



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

WEDNESDAY, THE 14<sup>TH</sup> DAY OF JANUARY 2026 / 24TH POUSHA, 1947

CRL.REV.PET NO. 448 OF 2018

AGAINST THE JUDGMENT DATED 20.01.2018 IN Crl.A NO.198  
OF 2017 OF SESSIONS COURT, PALAKKAD ARISING OUT OF THE  
JUDGMENT DATED 21.07.2017 IN CC NO.949 OF 2016 OF JUDICIAL  
MAGISTRATE OF FIRST CLASS, MANNARKAD

REVISION PETITIONER/APPELLANT/ACCUSED NO.2:

SHYJAL.C  
NO.3683,CENTRAL PRISON AND CORRECTIONAL HOME,VIYYUR  
(P.O), THRISSUR, S/O. MUHAMMED, THAROLA  
HOUSE,GUDALLYIKUNNU,KALPETTA (P.O),  
WAYANAD DISTRICT.

BY ADV SHRI.T.A.SHAİN  
ADV SHRI.R.HARIKRISHNAN - AMICUS CURIAE

RESPONDENT/RESPONDENTS/COMPLAINANT:

STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF  
KERALA, EERNAKULAM.  
SMT MAYA.M.N. - GP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
HEARING ON 14.01.2026, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

**"C.R"****M.B.SNEHALATHA, J.****Crl.R.P.No.448 of 2018****Dated this the 14<sup>th</sup> January, 2026****O R D E R**

The challenge in this revision petition is to the judgment in Crl.Appeal No.198/2017 of Sessions Court, Palakkad, by which it confirmed the conviction and sentence against the revision petitioner/A2 in CC. No.949/2016 of Judicial First Class Magistrate Court, Mannarkkad, for the offence punishable under Section 379 r/w 34 of the Indian Penal Code (IPC).

2. The prosecution case is that on 03.09.2016 at 00.30 hours, Accused 1 and 2, in furtherance of their common intention, committed theft of a motorcycle bearing registration No.KL-50-5087 owned by PW1 Babu from the residential premises of PW1.

3. Pursuant to Ext. P1 FI Statement laid by PW1, Ext.P10 FIR was registered by SHO Nattukal Police Station.

4. As per the prosecution case, on 08.09.2016, while the police party of Kolathur Police Station in Malappuram district were on night



patrolling duty, they intercepted a motorcycle ridden by A1 with A2 as pillion rider, which was proceeding from Chattiparamb side. On seeing the police officials, the pillion rider took to his heels. A1, who was the rider of the said motorcycle, failed to give any satisfactory account of his possession of the said vehicle and failed to furnish any records relating to the said vehicle. On search of the person of A1, MO1 iron rod, which had been concealed on his waist, was seized by PW3, the then Sub Inspector of Police, Kolathur Police Station. PW3 registered Ext. P6 FIR under Sections 41 (1) (d) and 102 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C"). The motorcycle bearing registration No.KL-50-5087 ridden by A1 was seized as per Ext.P5 seizure Mahzar. A1 was arrested and produced before the Jurisdictional Magistrate Court, along with Ext. P8 remand report. Upon interrogation of A1, it was revealed that the motorcycle seized from A1 as per Ext.P5 mahazar was a stolen vehicle. PW4, the then Station House Officer, Kolathur police Station, verified the ownership of the said motorcycle with the Motor Vehicle Department and it was revealed that PW1 – Babu is the owner of the said vehicle and it was stolen from his residential premises. PW4 could also learn that a crime as Ext.P10 has already been registered at Nattukal Police Station regarding the theft of the said motorcycle. Since the offence was committed within the limits of Nattukal Police Station, Ext. P6 FIR of Kolathur Police Station was transferred to Nattukal Police Station to be clubbed with Ext.P10 crime of Nattukal Police Station.



PW5, the then Sub Inspector of Police, Nattukal Police Station, conducted the Investigation. After completing the investigation, final report was laid against A1 and A2 for the offence punishable under Section 379 r/w 34 IPC.

5. Revision petitioner/A2 pleaded not guilty to the charge and faced trial along with A1 before the Judicial First Class Magistrate Court, Mannarkkad.

