

Omanakuttan Vs. Stae

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Court : Kerala

Decided On : Jul-31-2013

Judge : Honourable Mr.Justice S.Siri Jagan

Appellant : Omanakuttan

Respondent : Stae

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.D.RAJAN WEDNESDAY, THE 31ST DAY OF JULY 2013 9TH SRAVANA, 1935 Crl.Rev.Pet.No. 699 of 2002 ()
----- AGAINST THE ORDER/JUDGMENT IN CRA 290/1999 of ADDL.SESIONS JUDGE (FAST TRACK), ALAPPUZHA DATED 27 03-02002 AGAINST THE JUDGMENT IN CC 304/1995 of J.M.F.C.-I, CHERTHALA DATED 15 11-1999 REVISION PETITIONER(S)/APPELLANT/ACCUSED:
----- OMANAKUTTAN, S/O.KUMARA PANICKER, VELIYIL HOUSE, WARD NO.IX, KADAKARAPPALLI PANCHAYATH. BY ADV. SRI.J.OM PRAKASH
RESPONDENT/RESPONDENT/STATE:
----- THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY ADV. SMT. MADHUBEN - PUBLIC PROSECUTOR. THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11-03-2013, THE COURT ON 31-07-2013 PASSED THE FOLLOWING: acd P.D.

----- Crl. R.P. No.699 of 2002
----- Dated this the 31st day of July, 2013 ORDER

The revision petitioner was convicted by the Judicial First Class Magistrate-I, Cherhala U/s. 457, 379 IPC and sentenced to undergo rigorous imprisonment for different periods under the above Sections. The sentences were ordered to run concurrently by the trial court and set off was allowed. An appeal filed by him was dismissed by the Additional Sessions Court (Fast Track), Alappuzha.

2. The prosecution case is that on 9.3.1995 at 2.25 a.m. the accused trespassed into the house of PW1 and snatched a gold chain weighing 4 grams from her neck, while she was sleeping in her house. The accused was arrested in connection with a Crime No.68/1995 of Cherthala Police Station. During interrogation, he disclosed that he committed offence in this case also. On the basis of confession statement, the Police registered a Crime No.114/1995 and after completing investigation laid Crl. R.P.No.699/02 2 charge in the trial court U/Ss. 457, 379 IPC. On the above allegation, the prosecution examined PWs 1 to 7 and marked Exts.P1 to P3 and P1(a) and MO1 in evidence. The incriminating circumstances brought out in evidence were denied by the accused while questioning under Section 313 Cr.P.C. After analysing the oral and documentary evidence, the trial court convicted the accused. The first appellate court also considered the relevant evidence, the submission made by both parties in the appeal and dismissed the appeal. Challenging the above judgment, the accused preferred this revision.

3. Heard both sides. The learned counsel for the revision petitioner submits that there was no recovery as per Section 27 of the Indian Evidence Act. In chief examination, leading questions were asked to PW3 and on that ground his evidence is not admissible. He relied following decisions, in Himachal Pradesh Administration v. Om Prakash [AIR 197.SC 975], Chandran v. The State of Tamil Nadu [(1978) 4 SCC 90.and in Joseph v. State of Kerala [1997(1) KLJ 764].

4. The learned Public Prosecutor strongly opposed the above argument and contended that recovery was effected on Crl. R.P.No.699/02 3 the basis of the information given by the accused.

5. The ground for admitting a fact disclosed to a police officer is candidly explained under Section 27 of the Evidence Act. It will be seen that the first condition is the discovery of a fact in consequence of an information received from a person accused of an offence, secondly the discovery of such must be deposed to, thirdly at the time of receipt of information accused must be in police custody and finally "so much of the information" as relates distinctly to the fact thereby discovered is admissible. According to PW7 the revision petitioner was arrested on 6.4.1995 in Crime Nos.311/1994 and 68/1994 of Cherthala Police Station, during interrogation, he admitted that he had stolen the gold chain and gave it in the Balaji Jewellery, Cherthala. On the basis of that information, PW7 reached in that shop and the revision petitioner showed the person to whom the stolen property was entrusted. The accused was produced before the court and obtained his further custody. On 8.4.1995, at 11 a.m. he arrived at the place of occurrence and prepared Ext.P2 mahazar. On 11.4.1995, he arrived in the Balaji Jewellery and recovered the stolen article, MO1 from the Jewellery, after preparing Ext.P1 mahazar. Ext.P1(a) is CrI. R.P.No.699/02 4 the disclosure portion. Ext.P3 is the F.I.R. Independent witness present there attested the recovery mahazar. After completing the investigation, he laid charge before the court.

