAGISTRATE,MANJERI DATED 02.03.2005

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SIDIQUE. S/O. MOIDEENKUTTY,
KAREETTAPARAMBIL HOUSE, KAMBALAKKALLU
VAZHIKKADAVU AMSOM, PULIKKALANGADI
MALAPPURAM DISTRICT.

BY ADV. SRI.P.SAMSUDIN

RESPONDENT(S)/RESPONDENT/COMPLAINANT & STATE:

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

R, BY PUBLIC PROSECUTOR SRI. N. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 30-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.3187 of 2006

Dated this the 30th day of November, 2015

ORDER

The revision petitioner was charge sheeted in C.C.No.20/2004 of Chief Judicial Magistrate Court, Manjeri for having committed an offence punishable u/s.457, 461, 380 r/w. 34 IPC. The charge was that between 28.6.1999 and 30.6.1999 night the revision petitioner and two others committed house breaking in building No.VI/423 of Edavanna Panchayat and stolen VCP worth ₹6,000/- and cash ₹2,000/- from the house. Edavanna Police registered a crime and after completing investigation, they laid charge before Chief Judicial Magistrate, Manjeri against three accused persons. The revision petitioner was absconding, hence other's case

was disposed as C.C.No.221/2000 by that Court. The split up case of the revision petitioner was tried as C.C.No.20/2004 before Chief Judicial Magistrate, Manjeri.

2. During trial, prosecution examined 11 witnesses and marked Exts.P1 to P6 as documentary evidence. The VCP was marked as MO1 in the trial Court. The learned Magistrate convicted the accused and sentenced to undergo rigorous imprisonment for 3 years each and to pay fine of ₹2,000/- u/s.457 IPC and 380 IPC, with a default sentence of three months, each and rigorous imprisonment for one year u/s.461 IPC. Against that, the revision petitioner preferred Crl.Appeal No.142/2005, before Additional Sessions Judge, Fast Track-III, Manjeri where the conviction u/s.380 IPC was confirmed and acquitted u/s.457 and 461 r/w.34 IPC. Being aggrieved by that, he preferred this revision petition.

3. Heard both sides. Learned counsel for the revision petitioner contended that there was misreading of evidence and many things favourable to the petitioner were omitted by the Courts below. Some relevant factors, which ought to have been considered, were not appreciated in the correct sense. In this back ground, I have obtained a report from the District Probation Officer, Malappuram about the antecedents of the revision petitioner.

4. The presumption of criminal law is that a person is innocent, unless the prosecution proved the case beyond reasonable doubt. Such presumption is available to the accused in this case who is charge sheeted for offence of house breaking by night in order to commit an offence of theft. In order to attract an offence of theft, prosecution has to prove that the accused with intending to take dishonestly any movable property out of the possession of

any person without that person's consent and he moves that property in order to such taking. The mere suspicion that the incident happened on a particular day is not sufficient to attract the offence.

5. The occurrence was deposed by PW1 and PW2, who deposed that the offence of house breaking was committed by the revision petitioner with the help of other accused. The evidence of PW1 shows that on 28.6.1999, she locked the house and went to her parental house and returned on 30.6.1999. At that time, the front door of the house was found broken and a suit case was lying at the courtyard. She went inside and inspected the room at that time she noticed that a VCP and a sum of ₹2,000/- kept in the suit case were missing. She reported the matter to the Police. Subsequently, VCP was recovered by the Police and it was marked as MO1. PW2 supported

the evidence of PW1 but he has no direct knowledge.

The recovery of MO1 was effected from the shop of PW3, who is conducting the sale of foreign goods in Kozhikode.

He admitted that one person sold MO1 in his shop for ₹4,500/- about 1 $\frac{1}{2}$ years back, and Circle Inspector of

Police, Nilambur with the help of A1 and A2 recovered

MO1. PW4 attested Ext.P1 seizure mahazar. PW5

witnessed the recovery of MO1 from the shop of PW3.

PW6 attested Ext.P2 scene mahazar. The case was

registered by PW7 and Ext.P3 is the FIR. The aforesaid

evidence is admissible and should be received by the Court

to which it is tendered unless there is a legal reason for its

rejection. Admissibility presupposes relevancy.