6. The prosecution examined PWs 1 to 5, marked Exts.P1 to P11 and MO1. No defence evidence was adduced by the accused.

7. After trial, the learned Magistrate found both the accused guilty under Section 379 r/w 34 IPC and they were convicted and sentenced to undergo rigorous imprisonment for three years each and to pay a fine of Rs.5,000/- each, with a further direction that in default of payment of fine, both accused shall undergo rigorous imprisonment for a period of three months each. Set off was allowed by the trial court.

8. Though challenging the conviction and order of sentence, revision petitioner/A2 preferred Crl.Appeal.No.198/2017 before the Sessions Court, Palakkad, the same was dismissed by the learned Sessions judge by confirming the conviction and sentence against him.

9. When this revision petition came up for hearing, there was no representation for the revision petitioner and accordingly, this Court appointed Adv. Sri. R. Harikrishnan as amicus curiae.

10 Both sides were heard.



11. Revision petitioner/A2 assails the concurrent finding of conviction and order of sentence against him on the ground that prosecution failed to adduce any evidence to connect him with the crime alleged; that the trial Court and the appellate court convicted him based only on the confession statement allegedly given by A1 to the police, which is inadmissible in evidence and therefore, the trial court and the appellate court went wrong in finding the revision petitioner/A2 guilty of the offence under Section 379 r/w 34 IPC.

12. Per contra, the learned Public Prosecutor submitted that the prosecution has succeeded in establishing beyond a reasonable doubt that A1 and A2 committed theft of the motorcycle owned by PW1; that A1 has made a confession regarding the involvement of A2 in the commission of the crime and therefore, the conviction and sentence against A2 for the offence under Section 379 r/w 34 IPC is not liable to be interfered with.

13. The only point for consideration is whether the impugned judgment of conviction and sentence against the revision petitioner/A2 warrants any interference by this Court.

14. PW1 is the defacto complainant. According to him, on the intervening night of the 2<sup>nd</sup>/3<sup>rd</sup> of September 2016, the motorcycle belonging to him, which he had kept in his residential premises, was found missing. Initially, he made his own search in the neighborhood. When his attempt to find out the motorcycle went in vain, he laid Ext. P1



complaint to Nattukal Police Station on 05.09.2016. Ext. P10 is the FIR registered pursuant to Ext.P1 complaint laid by PW1.

15. PW3, the then Grade Sub Inspector of Police, Kolathur Police Station, testified that on 08.09.2016, while he along with his team were on night patrolling duty, they intercepted the motorcycle bearing registration No.KL-50-5087 ridden by A1 with another person as pillion rider, that on seeing the police officials, the pillion rider took to his heels; that though PW3 along with other policemen tried to catch the pillion rider, they could not succeed in their attempt. His further version is that A1, who was the rider of the motorcycle, could not furnish any documents or details in respect of the said vehicle nor could he furnish any satisfactory account of his possession of the said motorcycle. PW3 arrested A1 and took into custody the motorcycle. Ext.P7 is the arrest memo. Ext. P5 seizure mahazar. Ext.P6 is the FIR.

16. PW4, who was then SHO of Kolathur Police Station, testified that, upon interrogation, A1 made a confession that he, along with A2, committed a theft of motorcycle from the residential premises of PW1. PW4 verified the registration particulars of the said motorcycle from the website of Motor Vehicle Department and contacted its RC owner, namely PW1, who in turn informed that he had already laid a complaint before the Nattukal Police regarding the theft of his motorcycle. Accordingly, PW4 transferred the case records in crime 330/2016 of Kolathur Police Station to Nattukal Police Station.



17. PW5, then Sub Inspector of Police, Nattukal Police Station, testified that the records in Crime 330/2016 of Kolathur Police Station were received on 10.09.2016 and accordingly, he filed a report before the court for clubbing the said crime with crime 562/2016 of Nattukal Police Station; PW5 conducted the investigation. According to PW5, the investigation revealed that A1, along with A2, committed theft of the motorcycle, which was kept in the residential premises of PW1.

18. The evidence tendered by PW1 would show that the motorcycle bearing registration No.KL-50-5087 owned by him, which he had kept in his residential premises, was stolen in the intervening night of 2<sup>nd</sup>/3<sup>rd</sup> September 2016 and he laid Ext. P10 FIR before the Nattukal Police regarding the said incident.

