

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

Crl.Rev.Pet.No. 2509 of 2013 ()

JUDGMENT IN Crl.A 121/2013 OF THE ADDITIONAL SESSIONS COURT - IV,
PATHANAMTHITTA

JUDGMENT IN CC 736/2012 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
ADOOR

REVISION PETITIONER(S)/APPELLANT/2ND ACCUSED:

SURESH BABU, AGED 36 YEARS
S/O.RAGHAVAN, PLAVILAYIL VEEDU, THENGAMAN MURI
PALLICKAL VILLAGE.

BY ADV. SRI.A.C.DEVY

RESPONDENT(S)/RESPONDENT:

THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

R BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 18-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.2509 of 2013

Dated this the 18th day of November, 2015

ORDER

The second accused in C.C.No.736 of 2012 on the files of the Court of the Judicial Magistrate of First Class-I, Adoor., has filed this revision petition challenging the concurrent finding of the conviction and sentence passed by the courts below under Section 379 IPC.

2. The prosecution allegation is that on 12.11.2011 at about 12 noon, the revision petitioner and the other accused in furtherance of their common intention, came near to PW1 in a motor cycle with the revision petitioner as the driver and thereafter, the first accused snatched away the gold chain weighing one sovereign from the neck of PW1.

3. Before the court below, PW1 to PW7 were examined and Exts.P1 to P7 were marked for the prosecution, besides identifying MO1 gold chain. No evidence was adduced on the side of the revision petitioner.

4. PW1 is the de facto complainant, who had given evidence in tune with the prosecution case. PW1 identified the first and the second accused in this case. PW3 is conducting a financial institution, who had given evidence that the first accused had pledged MO1 gold chain to PW3 and the said gold chain was produced by him before the police, when the police came to his shop along with the first accused. PW4 was the Sub Inspector of Police, who arrested the first accused. When questioned, the first accused had given Ext.P2 (a) disclosure statement and pursuant to Ext.P2 (a) and as led by the first accused, PW4 reached the financial institution of PW3 and thereafter, PW3 produced MO1 gold chain before PW4, who in turn seized the same as per Ext.P4 property list.

5. The solitary evidence against the revision petitioner is the evidence of PW1. PW1 identified the revision petitioner. However, PW1 stated before the court that the police brought the accused persons to her house, after covering their face. Then, she stated that the first and the second accused were

not the accused in the crime. However, the accused themselves told PW1 that they had snatched away the gold chain of PW1. The police also told PW1 that the accused Nos.1 and 2 had snatched away the gold chain from the neck of PW1. The first and the second accused were brought to her house twice and hence, she had acquaintance with the accused.

6. Having gone through the above evidence of PW1, I am of the view that the evidence of PW1 regarding the identification of the revision petitioner cannot be safely accepted. Therefore, the evidence of PW1 is not sufficient to conclusively connect the revision petitioner with the commission of the offence, particularly when there is absolutely no other material before the court to connect the revision petitioner with the commission of the offence. The recovery of MO1 does not relate to the revision petitioner. In the absence of any convincing material to connect the revision petitioner with the commission of the offence, the court below ought not have found the revision petitioner guilty. For the

said reason, the appreciation of the evidence and the concurrent finding by the courts below cannot be correct. Consequently, the conviction and sentence passed by the courts below cannot be sustained.

In the result, this revision petition stands allowed, setting aside the conviction and sentence passed by the courts below against the revision petitioner under Section 379 IPC and the revision petitioner is acquitted for the said offence. The bail bond of the revision petitioner stands cancelled and he is set at liberty.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

Scl/19.11.2015

True Copy

PA to Judge