

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

Crl.Rev.Pet.No. 558 of 2015 ()

**AGAINST THE JUDGMENT IN CRA 287/2013 of ADDITIONAL DISTRICT AND SESSIONS
COURT, MOOVATTUPUZHA DATED 30-01-2015**

**AGAINST THE JUDGMENT IN CC 571/2005 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, KOLENCHERRY DATED 13-05-2013**

REVISION PETITIONER(S)/APPELLANTS/ACCUSED 1 & 4.:

- 1. RAMESAN, AGED 45 YEARS
S/O.VALLON, THORTHANAKUDY VEEDU, KARINGAZHA KARA
THRIKKARIYOOR VILLAGE, ERNAKULAM DISTRICT.**
- 2. SUDHA, AGED 40 YEARS,
W/O.RAMESAN, THORTHANAKUDY VEEDU, KARINGAZHA KARA
THRIKKARIYOOR VILLAGE, ERNAKULAM DISTRICT.**

BY ADV. SRI.IEANS.C.CHAMAKKALA

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA
REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE
RAMAMANGALAM, THROUGH THE PUBLIC PROSECUTOR
HIGH COURT, ERNAKULAM-682 031.**

BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
04-06-2015, ALONG WITH CRL.R.P. NO. 590/2015, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:**

ds

K.HARILAL, J.

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Crl.R.P.Nos.558 & 590 of 2015

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Dated this the 4th day of June, 2015

ORDER

These revision petitions are filed challenging the concurrent findings of conviction and sentence imposed on the revision petitioners in C.C.No.571/2005 on the files of the Judicial First Class Magistrate's Court, Kolencherry, which was confirmed in Criminal Appeal Nos.287/2013 and 306/2013 by the Additional District & Sessions Judge, Muvattupuzha. The revision petitioners in revision petition No.558/2015 are accused Nos.1 and 4 and the revision petitioner in revision petition No.590/2015 is the 3rd accused in Crime No.78/2004 of Ramamangalam Police Station. They along with the 4th accused were prosecuted for the offences punishable under Sections 457, 461, 380 and 414 read with Section 34 of the Indian Penal Code and 1st accused was found guilty for all the said offences except

offence under Section 414 of the Indian Penal Code and A2 to A4 were found guilty for the offence under Section 414 and acquitted of the offences under Sections 457, 461 and 380 read with Section 34 Indian Penal Code. Now, 1st accused stands sentenced to undergo rigorous imprisonment for two years for the offence under 457 IPC and to undergo rigorous imprisonment for one year for the offence under Section 461 IPC and to undergo rigorous imprisonment for three years for the offence under Section 380 IPC. All the sentences shall run concurrently. Set off is allowed. Accused Nos.2 to 4 stand sentenced to undergo rigorous imprisonment for two years each for the offence under Section 414 IPC. They are acquitted of the offences punishable under Sections 457, 461 and 380 IPC. Set off is allowed. The legality and propriety of the concurrent findings of conviction and sentence are under challenge in these revision petitions.

2. The prosecution case in brief is as follows: The 1st

accused with an intention to commit theft, on 2.7.2004 early morning, entered into the house No.11/21 of Pampakuda Grama Panchayat through the ventilator of the bedroom and opened the lock of almirah and stolen away gold ornaments kept therein. Then he took the key of another almirah, opened the same with that key and stolen away gold ornaments having a total weight of 72 sovereigns worth ₹3,02,400 kept therein. Thereafter, 1st accused sold and pledged the ornaments with the help of A2 to A4 and deposited ₹45,000/- in the Co-operative Bank in name of his wife, the 4th accused. Thus, they have committed the offences punishable under Sections 457, 461, 380 and 414 read with 34 IPC.

3. To prove the prosecution case, PWs.1 to 25 were examined and Exts.P1 to P26 and D1 and material objects M.O.1 to M.O.18 were marked. The accused pleaded not guilty. But no evidence had been adduced in defence. They denied all the incriminating circumstances put to them

while questioning under 313 of the Code of Criminal Procedure.