19. There is no reason to disbelieve the version of PW3 and PW4 that on 08.09.2016, during night patrolling duty while they were conducting vehicle checking, A1 was found riding the motorcycle bearing registration No.KL-50-5087 with another person as pillion rider; and on seeing the police officials, the pillion rider took to his heels; that the police party intercepted the said motorcycle; and since A1 could not give any satisfactory account of his possession of the said vehicle nor could he furnish any records of the said vehicle, the motorcycle was taken into custody as per Ext. P5 seizure Mahazar and a crime was registered against A1 under Sections 41 (1) (d) and 102 of Cr.P.C.

20. The case of the prosecution is that upon interrogation of A1 by



the police officials, he gave a confession statement to the police that he, along with A2, stolen the motorcycle bearing registration No.KL-50-5087 from the residential premises of PW1 - Babu.

21. Prosecution relies on the alleged confession statement of A1 to rope A2. The question is whether the confession statement allegedly given by A1 to the police that he, along with A2, committed theft of motorcycle from the house of PW1 is admissible in evidence.

22. The law of confession is embodied in Sections 24 to 30 of the Indian Evidence Act, 1872 (*Corresponding provisions in Bharatiya Sakshya Adhiniyam, 2023 is Sections 22 to 24*).

23. Section 24 of the Evidence Act provides that a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

24. Sections 25 of the Indian Evidence Act, 1872 reads as under:

*"25. Confession to police-officer not to be proved.-No confession made to a police officer, shall be proved as against a person accused of any offence."*

(Corresponding provision in Bharatiya Sakshya Adhiniyam, 2023 is Section 23(1)).



Section 25 of the Evidence Act provides that even if such confession is not the result of any threat, inducement or promise, still such confession would be inadmissible if it was made to a police officer.

25. Sections 26 of the Indian Evidence Act, 1872 reads as under:

*"26. Confession by accused while in custody of police not to be proved against him.- No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate , shall be proved as against such person."*

(Section 23(2) of Bharatiya Sakhya Adhiniyam, 2023 is the corresponding provision).

26. Section 27 of the Evidence Act reads as under:

*"How much of information received from accused may be proved. - Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

(Proviso to Section 23 of Bharatiya Sakhya Adhiniyam, 2023 corresponds to Section 27 of Evidence Act.).

Section 27 of the Evidence Act is an exception to sections 24 to 26.

27. Sections 30 of the Indian Evidence Act, 1872 reads as under:

*"30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.-When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.  
[Explanation.- "Offence" as used in this section, includes the abetment of, or attempt to commit, the offence.]"*

(Section 24 is the corresponding provision in the Bharatiya Sakhya Adhiniyam, 2023).



28. Section 30 of the Evidence Act provides that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. The basis on which this provision is founded is that if a person makes confession implicating himself, that any suggest that the maker of the confession is speaking the truth. Normally, if a statement made by an accused person is found to be voluntary and it amounts to a confession in the sense that it implicates the maker, it is not likely that the maker would implicate himself untruly, and so, Section 30 provides that such a confession may be taken into consideration even against a co-accused who is being tried along with the maker of the confession.

29. Confession mentioned in Section 30 of the Evidence Act is not evidence under Section 3 of the Indian Evidence Act. Section 3 of the Evidence Act defines evidence as:

*"Evidence" means and includes -*

- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence,*
- (2) all documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence"*

30. The Privy Council in *Bhuboni Sahu v. King* [AIR 1949 PC 257] explained the significance of the expression "may take into consideration" used in Section 30. It observed that a "confession" does not come within the definition of "Evidence" under Section 3 of the



Evidence Act, as it is neither required to be given on oath, nor in the presence of the co-accused, and the same cannot be tested by cross-examination. Thus, although a confession against a co-accused, is not an evidence, yet as per Section 30, a court may take it into consideration and act upon it. However, the courts must be mindful that such confessions do not amount to proof, it is only one of the elements in the consideration of all other facts proved in a particular case, and therefore, there must be other evidence before such confession is taken into consideration.

