

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

Cr1.Rev.Pet.No. 807 of 2015 ()

AGAINST THE JUDGMENT IN CRA 62/2013 of ADDL.
SESSIONS COURT - III,
KASARAGOD DATED 24-04-2014

AGAINST THE JUDGMENT IN CC 677/2011 of CHIEF JUDICIAL
MAGISTRATE COURT, KASARAGOD DATED 26-03-2013

CRIME NO. 230/2010 OF VIDYA NAGAR POLICE STATION, KASARGOD

REVISION PETITIONER(S):

BASHEER @ UKKAS BASHEER, S/O. ABDULLAH
C.NO.2981 OF CENTRAL PRISON, KANNUR

BY ADV. SRI.A.G.ADITYA SHENOY (STATE BRIEF)

RESPONDENT(S):

STATE OF KERALA

(SHO, VIDHYANAGAR POLICE STATION, KASARAGOD)

BY PUBLIC PROSECUTOR SRI. GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 18-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P.No. 807 2015
.....

Dated this the 18th day of September, 2015

ORDER

The revision petitioner is the accused in C.C. No. 677 of 2011 on the files of the Court of the Chief Judicial Magistrate, Kasaragod.

2. The revision petitioner was convicted by the trial court under Sections 457 and 380 IPC and sentenced to rigorous imprisonment for two years each and a fine of Rs. 10,000/- each with a default clause for rigorous imprisonment for six months each under Section 457 and 380 IPC and rigorous imprisonment for one year under Section 461 IPC with a direction that the substantive sentences shall run consecutively. The appeal filed against the said conviction and sentence was dismissed by the appellate court as per judgment dated 24.4.2014 in Crl.Appeal 62 of 2013.

3. Heard both sides.

4. The prosecution allegation is that in between 5 p.m. on

26-11-2010 and 6 a.m. on 28-11-2010, the petitioner herein criminally trespassed into the residential house of PW1 and committed theft of gold ornaments weighing four sovereigns, silver ornaments, four watches, two mobile phones and one camera and Rs. 500/- from the said house by breaking open the almirah kept in the said house.

5. Before the court below, PW1 to PW8 were examined and Exts. P1 to P4 were marked for the prosecution, besides identifying MO1 and MO2 series.

6. PW1 is the de facto complainant who had given Ext. P1 statement before the Court in connection with the theft. She stated about the theft of the articles from her house. PW2 is the owner of the jewellery shop who produced MO2 series of gold bangles before PW8.

7. PW8 was the Circle Inspector of police, who formally arrested the revision petitioner while the revision petitioner was in custody in connection with another case. When questioned, the revision petitioner had given Ext. P2(a) disclosure statement and pursuant to Ext. P2 (a) disclosure statement and as led by the revision petitioner, PW8 and party reached the shop of PW2. Thereafter, PW2 handed over MO2 series to PW8 who in turn

recovered the same as per Ext. P2 seizure mahazar. PW3 was an attestor to Ext. P2 seizure mahazar, who supported the prosecution case. The evidence of PW2 is that the revision petitioner had sold the gold ornaments to PW2. The courts below appreciated the oral and documentary evidence adduced by the prosecution and concurrently found that the revision petitioner committed the offences under Sections 457 and 380 and 461 IPC.

8. The learned counsel for the revision petitioner has argued that since there was no evidence to the effect that the offence alleged was committed during night, no offence under Section 457 IPC would be attracted in this case. In this case, the prosecution allegation is that the offence was committed in between 5 p.m. on 26-11-2010 and 6 a.m. on 28-11-2010. Therefore, the offence could be committed even during day time on 27-11-2010. It is the duty of the prosecution to establish that the offence was committed during the night, to attract the offence under Section 457 IPC. In the absence of any such proof, it has to be held that the concurrent finding of the courts below that the revision petitioner committed the offence under Section 457 IPC cannot be sustained. However, the evidence on record would show that the revision petitioner committed the offence under Section 454 IPC. Since there is concurrent finding on facts,

with regard to the guilt of the revision petitioner under Sections 380 and 461 IPC, 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 was perverse or incorrect.

9. Having gone through the relevant inputs, I am satisfied that the prosecution established that the revision petitioner committed the offence under Sections 380, 454 and 461 IPC.

As regards the sentence, the courts below awarded the sentence of imprisonment consecutively. The learned Magistrate recorded that the revision petitioner was involved in so many theft cases and house breaking cases. However, there is no material before the court to prove any previous conviction of the accused. Therefore, the said observation of the trial Court cannot be sustained. Having regard to the facts and circumstances of the case, I am of the view that the sentence awarded by the courts below under Sections 380 and 461 IPC does not call for any interference by this Court. The revision petitioner is also liable to be sentenced to rigorous imprisonment for one year under Section 454 IPC. Accordingly, I order so.

In the result, this revision petition stands allowed in part

confirming the verdict of guilty and conviction passed by the courts below under Sections 380 IPC and 461 IPC. The conviction entered into by the courts below under Sections 457 IPC is set aside and instead of convicting under Section 475 IPC, the revision petitioner is convicted under Section 454 IPC. The sentence awarded by the courts below under Sections 457 and 380 IPC is confirmed. The revision petitioner is sentenced to rigorous imprisonment for one year under Sec. 454 IPC. The substantive sentence of imprisonment shall run concurrently.

B. SUDHEENDRA KUMAR,
JUDGE.

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