Admissibility also denotes the absence of any applicable

rule of exclusion. Facts should not be received in evidence

unless they are both relevant and admissible. The

principal rules of exclusion under which evidence becomes inadmissible are two fold. First, evidence of relevant facts is inadmissible when its reception offends against public policy or a particular rule of law. Some matters are privileged from disclosure. A party is some times estopped from proving facts and these facts are therefore inadmissible. Second, relevant facts are subject to recognized exceptions inadmissible unless they are proved by the best or the prescribed evidence.

6. The recovery of the stolen article MO1 was effected by the C.I. of Police, Nilambur (PW9) on the basis of information given by this accused, from the shop of PW3. The disclosure portion of the accused was marked as Ext.P5. Even though PW9 was cross examined in the trial Court, nothing has been brought out to discredit his evidence. PW8, the Sub Inspector of Police conducted

investigation in this case and laid charge. He also supported the recovery effected by PW9. PW11 deposed that the crime was registered on the basis of disclosure made by the accused. Apex Court in K. Chinna Swamy Reddy

v. State of Andhra Pradesh [1962 SC 1788] held as follows:

"Section 27 is an exception to Ss.25 and 26 of the Evidence Act, which prohibit the proof of a confession made to a police officer or a confession made while a person is in police custody, unless it is made in immediate presence of a Magistrate. Section 27 allows that part of the statement made by the accused to the police "whether it amounts to confession or not" which relates distinctly to the fact thereby discovered to be proved. Thus even a confessional statement before the police which distinctly relates to discovery of a fact may be proved under S.27.

It is only that part which distinctly relates to the discovery which is admissible: but if any part of the statement distinctly relates to the discovery it will be admissible wholly and the court cannot say that it will exercise one part of the statement because it is of a confessional nature. Section 27 makes that part of the statement which is distinctly related to the discovery admissible as a whole, whether it be in the nature of confession or not.

Where in a case under S.411, IPC the accused stated that he would show the place where he had hidden the ornaments, the whole of the statement relates distinctly to the discovery of the ornaments

and is admissible under S.27 of the Indian Evidence Act. The words "when he had hidden them" have nothing to do with the past history of the crime and are distinctly related to the actual discovery that took place by virtue of that statement. Also these words by themselves though they may show possession of the appellant would not prove the offence, for after the articles have been recovered, the prosecution has still to show that the articles recovered are connected with the crime, i.e. in this case, the prosecution will have to show that they are stolen property."

There was no illegality in his evidence. On a close scrutiny of PW1, it is clear that the recovery was effected on the basis of information given by the accused and no reason has been brought out to discredit the oral evidence of PW9. Therefore, the statement distinctly relating to discovery is admissible in evidence and both Courts analysed the recovery and the appellate Court confirmed the conviction u/s.380 IPC and acquitted the revision petitioner u/s.447 and 461 IPC. There is no illegality or irregularity in the above finding and the conviction u/s.380

IPC is confirmed.

7. In this context, I have considered the report submitted by the Probation Officer, Malappuram, in which he reported that the revision petitioner is now leading a peaceful life and maintaining good relation in the locality and he is undergoing treatment for heart ailment. He has to undergo an open heart surgery. He belongs to a poor family. If he is sent to jail, it will affect his family consisting of his wife and children. According to Section 4 (1) of the Probation of Offenders Act, 1958 when any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, instead of sentencing him at once to any

punishment, it is expedient to release him on probation of good conduct. This power can be exercised by the appellate or revisional court after considering the nature of offence and the character of the offender. Hence, instead of sentencing the revision petitioner to jail, he is released on probation of good conduct according to the following conditions:

a) He shall appear before Chief Judicial Magistrate, Manjeri and execute a bond for ₹15,000/- with two solvent sureties of the like amount to the satisfaction of the Chief Judicial Magistrate.

(b) He shall appear and receive sentence as when called upon by the trial Court during such period, not exceeding one year.

(c) He shall be under the supervision of the District Probation Officer, Manjeri for a period of one year and

the Probation Officer shall file periodical report before trial Court.

(d) If any of the conditions stated is violated, the order passed u/s.4(1) of the Probation of Offenders Act, 1958 shall be cancelled and the revision petitioner shall appear before the trial Court and receive sentence imposed by the appellate Court.

The Crl.R.P. is disposed of as above.

Sd/-
P.D. RAJAN, JUDGE.

acd

True copy

PA to Judge.

