

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

Crl.Rev.Pet.No. 670 of 2015 ()

CRA 461/2011 of SESSIONS COURT,THRISSUR
CC 1168/2006 of J.F.C.M.,KUNNAMKULAM

REVISION PETITIONER/APPELLANT/ACCUSED:

BENSON, C.NO.3405,
(CENTRAL PRISON KANNUR)
S/O.LONAPPAN, KOZHUKKULLIKARAN HOUSE
ANTHIKAD DESOM, ANTHIKAD VILLAGE, THRISSUR

BY ADVS.SRI.YASH THOMAS MANNULLY (STATE BRIEF)

RESPONDENT/RESSPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY GOV.PLEADER
AND PUBLIC PROSEUTOR, HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.670 of 2015

Dated this the 17th day of September 2015

ORDER

The revision petitioner is the first accused in C.C.No.1168 of 2006 on the files of the Court of the Judicial Magistrate of First Class, Kunnankulam.

2. The trial court convicted the revision petitioner under Section 379 of the Indian Penal Code and sentenced him thereunder to rigorous imprisonment for one year and a fine of Rs.1,000/- with a default clause for simple imprisonment for six months. In the appeal filed against the said conviction and sentence, the appellate court

confirmed the said conviction and sentence as per judgment in Crl.Appeal No.461 of 2011. Aggrieved by the said conviction and sentence, this Revision Petition was filed.

3. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that on 3.6.2006 at about 4.50 p.m., while PW1 and PW2 were walking near to Vyasa Peedam bus stop in Chittilappilly village, the revision petitioner and the other accused came in a motor cycle and snatched away the gold chain weighing 34 grams worth Rs.16,000/- from the neck of PW1.

5. Before the court below, PW1 to PW11 were examined and Exts.P1 to P6 were marked for the

prosecution, besides identifying MO1 gold chain. No evidence was adduced on the side of defence. PW1 stated the above incident in tune with the prosecution case. PW1 had given Ext.P1 F.I. Statement before the police immediately after the incident. PW2 also had given evidence corroborating the evidence of PW1 with regard to the incident. PW1 and PW2 identified the revision petitioner as the assailant, who had snatched away the gold chain from the neck of PW1. The revision petitioner was arrested by PW10 on 12.6.2006 in connection with Crime No.441 of 2003 of Peramangalam police station and when questioned, it was revealed that the revision petitioner committed the offence in this case also. When questioned, the revision petitioner had given Ext.P6 disclosure

statement and in pursuance to Ext.P6 disclosure statement and as lead by him, PW10 and party reached the shop of CW7 (not examined) and recovered MO1 gold ingot from the shop of CW7.

6. The courts below, relying on the documentary as well as oral evidence adduced by the complainant, concurrently found that the revision petitioner committed the offence under Section 379 I.P.C. 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 appreciation of evidence by the courts below was perverse or incorrect. The courts below found the revision petitioner guilty under Section

379 I.P.C and convicted him thereunder. Having gone through the relevant inputs, I do not find any reason to disturb the finding of the courts below that the revision petitioner committed the offence under Section 379 I.P.C.

7. As regards the sentence, the courts below had taken a very lenient view in the matter of sentence. However, the default sentence awarded by the courts below is excessive. Having regard to the facts and circumstance of the case, I am of the view that the default sentence awarded by the courts below can be modified and reduced to simple imprisonment for two months, to secure the ends of justice. Accordingly, I order so.

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

- (i) confirming the verdict of guilty, conviction and sentence passed by the courts below under Section 379 I.P.C.
- (ii) the default sentence awarded by the courts below stands modified and reduced to simple imprisonment for two months.

The revision petitioner is entitled to get set off for the period of his detention in connection with this case.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

dl

/ True copy /

PA to Judge