31. In *Haricharan Kurmi and Another v. State of Bihar [1964 KHC 540]* the Hon'ble Apex Court held in paragraphs 11, 12 and 13 as follows:

*"11. The question about the part which a confession made by a coaccused person can play in a criminal trial has to be determined in the light of the provisions of S.30 of the Act. S.30 provides that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. The basis on which this provision is founded is that if a person makes confession implicating himself that any suggest that the maker of the confession is speaking the truth. Normally, if a statement made by an accused person is found to be voluntary and it amounts to a confession in the sense that it implicates the maker, it is not likely that the maker would implicate himself untruly, and so, S.30 provides that such a confession may be taken into consideration even against a coaccused who is being tried along with the maker of the confession. There in no doubt that a confession made voluntarily by an accused person can be used against the maker of the confession, though as a matter of prudence criminal courts generally require some corroboration to the said confession particularly if it has been retracted. With that aspect of the problem, however, we are not concerned in the present appeals. When S.30 provides that the confession of a coaccused may be taken into consideration, what exactly is the scope and effect of such taking into consideration is precisely the problem which has been raised in the present appeals. It is clear that the confession mentioned in S.30 is not evidence under S.3 of the Act S.3 defines "evidence" as meaning and including.*

*(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;*

*(2) all documents produced for the inspection of the Court;*

*12. Such documents are called documentary evidence. Technically*



construed, this definition will not apply to a confession. Part (1) of the definition refers to oral statements which the court permits or requires to be made before it; and clearly a confession made by an accused person is not such a statement; it is not made or permitted to be made before the court that tries the criminal case. Part (2) of the definition refers to documents produced for the inspection of the court; and a confession cannot be said to fall even under this part. Even so S.30 provides that a confession may be taken into consideration not only against its maker, but also against a coaccused person; that is to say, though such a confession may not be evidence as strictly defined by S.3 of the Act, it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non technical way. But it is significant that like other evidence which is produced before the Court, it is not obligatory on the court to take the confession into account. When evidence as defined by the Act is produced before the Court it is the duty of the Court to consider that evidence. What weight should be attached to such evidence, is a matter in the discretion of the Court. But a Court cannot say in respect of such evidence that it will just not take that evidence into account. Such an approach can, however, be adopted by the Court in dealing with a confession, because S.30 merely enables the Court to take the confession into account.

13. As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a coaccused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against other accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in *Emperor v. Lalit Mohan Chockerbury*, ILR 38 Cal 559 at p. 588 a confession can only be used to "lend assurance to other evidence against a coaccused". In *Periyaswami Moopan v. Emperor*, ILR 54 Mad. 75 at p. 77 : AIR 1931 Mad. 177 at p. 178 Reilly, J., observed that the provision of S.30 goes not further than this, "where there is evidence against the coaccused sufficient, "if believed, to support his conviction, then the kind of confession described in S.30 may be thrown into the scale as a additional reason for believing that evidence." In *Bhuboni Sahu v. The King*, 76 Ind App. 147 at p. 155 : AIR 1949 PC 257 at p. 260 the Privy Council has expressed the same view. Sir. John Beaumont who spoke for the Board, observed that

"a confession of a coaccused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in S.3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. S.30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence." It would be noticed that as a result of the provisions contained in S.30, the confession has no doubt to be regarded as amounting to evidence in a general way. Because whatever is considered by the Court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of S.30, the fact remains that it is not evidence as defined by S.3 of the Act. The result, therefore, is that in dealing with a case against an accused person,



*the court cannot start with the confession of coaccused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in S.30. The same view has been expressed by this Court in Kashmira Singh v. State of Madhya Pradesh, 1952 SCR 526 : AIR 1952 SC 159 where the decision of the Privy Council in Bhuboni Sahu's case, 76 Ind. App 147 : AIR 1949 PC 257 has been cited with approval." (emphasis supplied by this Court)*

32. In Kashmira Singh v. State of M.P., (1952) 1 SCC 275 the Hon'ble Apex Court explained as to when such confession may be taken into consideration against another co-accused. Placing reliance on the decision of Periyaswami Moopan, 1930 SCC OnLine Mad 86 it was held that, "where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence" and "the proper way is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what, without the aid of the confession, he would not be prepared to accept". Thus, such a confession can only be pressed



into consideration by the court as a rule of prudence, to lend assurance to the other evidence against such co-accused.