4. The learned counsel for the petitioners advanced arguments challenging the concurrent findings of conviction and sentence. According to the learned counsel, the court below failed to appreciate the oral evidence of the witnesses in its correct perspective. The sum and substance of the arguments is that absolutely there is no evidence to prove the commission of theft from the house of PW2 by the accused. Mere recovery of the gold ornaments alleged to have been stolen away by the accused from various jewellery shops is not sufficient to bring home guilt of the 1st accused under Section 380 of the Indian Penal Code. The foot marks seen in the wall of the bathroom was not scientifically examined to prove that the marks are the marks of the accused. It is also contended that the recovery under Section 27 of the Evidence Act made under Exts.P3 to P8 seizure mahazars are not reliable to base guilt

of the accused.

5. Per contra, the learned Public Prosecutor advanced arguments to justify the concurrent findings of conviction entered and sentence imposed on the accused by the courts below. According to the Public Prosecutor, the prosecution has succeeded in proving the charge against the accused beyond doubt. There is no illegality or impropriety in the recovery made under Section 27 of the Indian Evidence Act, whereby PW25 Investigating Officer recovered the gold ornaments stolen away by the accused and subsequently sold in different jewelleries.

6. The scope and extent of jurisdiction of this Court in a revision filed under Sections 397 and 401 of the Code of Criminal Procedure is very limited and confined to the examination of legality, propriety and correctness of the findings of the court below only. This Court is not supposed to re-appreciate the entire evidence on record and no interference with appreciation of evidence is possible

unless it is shown that the appreciation of evidence is tainted with perversity. In the matter of appreciation of evidence, even if two views are possible, this Court cannot substitute its own view instead of the concurrent views of the courts below.

7. With the above yardstick, I have meticulously examined both judgments under challenge by which the courts below concurrently found that the accused are guilty of the offences for which they are convicted. On an evaluation of the evidence of PW2, from whose house the gold ornaments were stolen away, the court below concurrently observed that she has given evidence in conformity with her statement before the Police. No direct evidence would be available in a theft case committed in a midnight. The evidence of PW2 is supported by the evidence of PWs.1 and 12, who are the son in law and daughter of PW2 as well as the inmates of the house at the time when the offence was allegedly committed. After

appreciating the evidence of PWs.2 and 12, the courts below observed that the missing of gold ornaments by way of theft from the house of PW2 as alleged by the prosecution stands proved. I do not find any reason to unsettle the said findings of the courts below.

8. PW25, the Investigating Officer is the star witness in the instant case. During the course of investigation, on the basis of the statement given by PW2, he arrested 2nd accused on 27.8.2004 and recorded his confession statement. Subsequently, he arrested the first and third accused and their confession statements were also recorded. On the basis of the confession statements of the said accused, he had effected recovery M.O.1 to M.O.7 gold ornaments as per Section 27 of the Evidence Act under Exts.P3 to P8 seizure mahazars from the shops of PWs.3, 6 and 8. After evaluating the evidence of PWs.3, 6 and 8, the courts below observed that during the course of recovery, they have identified the accused as the persons who have

sold the gold ornaments to them. The said gold ornaments were identified by PWs.1 and 2 as the gold ornaments which were found missing from the bedroom of their house. PWs.3, 6 and 8 jewellery owners identified the accused in court also. Thus, on an analysis of the findings of the court below, I find that the guilt of the accused has been proved beyond doubt by the evidence of PWs.1, 2, 3, 6, 8 and 25. The court below observed that though these witnesses were cross examined at length and into minute details, nothing brought out to discredit their version or to impair the credibility of the proceedings whereby PW25 recovered the gold ornaments as per Section 27 of the Evidence Act.

9. Coming to the contention raised by the learned counsel for the petitioner, the counsel argued that even if the prosecution evidence is admitted at its entirety, it is not sufficient to bring home guilt of the accused for the offence under Section 380 Indian Penal Code and at the most, they can be convicted for the offence under Section 411 of the

Indian Penal Code only. According to the learned counsel, unless the foot marks seen on the wall of the bathroom is scientifically examined and proved as the marks of the accused, no conviction can be based for the offence under Section 380 of the Indian Penal Code.

