

Govindan Vs. State of Kerala

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Court : Kerala

Decided On : Dec-20-2012

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Govindan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN THURSDAY, THE 20TH DAY OF DECEMBER 2012 29TH AGRAHAYANA 193 CrI.Rev.Pet.No. 897 of 2002 () ----- CRA.550/1999 of SESSIONS COURT,KOZHIKODE CC.428/1995 of J.M.F.C-I,PERAMBRA REVISION PETITIONER(S)/APPELLANT/ACCUSED: -----

GOVINDAN S/O.KUNHIKRISHNAN, PERULATHMANNIL, MUDIYANCHAL, PERAMBRA AMSOM AND DESOM, KOZHIKODE TALUK. BY ADV. SRI.P.V.KUNHIKRISHNAN COMPLAINANT(S)/COMPLAINANT:

----- STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA. BY PUBLIC PROSECUTOR SRI. ROY THOMAS THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20-12-2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: **das N.K.BALAKRISHNAN, J.**

===== Crl.R.P. No. 897 of 2002 =====

Dated this the 20th day of December, 2012 ORDER The petitioner was concurrently held guilty of offence punishable under Sec.324 of IPC and was sentenced to R.I for one year and to pay Rs.1,000/- as fine.

2. It is alleged that on 24.05.1995 at about 9.30PM, the accused went to the path way near the house of PW1. There was wordy altercation between the accused and PW1. PW2 and PW3 intervened. According to the prosecution, the accused inflicted cut injuries to PW2 and PW3 with a knife. PW4 and PW5 reached there. The injured persons were taken to the hospital. Based on the statement given by PW1, the FIR was registered. The investigation was conducted and charge sheet was laid. Crl.R.P.No.897/2002 :

2. :

3. PW1 to PW10 were examined and Exts.P1 to P5 were marked. M.O.1 knife was also identified and marked. The two witnesses were examined on the side of defence as DW1 and DW2.

4. Relying on the evidence given by PW1 to PW3, which was supported by PW4 and PW5, the trial court found the petitioner guilty and convicted him for the offence under Sec.324 of IPC. The appellant was sentenced to R.I for one year and to pay Rs.1,000/- as fine. The conviction and sentence passed against him was confirmed by the appellate court.

5. The learned counsel for the petitioner submits that it was, in fact, a case where the accused was attacked by PW1 to PW3 and PW5 and serious injuries were inflicted on the body of the accused. Though the two witnesses were examined on the side of the defence, it is seen that no document was produced by the defence to show that a protest complaint was filed. Though a Crl.R.P.No.897/2002 :

3. : suggestion was made to the prosecution witnesses it is inconceivable why the copy of the complaint, FIR and the copy of wound certificate etc. were not produced on the side of the defence and why those documents were not confronted to the prosecution witnesses. It is in evidence a protest complaint was

filed; and cognizance was taken and the case against PW2 and others was pending as C.C.301/1995. Investigating officer admitted that a complaint was there and after the investigation, the case was referred as false. Therefore, the prosecuting agency was not able to produce the document to prove the case for the defence and the factum of filing of the complaint within the knowledge of the accused. He could have produced the copy of the complaint and the records mentioned earlier to probabalise the case set up by him. That was not done.

6. The learned counsel for the petitioner submits that only because, the case was not conducted on behalf Crl.R.P.No.897/2002 :

4. : of the accused properly, the accused may not be denied justice. The learned counsel has handed over to me the copies of the wound certificate, scan report etc. to show that the accused had sustained serious injuries in that incident. But unfortunately, those aspects were not produced before the courts below.

7. However, only because the accused's counsel did not placed all those records before the court below, it may not be just or fair to deny justice. The fact that PW2 and PW3 sustained injuries as they were stabbed with knife could be proved by the prosecution. Had the accused been attacked by PW2 and others he (accused) could have set up a right of private defence or could have contended that he stabbed PW2 because of grave and sudden provocation. That was not done. This revision was filed in the year 2004. The allegation against the accused that he inflicted injury on PW2 and others with a knife stood proved. Hence, the conviction is to be Crl.R.P.No.897/2002 :

5. : confirmed. Taking note of the factors mentioned above, I find that the sentence can be modified because the accused had also sustained injuries in the incident.

8. In the result, this criminal revision petition is disposed of as stated below: The conviction is confirmed. In supersession of the sentence awarded by the courts below, the petitioner is sentenced to imprisonment till the rising of the court and to pay Rs.1,000/- (Rupees one thousand only) as fine, in default whereof, he will undergo S.I for one month. Sd/- N.K.BALAKRISHNAN, JUDGE das // True copy // PA to Judge