33. In P.Krishna Mohan Reddy v. State of Andhra Pradesh [2025 SCC Online SC 1157] the Hon'ble Apex Court held that before a confession is taken into consideration against a co-accused, the said confession has to be duly proved against the maker. It has to be clearly established that such confession is not vitiated either by Section 24 of the Evidence Act nor rendered inadmissible by Section 25 thereof, which can only be ascertained in the course of trial. It must be clearly established by leading cogent evidence in the course of the trial before the case for the prosecution comes to an end. [See: Dipak Bhai Jagdishchandra Patel v State of Gujarat, (2019) 16 SCC 547]. When confession is made before police official, the same cannot be proved in evidence at all. Statement contemplated under section 30 should be relevant and admissible, and that is the foremost requirement of section and sine qua non.

34. The Apex Court further held that Section 30 of Evidence Act postulates that such a confession can be taken into consideration only where the accused persons are jointly tried. The said provision does not merely require that the persons must be accused of the same offence, but rather requires that they must be being tried jointly for the said offence [See Queen Empress v Jagat Chandra Mali, ILR (1894) 22 Cal 50; Naresh v. R, AIR 1938 Cal 479]. Joint trial here refers to the one



provided under Section 223 of the Criminal Procedure Code, 1973 (for short, the "Cr.P.C."). Thus, where the accused persons are either not being tried jointly, or are yet to be charged for the same offence and thereafter tried together, Section 30 of the Evidence Act would be inapplicable. [See Badri Prasad Prajapati v. State of M.P, 2005 Cri LJ 1856] Thus, Section 30 of the Evidence Act, would not spring into action when the charges are yet to be framed and the accused persons are yet to be committed to trial, and any confession admissible thereunder cannot be taken into consideration by the courts.

35. Where a confessional statement is otherwise excluded or inadmissible by virtue of Section(s) 25 or 26 of the Evidence Act, respectively, there can be no question of such confessional statements being made admissible against another co-accused by stretching it with the help of Section 30 of the Evidence Act. Section 25 of the Evidence Act places a complete ban on the making of such confession by that person, whether he is in custody or not. Section 26 of the Evidence Act lays down that a confession made by a person while he is in the custody of a police officer shall not be proved against him unless it is made in the immediate presence of a Magistrate.

36. Thus, it is a well settled principle that confession statement contemplated under Section 30 of the Evidence Act must be both relevant and admissible in terms of the Evidence Act.

37. Section 25 of the Evidence Act lays down that no confession



made to police officer shall be proved as against a person accused of any offence. Section 30 of the Evidence Act permits the Court to take into consideration the confession of a co-accused only if such confession is proved. The expression "confession proved" in Section 30 of the Evidence Act necessarily means a confession that is legally admissible. Since Section 25 of the Evidence Act imposes an absolute bar on confession made to a police officer, such a confession cannot be proved at all. Consequently, it cannot be looked into even for the limited purpose contemplated under Section 30 of the Evidence Act . Section 30 of the Evidence Act does not override the ban under Section 25 of the Evidence Act. In other words, Section 30 of the Evidence Act is subject to Sections 24 to 26 of the Evidence Act and it does not override the prohibition contained in Section 25 of the Evidence Act.

38. In the case in hand, except for the statement given by PWs 3 and 4 that while in custody, A1 made a confession statement to the police that he, along with A2, stolen the motorcycle bearing registration No.KL-50-5087 from the residential premises, there is absolutely no evidence to connect A2 with the crime. The confession allegedly given by A1 while in Police custody is inadmissible in evidence as there is a total ban under Section 25 of the Evidence Act. The confession of a co-accused which is inadmissible in view of the bar under Section 25 of the Evidence Act is non-existent in the eye of law and therefore, Section 30 of the Evidence Act cannot be invoked in respect of such a



confession.

39. The prosecution failed to establish the involvement of revision petitioner/A2 in the commission of the crime alleged. Hence, the revision petitioner/A2 is found not guilty under Section 379 r/w 34 IPC.

Accordingly, revision petition is allowed. The conviction and sentence against the revision petitioner/A2 for the offence under Section 379 r/w 34 IPC stands set aside and he is acquitted. His bail bond stands discharged. Fine amount, if remitted, shall be returned to the revision petitioner/A2.

Registry shall transmit the records to the trial court forthwith.

Sd/-  
**M.B.SNEHALATHA,**  
**JUDGE**

Mms