

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

Crl.Rev.Pet.No. 2119 of 2010 ()

AGAINST THE JUDGMENT IN CRL.A. 742/2008 of ADDL.DISTRICT &
SESSIONS COURT (ADHOC-I), KOZHIKODE DATED 14-12-2009

AGAINST THE JUDGMENT IN CC 210/2007 of J.M.F.C.-IV,KOZHIKODE
DATED 26-08-2008

REVISION PETITIONER(S)/APPELLANT/ACCUSED NO.1:

NIZAR, S/O. ABU, ABU NIVAS, H.NO.21/2069
NADI NAGAR, CHAKKUMKADAVE.

BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENT(S):

STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 16-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Crl.R.P. No. 2119 of 2010
.....

Dated this the 16th day of October, 2015

ORDER

The revision petitioner was the first accused in C.C. No. 210 of 2007 on the files of the Court of the Judicial Magistrate of First Class-IV, Kozhikode.

2. The trial Court convicted the accused under Section 379 read with Sec. 34 IPC and sentenced him thereunder to rigorous imprisonment for one year. The appeal filed against the said conviction and sentence was dismissed by the appellate court. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

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

4. The prosecution allegation is that on 13-1-2006 at

about 6.30 a.m., while PW1 was returning to her house after the prayer in Azhakodi Devi Temple, the revision petitioner and the other accused came near to PW1 in a motor cycle when PW1 reached near Markaz Complex, and thereafter, the revision petitioner snatched away the gold chain weighing 5 sovereign worn by PW1.

5. Before the trial Court, PW1 to PW6 were examined and Exts. P1 to P8 were marked for the prosecution, besides identifying MO1 gold ingot.

6. PW1 is the victim in this case. She stated that on 13-01-2006 at about 6.30 a.m., while she was coming back from the temple, the revision petitioner and the other accused came in a motor cycle and snatched away the gold chain from her neck. PW1 had given Ext. P1 statement in connection with the incident. PW3 was the Circle Inspector of Police, Kozhikode during the relevant period. He arrested the revision petitioner on 8-2-2006

in connection with crime No. 42/2006 of Kottakkal Police Station. When questioned, the revision petitioner had given Ext. P3 disclosure statement and pursuant to Ext. P3 disclosure statement and as led by the revision petitioner, PW1 and party reached a jewellery at Kottakkal and thereafter, the owner of the jewellery produced MO1 gold ingot, which was seized by PW3 as per Ext. P4 mahazar. PW6 also supported the evidence of PW3 regarding the recovery of MO1 at the instance of the revision petitioner.

7. The learned counsel for the revision petitioner relied on the decision of the Apex Court in Mohd. Iqbal Shaikh v. State of Maharashtra [(1998) 4 SCC 494] and argued that since there was no test identification parade, the identification of the revision petitioner by PW1 in the Court for the first time cannot be given any sanctity and, consequently, the revision petitioner is entitled to benefit of doubt. In Mohd. Iqbal (supra), PW1 stated that he

saw the occurrence from the cement grill of the window of his house. However, PW6 stated that if a person stands inside the house of PW1 and tries to see through the window of the said house, the house of Rajaram Bane, one of the deceased, whose house was set to fire, could not be visible as the cement grill in the said house had sufficient thickness. PW6 clearly stated that it was not possible for PW1 to witness the incident from his house. PW2 stated that he saw accused Sallo from inside his house. However, when he was asked to identify the accused Sallo, he pointed out some other accused instead of the correct accused, in the court. In the said circumstances, the Apex Court held that if the witness does not know the accused persons by name but can only identify them from their appearance, then a test identification parade is necessary, so that the substantive evidence in the court about the identification, which is held after a fairly long period, can get corroboration from the identification parade.

8. The facts of this case are entirely different from the facts in Mohd. Iqbal (supra). In this case, PW1 stated that he could identify the revision petitioner, who had snatched away the gold chain of PW1. She also identified the accused. There is also convincing evidence of PW3 with regard to the recovery of gold ingot pursuant to Ext. P3 disclosure statement given by the revision petitioner. There is no allegation that PW3 had any ill-motive to falsely implicate the revision petitioner in a case like this. PW6 also supported the evidence of PW3 regarding the recovery of MO1 gold ingot. PW6 also is not having any ill-motive to falsely implicate the revision petitioner in a case like this. Thus, the evidence of identification of the revision petitioner by PW1 is corroborated by the evidence of PW3 and PW6, regarding the recovery of MO1. Since there is concurrent finding on facts, this Court will not be justified in re-appreciating the same, particularly when the appreciation of evidence by the

courts below was not perverse or incorrect.

9. Having gone through the relevant inputs, I am satisfied that the courts below correctly appreciated the evidence and concurrently found that the revision petitioner committed the offence under Sec. 379 IPC. In the said circumstances, I find no reason to interfere with the said finding by the courts below. The sentence awarded by the courts below also does not warrant any interference by this Court.

In the result, this Revision Petition stands dismissed.

B. SUDHEENDRA KUMAR,
JUDGE.

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