

Suni Vs. State of Kerala

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Court : Kerala

Decided On : Feb-01-2013

Judge : Honourable Mr.Justice. P.S.Gopinathan

Appellant : Suni

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE. P.S.GOPINATHAN FRIDAY, THE 1ST DAY OF FEBRUARY 2013 12TH MAGHA 193 CrI.Rev.Pet.No. 665 of 2004 ()
----- CRA.394/2002 OF IIIRD ADDITIONAL SESSIONS COURT (ADHOC), FAST TRACK COURT NO. I, THRISSUR CC.537/1997 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, THRISSUR -----
REVISION PETITIONER/1ST ACCUSED :
----- SUNI, S/O. POKATHPARAMBIL
VEETIL CHIDAMBARAN, VADAKEKKARA VILLAGE, PATTANAMKARA. BY
ADVS.SRI.P.VIJAYA BHANU SMT.P.MAYA
RESPONDENT/RESPONDENT/COMPLAINANT :
----- STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM. BY PUBLIC PROSECUTOR SRI. S. SURESH THIS CRIMINAL
REVISION PETITION HAVING BEEN FINALLY HEARD ON 01-02-2013, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING: Mn

P.S.GOPINATHAN, J.

=== = = = = = C.R.R.P.No.665 OF 200.= = = = == = = = = Dated this
the 1st day of February, 2013

JUDGMENT

The Revision Petitioner was prosecuted by the Circle Inspector of Police, Thrissur along with three others accusing offence u/s 392 read with 34 I.P.C with an allegation that at 5 a.m. on 01.05.1996, the Revision Petitioner along with the other accused robbed 56 kgms. of silver ornaments worth Rs.2,25,000/- brought by PWs. 1 and 2 from Salem for sale in Thrissur.

2. The third accused could not be apprehended despite the coercive steps issued against him. Therefore, the revision petitioner and the other two accused namely, accused 2 and 4 were sent for trial. After hearing both sides charge was framed, read over and explained to which the accused pleaded not guilty. On side of the prosecution, PWs. 1 to 8 were examined. Exts. P1 to P6 were marked. C.R.R.P.No.665 OF 200.2 M.Os.1 to 6 were also marked. When questioned u/s 313 of Code of Criminal Procedure, the revision petitioner took a plea of total innocence and further contended that he was an employee of one Ramesh who was examined as DW2 and that he used to purchase ornaments from DW2 and sell it. He denied the prosecution case that silver ornaments involved in this case were seized by the Police at 4 a.m. on 05/06/1996 and further contended that he was arrested from his house and that DW2 had filed a complaint against PW2 and on the basis of that complaint, PW2 was arrested as was pointed out to the Police by the revision petitioner and because of that enmity to him, the case was falsely foisted. A Head Constable attached to the Vadakkekara Circle office was examined as DW1. Exts. D1 to D4 were marked, in addition to the evidence of DW2, during the defence stage. The learned Magistrate on appraisal of the evidence arrived at a finding that the prosecution had succeeded to establish the offence alleged against the revision petitioner, but failed to establish the offence C.R.R.P.No.665 OF 200.3 alleged against accused 2 and 4. Consequently, while acquitting accused 2 and 4, the revision petitioner was convicted and sentenced to rigorous imprisonment for two years and a fine of Rs.5,000/-, with a default

sentence of rigorous imprisonment for a further period of six months. Assailing the above conviction and sentence, the revision petitioner preferred criminal appeal 394/2002 before the Sessions Judge, Thrissur. The Additional Sessions Judge (Adhoc-I), to whom the appeal was made over, by the impugned judgment dated 24/01/2004, while confirming the conviction and sentence, dismissed the appeal. Assailing the legality, correctness and propriety of the above conviction and sentence, as confirmed in appeal, this revision petition was preferred.

3. I have heard Adv.Sri.V.C.Sarath, the learned counsel appearing for the revision petitioner and Sri.S.Suresh, the learned Government Pleader. Perused the impugned judgment. The learned counsel for the petitioner took me through the evidence on record. C.R.R.P.No.665 OF 200.4 4. By the evidence of PWs.1 and 2, the prosecution had succeeded to establish that PWs.1 and 2, who were merchants of silver ornaments at Salem, reached Thrissur on the early morning of 1.5.1996 by bus for business purpose with silver ornaments. They alighted in front of Ragam theatre and while proceeding ahead to Sree Budha lodge, they were intercepted, forced to board a car and was taken to the out-skirts of Thrissur. The fourth accused was the driver of the car. Before PWs.1 and 2 being taken into the car, they were beaten by the third accused. The bags containing the ornaments were taken inside of the car by the second accused wherein the revision petitioner was seated in the front seat. Pws.1 and 2 were forced inside the car stating that accused are police personnel. When the car reached at a place called Eravu, PWs.1 and 2 were thrown out and the car was driven away with the ornaments. PWs.1 and 2 returned to Thrissur and gave Ext.P1 first information statement before PW8, the Circle Inspector of Police, Thrissur Town East Police station C.R.R.P.No.665 OF 200.5 who registered the case for which Ext.P6 first information report was prepared.

