

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

Crl.Rev.Pet.No. 2597 of 2009 ()

JUDGMENT IN Crl.A 52/2009 of VI ADDL.SESIONS COURT, ERNAKULAM

JUDGMENT IN CC 259/2007 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
NORTH PARAVUR

REVISION PETITIONER/APPELLANT/ACCUSED NO.1:

VINOJ, S/O.THAMBI, AGED 33 YEARS, KAVUMKAL
PARAMBIL, HARIJAN COLONY, THONIACKAVU
PARAVOOR KARA, PARAVOOR VILLAGE.

BY ADVS.SRI.GEO PAUL
SRI.SANU MATHEW
SRI.NOEL JOSEPH
SRI.M.B.SANDEEP
SRI.RAJANISH K.V.

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY SUB
INSPECTOR OF POLICE, N.PARAVOOR, BY P.PROSECUTOR
HIGH COURT OF KERALA.

R, BY ADV. SRI.S.ASHOK KUMAR.
BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 06-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.2597 of 2009

Dated this the 6th day of November, 2015

ORDER

The revision petitioner is the accused in C.C.No.259 of 2007 on the files of the court of the Judicial Magistrate of First Class, North Paravur.

2. The revision petitioner was convicted by the trial court under Section 394 IPC and sentenced him thereunder to rigorous imprisonment for two years and a fine of ₹1,000/-. 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.

4. The prosecution allegation is that on 29.1.2007 at about 3.00 p.m., the revision petitioner voluntarily caused hurt on PW1 while committing robbery in respect of 1½ sovereigns of gold ornaments and ₹700/- in furtherance of the common intention of the revision petitioner and the other

accused.

5. Before the trial court, PW1 to PW8 were examined and Exts.P1 to P6 were marked for the prosecution. Ext.D1 was marked for the revision petitioner.

6. The courts below, after evaluating the oral and documentary evidence adduced by the parties, concurrently found that the revision petitioner committed the offence under Section 394 IPC. The defence set up by the revision petitioner was also turned down by the courts below. 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 concurrent finding by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by the courts below that the revision petitioner committed the offence under Section 394 IPC does not warrant any interference by this Court.

7. The de facto complainant has filed an affidavit

stating that the matter has been settled between the parties and the de facto complainant is not having any further grievance against the revision petitioner. Since the matter has been settled between the parties, leniency can be taken in the matter of sentence. There is no material before the court to show that the revision petitioner was convicted in any other offence of similar nature. Considering the facts and circumstances of the case, including the fact that the matter has been settled between the de facto complainant and the revision petitioner, I am of the view that leniency can be taken in the matter of sentence and accordingly, the sentence awarded by the courts below can be modified and reduced to simple imprisonment for three months under Section 394 IPC to meet the ends of justice.

In the result, this revision petition stands allowed in part,

(i) confirming the verdict of guilty and conviction passed by the courts below under Section 394 IPC,

(ii) the sentence awarded by the courts below stands modified and reduced to simple imprisonment for three months under Section 394 IPC.

The revision petitioner shall surrender before the trial court on 2.12.2015 to suffer the sentence. The revision petitioner is entitled to set off under Section 428 Cr.P.C. for the period of his detention in connection with this case.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

Sc/7.11.2015

True Copy

PA to Judge