

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

Crl.Rev.Pet.No. 2577 of 2009 ()

AGAINST THE JUDGMENT IN CRL.A. 379/2006 of I ADDL.
SESSIONS COURT, PALAKKAD DATED 31-10-2008

AGAINST THE JUDGMENT IN CC 212/2004
of J.M.F.C.-I, PALAKKAD DATED 27-5-2006

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MADHAVAN, S/O.MURALEEDHRAN,
KARAKATTUPARAMBU, VALIYAPADAM, PALAKKAD.

BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI.V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 08-10-2015, ALONG WITH CRRP. 2578/2009, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....

Crl.R.P. Nos. 2577 of 2009 & 2578 of 2009

.....

Dated this the 8th day of October, 2015

ORDER

The revision petitioner in Crl.R.P. No. 2578 of 2009 is the second accused and the revision petitioner in Crl.R.P. No. 2577 of 2009 is the 3rd accused in C.C. No. 212/2014 on the files of the court of the Judicial Magistrate of First Class – I, Palakkad .

2. The trial Court convicted the revision petitioners under Sections 457 and 380 read with Sec. 34 IPC and sentenced them to rigorous imprisonment for three years each and a fine of Rs. 5,000/- each under Section 457 IPC and rigorous imprisonment for three years each and a fine of Rs. 5,000/- each under Section 380 IPC.

3. The appeal filed against the said conviction and sentence was dismissed. Aggrieved by the said conviction and sentence, these Revision Petitions have been filed.

4. The prosecution case is that on 28-10-2003 at about 1 a.m., the revision petitioners and the other accused, in furtherance of their common intention to commit theft,

trespassed into the shop of PW1 by breaking open the door and committed theft of 10 car stereos and its accessories worth Rs. 76,200/-.

5. Before the court below, PW1 to PW14 were examined and Exts. P1 to P9 were marked for the prosecution, besides identifying MO1 to MO8.

6. PW1 is the owner of the shop namely 'Car Palace' at Pirivusala. PW1 stated that at about 9.30 a.m on 28-10-2003 when he came to the shop, for opening the shop, he found the shutter of the shop in an open condition. When he inspected, he could realise that 10 car stereos were lost from the shop. He lodged Ext. P1 F.I. statement before the police in connection with the incident. He identified MO1 to MO8 before the Court and stated that the said articles were stolen from his shop.

7. PW2 is the brother of PW1 who supported the evidence of PW1 in all material aspects. PW14 was the Circle Inspector of Police who arrested the 2nd accused on 20-11-2003 at about 8.10 p.m. When questioned, the second accused had given Ext. P4 (a) disclosure statement and in pursuance to Ext.P4 (a) disclosure statement and as led by the 2nd accused, PW14 discovered MO2 C.D. player at the instance of the 2nd accused as per Ext. P4 mahazar on 21-11-2003 at 10.30 a.m. PW11 is an attester to Ext. P4 mahazar. PW14 arrested the 3rd accused on 2-12-2003

at 11.am. When questioned, the 3rd accused had given Ext. P7 (a) disclosure statement and as per Ext. P7 (a) disclosure statement, PW14 discovered MO1 Car Stereo from the house of the 3rd accused as per Ext. P7 mahazar.

8. The evidence of PW14 regarding the discovery of MO2 at the instance of the 2nd accused pursuant to the disclosure statement given by the 2nd accused and the discovery of MO1 pursuant to the disclosure statement given by the 3rd accused is admissible under Section 27 of the Evidence Act. MO1 and MO2 were identified by PW1 who is the owner of the said articles. It is true that PW11 did not support the prosecution case with regard to the recovery of MO2 from him. However, he admitted his signature in Ext. P4 mahazar.

9. It is trite law that the evidence of the Investigating Officer with regard to the discovery can be acted upon if his evidence is reliable, natural and acceptable. In this case, there is nothing on record to indicate that PW14 had any ill-motive to implicate the 2nd and the 3rd accused in a case like this. There is no allegation that PW14 had any enmity towards them. In the absence of any ill-motive on the part of PW14, the evidence of PW14 with regard to the discovery of MO1 and MO2 can safely be accepted. The recovery of MO1 and MO2 is corroborated by the evidence of PW1 and PW2 who stated about the theft committed from the shop of PW1 during the night of 27-10-

2003.

10. The courts below correctly appreciated the oral and documentary evidence and came to the conclusion that the revision petitioners committed the offence under Sections 457 and 380 IPC read with Section 34 IPC. Since there is concurrent finding on facts, this Court will not be justified in interfering with the same unless the finding is perverse or incorrect. No circumstance has been brought to my notice to indicate that the finding of the courts below is perverse or incorrect. In the said circumstances, the concurrent finding of the courts below that the revision petitioners committed the offence under Sections 427 and 380 read with Sec. 34 IPC, does not call for any interference by this Court.

11. As regards the sentence, the learned counsel for the revision petitioners has pleaded for leniency. There is no material before the Court to prove any previous conviction of the revision petitioners. Considering the facts and circumstances of the case including the age of the revision petitioners, the jail term awarded by the courts below can be modified and reduced to rigorous imprisonment for one year each under Section 457 IPC and rigorous imprisonment for one year each under Section 380 IPC to meet the ends of justice and accordingly, I order so.

12. In the result, this revision petition stands allowed in

part, confirming the verdict of guilty and conviction passed by the courts below under Sections 457 and 380 IPC read with Section 34 IPC. The sentence awarded by the courts below stands modified and reduced to rigorous imprisonment for one year each and a fine of Rs. 5000/- each and in default to simple imprisonment for one year each under Section 457 IPC and rigorous imprisonment for one year each and a fine of Rs. 5000/- each and in default to simple imprisonment for one year each under Section 380 IPC. The substantive sentence of imprisonment shall run concurrently.

The revision petitioners shall surrender before the trial Court on 3-11-2015 to suffer the sentence. The revision petitioners are entitled to set off for the period of detention already undergone by them in connection with this case.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

ani/

/truecopy/

P.S. To Judge