

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYASHTA, 1937

Crl.Rev.Pet.No. 584 of 2015 (C1)

**AGAINST THE JUDGMENT IN CRLA 42/2010 of ADDL. SESSIONS COURT-I, MAVELIKKARA
DATED 31-01-2011**

AGAINST THE JUDGMENT IN CC 603/2008 of J.M.F.C.-I, HARIPAD DATED 19-12-2009

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REVISION PETITIONER/APPELLANT/2ND ACCUSED:

**BINOY, S/O. JOSE,
PALAMOOTTIL VEEDU,
KOLLAKADAVU MURI,
VENMONY (FROM JOSE VILLA,
VALIYAKUZHI MURI, CHEPPAD).**

**BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL**

RESPONDENT/RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031.**

BY PUBLIC PROSECUTOR SMT. MADHU BEN

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
01-06-2015, ALONG WITH CRL.R.P. 80/2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

OKB

K.HARILAL, J.

Crl.R.P. Nos. 80 & 584 of 2015

Dated this the 1st day of June, 2015.

O R D E R

The revision petitioners in these revision petitions are the accused Nos.1 and 2 in C.C.No.603/2008 on the files of the Judicial First Class Magistrate's Court-I, Haripad. They were prosecuted for the offences punishable under Section 379 read with Section 34 of the Indian Penal Code. They pleaded not guilty. After trial, the learned Magistrate found the accused guilty of the said offence and convicted them thereunder. He was sentenced to undergo rigorous imprisonment for two years each under Section 379 read with Section 34 IPC. Aggrieved by the conviction and sentence, though the accused had preferred Crl.A.No.42/2010 before the I Additional Sessions Judge, Mavelikkara, after re-appreciating the entire evidence on record, the learned Sessions Judge also concurred with the verdict of guilt and confirmed the

conviction and sentence as such. The legality and propriety of the concurrent findings of conviction and sentence are under challenge in this revision petition.

2. The prosecution case, in brief, is that on 15.3.2008 at 9.20 A.M. while P.W. 2 was walking along Pallimukku–Anari Puthussery School junction road and reached near Pallivathukkal Padasekharam culvert, the accused, in furtherance of their common intention to commit theft, came by riding a motor cycle and the first accused, who was the pillion rider, snatched away a gold chain weighing 20.150 grams worth Rs.22,000/- from the neck of P.W. 2 and thereby committed the offence of theft.

3. The learned counsel for the revision petitioners advanced arguments assailing the concurrent findings of conviction entered and the sentence imposed by the courts below. He submits that challenge against the impugned judgment is mainly confined to illegality and disproportionality of the sentence. According to him, the sentence imposed by

the court below is excessive, harsh and disproportionate with the nature and gravity of the offence.

4. Per contra, the learned Public Prosecutor advanced arguments to justify the sentence imposed on the revision petitioners. The learned Public Prosecutor herself admitted that, her instruction is that, the petitioners are not involved in any other offence.

5. Prison term is inevitable to secure the interest of deterrence. But deterrence in a case like this does not depend upon the length of the term that the offender spends behind the bars. Considering the very fact that the petitioners have also undergone a substantial portion of the imprisonment period, I find that so much extent of imprisonment is sufficient to meet the interest of justice and the sentence imposed by the trial court is a little excessive and harsh. Aggravating and mitigating circumstances have to be considered objectively for determining quantum of

sentence.

6. In this analysis, the substantive sentence of rigorous imprisonment for two years for the offence under Section 379 IPC in each case will stand reduced and modified to simple imprisonment for 14 months. Right of set off is allowed.

In the result, these revision petitions are allowed in part.

Sd/-
K. HARILAL, JUDGE

okb.