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Abid Vs. State of Kerala

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Court : Kerala

Decided On : Aug-20-2015

Judge : Honourable Mr.Justice K.Harilal

Appellant : Abid

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL THURSDAY, THE20H DAY OF AUGUST201529TH SRAVANA, 1937 Crl.Rev.Pet.No. 1025 of 2015 () -------------------------------- AGAINST THE

JUDGMENT
IN CRL.A5102014 of THE COURT OF SESSION, (ADHOC)-II, THALASSERY DATED2009-2012 AGAINST THE

JUDGMENT
IN CC2762003 of J.M.F.C.,PAYYANNUR DATED1708-2004 REVISION PETITIONER/APPELLANT/2ND ACCUSED: -- ABID AGED31YEARS, S/O. ALI , PAPPINISSERY, KANNUR TALUK BY ADVS.SRI.SUNIL NAIR PALAKKAT SRI.K.N.ABHILASH RESPONDENT/COMPLAINANT/STATE: ---------------------------- STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF

KERALA, 682 031 R1 BY PUBLIC PROSECUTOR:SRI.JUSTINE JACOB THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON2008-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K.HARILAL, J.

------------------------------------ Crl.R.P. No.1025 of 2015 -- Dated this the 20th day of August, 2015

ORDER

The revision petitioner is the 2nd accused in CC No.276/2003 on the files of the Judicial First Class Magistrate's Court, Payyanur. He was prosecuted, along with the 1st accused, for the commission of the offence punishable under Sec.379 of the Indian Penal Code.

2. The prosecution case is that, while PW1 was washing a sack at a drain on the road side at Kannomkulavayal in Ezhome on 29/09/2002 at 10 am, the petitioner and the 1st accused in furtherance of their common intention to commit theft of gold chain worn by PW1, came in a motor bike rode by the petitioner bearing Registration No.KL13G- 9399 and the 1st accused snatched away the gold chain from PW1 and thereafter, they escaped from the place of occurrence on the motor bike rode by the petitioner herein. After trial, the learned Magistrate found the revision petitioner guilty of the said offence and 2 Crl.R.P. No.1025 of 2015 convicted thereunder. He was sentenced to undergo simple imprisonment for one year each.

3. Though, the petitioner preferred Crl.Appeal No.510/2004 before the Court of Session, Thalassery, the learned Sessions Judge also concurred with the verdict of guilty and confirmed the conviction and sentence as such. The concurrent findings of conviction and sentence are under challenge in this revision petition.

4. The learned counsel for the petitioner advanced arguments assailing the findings; whereby the court below concurrently arrived at a finding that the petitioner is guilty of the offence under Sec.379 of the IPC. It is pointed out that he is the rider of the vehicle by which the 1st accused escaped from the place of occurrence, after the commission of the offence. Even according to the

prosecution case, the prosecution has no case that the petitioner snatched away the gold ornament from the neck of PW1. According to the learned counsel, the facts admitted by the prosecution does not constitute the offence under Sec.379 of the IPC. It is also contended that the substantive sentence of simple 3 Crl.R.P. No.1025 of 2015 imprisonment imposed on the revision petitioner is excessive and disproportionate with the nature and gravity of the offence.

5. Going by the impugned judgment under challenge, it is seen that, to prove the prosecution case, PWs 1 to 8 were examined and Exts.P1 to P4 were marked. The accused pleaded not guilty and denied the incriminating circumstances against him. After appreciating the evidence of PW1, the lady, from whose neck the gold chain was snatched away by the accused No.1, the court below concurrently arrived at a finding that she has testified in conformity with Ext.P1 First Information Statement. According to her evidence, while she was washing sack in the water flowing from paddy field at the side of the road, the accused came on a motor bike rode by the petitioner herein and asked her soap to wash his hands as it was dirty due to oil. While asking soap the 1st accused snatched away the gold chain worn by her from her neck and both of them escaped from the scene of occurrence. It follows that the petitioner was waiting for the arrival of the 4 Crl.R.P. No.1025 of 2015 1st accused after the commission of the offence. If the act of 1st accused was not in furtherance of common intention, the petitioner could have gone from there, without waiting 1st accused, when he saw the snatching of gold chain from the neck of PW1. The aforesaid evidence of PW1 gets assurance from the evidence of PWs 3 and 4, who witnessed the arrest and seizure of the gold chain from the 1st accused immediately after the occurrence. PWs 3 and 4 categorically stated that it was from the 1st accused that the gold chain was seized by PW7. The said gold chain was identified by PW1. In court, PW1 concurrently identified the 2nd accused and the gold chain which was snatched away by the 1st accused from her neck. The said gold chain is marked as MO1. Even though the petitioner has not directly participated in the act of snatching gold chain from the neck of PW1, on an appreciation of the fact that both came together to the place of occurrence and after the commission of the offence they together went away from there, can be taken as a strong circumstance indicating the sharing of mind in the commission of the offence. I do not 5 Crl.R.P. No.1025 of 2015 find any perversity

in the appreciation of evidence. There is no illegality or impropriety in any of the findings in the impugned judgment. Therefore the conviction is confirmed.

6. Coming to the question of sentence, the learned counsel for the petitioner submits that the sentence imposed on the revision petitioner is disproportionate with the nature and gravity of the offence and he has been undergoing imprisonment in execution of the sentence imposed under the impugned judgment since 27/01/2015. The prison term is inevitable to secure the interest of deterrence; but the deterrence does not depend upon the length of the term he spends behind the bar alone.

7. Having regard to the nature of involvement of the petitioner in the commissioning of the offence, I am of the opinion that the sentence imposed on the revision petitioner is a little excessive and harsh. In the above view of the matter, the substantive sentence is reduced and modified as given below: (i) The revision petitioner will stand sentenced to undergo simple imprisonment for seven months and to pay 6 Crl.R.P. No.1025 of 2015 a fine of Rs.5,000/- (Rupees Five thousand only) and in default, to undergo simple imprisonment for three months. Sd/- K.HARILAL JUDGE rsr //True Copy// PA to Judge

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