6. The recovery was challenged by the revision petitioner and contended that there was no recovery as per law. I have perused Ext.P1 recovery mahazar in which Ext.P1(a) was marked as the disclosure portion. PW3, the owner of the Jewellery deposed that the stolen article was converted into gold ingot. PW3 identified the revision petitioner and deposed that the the revision petitioner brought a gold chain weighing 4 grams and he paid Rs.1600/- for that. Subsequently, that gold chain was melted as MO1 gold ingot and at the instance of the revision petitioner, it was recovered by the Police. PW3 identified the revision petitioner and the recovery officer before Court. Independent witness, PW4 attested Ext.P1 recovery mahazar and PW5 attested Ext.P2 scene mahazar. It is pertinent to note that the revision petitioner was under custody of the Police, when he was giving Ext.P1(a) disclosure portion. In order to attract Section 27, the prosecution must establish that the information given by the revision petitioner led to the discovery of some facts CrI. R.P.No.699/02 5 deposed by him. From the evidence of PW7, it is evident that he had no previous information about MO1. The

essential ingredients of Section 27 is that the information given by the accused must lead to the discovery of facts, which is the direct outcome of the information given by the accused. When such a disclosure is made, only such portion of information given, is distinctly connected with the discovery is admissible against the accused. In *H.P. Administration's case (supra)* held that; "Normally, Section 27 is brought into operation where a person in police custody produces from some place of concealment some object said to be connected with the crime of which the informant is the accused. The concealment of the fact which is not known to the police is what is discovered by the information and lends assurance that the information was true. No witness with whom some material fact, such as the weapon of murder, stolen property or other incriminating article is not hidden, sold or kept and which is unknown to the police can be said to be discovered as a consequence of the information furnished by the accused." 7. Here, the MO1 recovered was according to Section 27 in which the detecting officer got direct information regarding the material object. The fact discovered was relevant and the information is admissible, which resulted in the recovery of MO1. When PW3, the owner of the Jewellery admits the case of the prosecution and identified the revision petitioner, I find no reason to discard the above CrI. R.P.No.699/02 6 prosecution evidence. In this context, I have considered the decision relied on by the revision petitioner in *Joseph's case (supra)*. In the above decision, gold ingot was recovered on the basis of information, but the witness, who saw the recovery, and PW4 from whom the gold ingot was recovered turned hostile and did not support the case. Hence the above decisions will not support the revision petitioner. The Apex Court in *Chandran's case (supra)*, in paragraph 36, held that the evidence of recovery of incriminating article in the absence of record of the statement cannot be relied upon. Here, the statement of the accused was recorded by the investigating officer as Ext.P1(a). Therefore, this decision is not applicable. In *H.P. Administration's case (supra)* held that the fact discovered within the meaning of Section 27 must refer to a material fact to which the information directly relates. That information which does not distinctly connect with the fact discovered or that portion of the information which merely explains the material thing discovered is not admissible under Section 27 and cannot be proved. Here, the position is different. Here, the fact discovered was the gold

ingot, which is a physical object produced by PW3, the owner of the CrI. R.P.No.699/02 7 Jewellery on the basis of the information given by the revision petitioner. Therefore, the information given distinctly connected with the recovery alone is admissible. In view of the aforesaid discussion, I am of the opinion that there is no merit in the argument advanced by the revision petitioner and the revision petition is dismissed accordingly. P.D. RAJAN, JUDGE. acd CrI. R.P.No.699/02 8

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