5. While the investigation was in progress, the revision petitioner was arrested by PW4, the Circle Inspector of Vadakkekara Police station at 4 a.m. on 05/06/1996. The detection was while PW4 moving on night patrol duty. The revision petitioner was possessing a bag, which was marked as M.O.I, containing the silver ornaments which were marked as M.O.6 series. The revision petitioner could not account the material objects. So he was arrested and M.O.1 and 6 were seized for

which Ext.P2 seizure mahazer was prepared. Returning to the police station, PW4 registered a case as Crime No.97/96 for offence u/s 41(1)(d) and 102 of the C.R.P.C for which Ext.P3 First Information Report was prepared. On further investigation it was found that M.O.6 series seized from the revision petitioner were the articles robbed from PW1 as alleged in this case. Information was conveyed to PW8. The evidence of PW1 would show that he had identified the C.R.R.P.No.665 OF 200.6 silver ornaments by the marks engraved on it as well as the bag. Though PW1 was subjected to searching cross examination, no material was disclosed to disbelieve him.

6. In the attempt to account the silver ornaments Dws.1 and 2 were examined and Exts.D1 to D4 were marked. Ext.D1 is the copy of the first information report in Crime No.228/1995 of Vadakkekara Police station with the First Information Statement given by DW2 against PW2 accusing offence u/s.420 read with 34 I.P.C. The allegation was that PW2 sold silver ornaments to DW2 and later it was found that the ornaments supplied were not made of silver but with some other material. Ext.D3 is a copy of the seizure mahazar and Ext.D4 is a copy of another mahazar. Those documents were relied upon by the revision petitioner to bring on record that in Ext.D1 case PW2 was arrested for which the revision petitioner had identified PW2 as the accused. Going by Exts.D1 to D4, I find that the revision petitioner was not at all a witness in any of the documents produced. He was not at all a prosecution C.R.R.P.No.665 OF 200.7 witness in that case. Therefore, that plea is devoid of merit. Adding to that if PW2 had such enmity, it should have been against DW2 who could have been otherwise able to identify PW2 and to point out PW2 to Police. DW2 has no case that PW2 cooked up any case against DW2. Therefore, the plea of enmity is not convincing. Adding to the above, neither the evidence of PWs.1 and 2 nor the evidence of the Police Officers would show that PWs.1 and 2 are so influential to cook up false case or that the police officers are susceptible to influence. There is no material suggesting false implication.

7. The evidence on DW2 was also relied upon to account the material objects by the revision petitioner. But DW2 could not withstand the cross examination. He could not give a good account of the markings on the material objects or that the markings are his. So also, there is nothing produced to show that DW2 was in

possession of the silver ornaments to give it to the revision petitioner. It is also pertinent to note that very case of DW2 that the C.R.R.P.No.665 OF 200.8 revision petitioner used to take ornaments from DW2 for sale. Even if it is so, it remains a mystery why the revision petitioner had been carrying the silver ornaments at the small hours. Adding to that, regarding the so called sale to the revision petitioner, there is no bit of document, either sales bill or stock register. In the above circumstance, I find that the evidence on record is sufficient enough to conclude that M.O.6 material objects seized from the revision petitioner are nothing but the silver ornaments robbed from PWs.1 and 2 as alleged by the prosecution and not that of DW2. The revision petitioner could not account the possession of the ornaments. So, the presumption would go against the revision petitioner. He, who was in possession of the robbed ornaments and failed to account, is to be presumed as the person who committed robbery. Presumption under section 114, illustration (a) is in favour of prosecution and against the revision petitioner.

7. I find nothing wrong in the finding of the courts below. The conviction under challenge is based C.R.R.P.No.665 OF 200.9 upon cogent evidence. Having due regard to the nature of the offence, the time and manner in which it was committed and the quantity of the ornaments, I find that the sentence awarded by the trial court is not at all disproportionate. Therefore, the sentence also requires no interference. In the result, the revision petition is dismissed. The trial court is directed to see the execution of sentence and report compliance.
P.S.GOPINATHAN, JUDGE. stu

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