10. But, I am unable to accept the said argument in view of the other evidence available in abundance on record which is pointing towards the accused for the commission of the offence under Section 380 Indian Penal Code. Admittedly, the missing of the gold ornaments from the house of P.W.2, as alleged by her, stands proved. Similarly, the recovery of the gold ornaments under Sec.27 of the Evidence Act on the basis of the confession statement of all the accused from the jewelleries of P.Ws.3 to 6 are also proved beyond doubt. It follows that the possession of the gold ornaments, which were found missing from the house of P.W.2, was found in the possession of the accused. If that be so, the burden is heavy on the accused to give a

sufficient and reasonable explanation to account for their possession. In the instant case, no explanation had been put forward as to the possession of the missed gold ornaments which were found in the hand of the accused immediately after the theft and subsequently pledged and sold. Thus, the non-accounting of the possession of gold ornaments pointing towards the guilt of the accused under Sec.380 of the IPC. The accused miserably failed to account their possession. So the legal presumption envisaged under Sec.114(a) of the Evidence Act operates against the accused. Therefore, the non-examination of the foot marks found on the wall of the bed room pales to insignificance in view of other evidence available in abundance on record. The available evidence proves beyond doubt that the 1st accused have committed the offence punishable under Sec.380 of the IPC and the other accused have committed the offence punishable under Section 414 IPC. There is no illegality or impropriety in any

of the findings whereby the court below convicted the accused. Therefore, the conviction confirmed.

10. Coming to the question of sentence, the sum and substance of the arguments advanced by the learned counsel for the petitioners is that the petitioners/accused had never been involved in any offence and the substantive sentence imposed on the accused are disproportionate with the nature and gravity of the offence. It is also submitted that the 4th accused is the wife of the 1st accused and they have three children. They are school going students. The younger one is a girl child studying in the L.P. School.

11. Prison term is inevitable to secure the interest of deterrence. On instructions, the learned Public Prosecutor submits that the accused had never been involved in any other offence. In short, they are not habitual offenders. So the prison term must be proportionate with the gravity of the offence. Aggravating and mitigating circumstances are also required to be considered. Since they are not habitual

offenders, I am of the opinion that an unduly long term substantive sentence may be a counter productive also. In my view, the accused can be given an opportunity to lead a refined life after suffering a reasonable prison term. Considering the sad plight of the youngest daughter, who has not yet crossed infancy, I am inclined to take a lenient view in the matter of awarding substantive sentence to the 4th accused. At the same time, misplaced sympathy has no place in the criminal adjudicatory process. On a proper balancing of all the circumstances, I find that the substantive sentence imposed on the revision petitioners/accused is a little excessive and harsh.

12. Consequently, in supersession of the sentence imposed by the trial court and confirmed by the appellate court, the revision petitioners will stand sentenced as follows:

- (i) The 1st accused (1st revision petitioner in Crl.R.P.No.558 of 2015) is sentenced to

undergo simple imprisonment for one year and six months and to pay a fine of ₹10,000/- (Rupees Ten thousand only) for the offence under Section 380 IPC. In default, he shall undergo simple imprisonment for a further period of six months. Further, he is sentenced to undergo simple imprisonment for one year for the offence under Section 457 IPC and six months for the offence under Section 461 IPC. The sentence shall run concurrently and set off is allowed.

(ii) The 3rd accused (the revision petitioner in Crl.R.P.No.590 of 2015) is sentenced to undergo simple imprisonment for 8 months and to pay a fine of ₹10,000/- (Rupees Ten thousand only) for the offence under Section 414 IPC. In default, he shall undergo simple imprisonment for a further

period of six months. Set off is allowed.

(iii) The 4th accused (the 2nd revision petitioner in Crl.R.P.No.558 of 2015) is sentenced to undergo simple imprisonment for one day till rising of the court and to pay a fine of ₹10,000/- (Rupees Ten thousand only) for the offence punishable under Section 414 IPC. In default, she shall undergo simple imprisonment for a period of three months.

These Crl. Revision Petitions are allowed in part.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge