

Sujatha Vs. State of Kerala

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Court : Kerala

Decided On : Dec-20-2012

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Sujatha

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. 699 of 2003 () ----- CC.572/1999 of J.M.F.C.-II,ATTINGAL REVISION PETITIONER(S)/COMPLAINANT: ----- SUJATHA D/O. DEVAKI, HAREENDRA BHAVAN, DHARBHA KATTAKKAL, POOVATHOOR, MELATTUMOOZHI VAMANAPURAM VILLAGE, THIRUVANANTHAPURAM DISTRICT BY ADV. SRI.M.R.RAJESH COMPLAINANT(S)/STATE AND ACCUSED: ----- 1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. CHITHAMBARAM, S/O. DAMODARAN, KIZHUKKUMKARA VEEDU, POOVATHOOR, VAMANAPURAM VILLAGE, THIRUVANANTHAPURAM DISTRICT. 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: JJJ N.K.

----- Crl. R.P. No:

699. of 2003 ----- Dated this the 20th day of
December, 2012

ORDER

This revision petition is filed by the de facto complainant in C.C. No.572/1999 of Judicial First Class Magistrate Court-II, Attingal. The accused therein was acquitted by the learned Magistrate under section 248(1) of Cr.P.C. The respondent herein/accused stood charged for offences under sections 452 and 324 of IPC.

2. The alleged incident took place on 15.4.1999 at 11.30 a.m. According to the prosecution the accused, after having made preparation to attack PW3 - the victim, trespassed into her house and beat on her back of chest and on her gluteal area. At the time of incident her husband was not there. When her husband reached the house in the evening, she was taken to C.H.C. Kanyakulangara. She was Crl.R.P. No:

699. 2003 -2- examined by PW5 the Doctor at 7.05 p.m. on the same day and issued Ext.P2 - wound certificate. Since the accused was her near relative, she thought no case is required to be registered. She went to the Police Station on 5.6.1999 and lodged Ext.P1 - F.I. Statement, based on which Ext.P4 - F.I.R. was registered. The Investigating Officer questioned the witnesses and after completing investigation, charge sheet was laid against the respondents.

3. PWs 1 to 9 were examined and Exhibits P1 to P4 were marked on the side of the prosecution. The learned Magistrate, holding that PW7 - the independent witness did not explain his presence at the place of incident, disbelieved him. Similarly, since PW6 did not take PW3 to the hospital his presence was also doubted by the learned Magistrate and thus disbelieving the prosecution case, acquitted the accused. Crl.R.P. No:

699. 2003 -3- 4. The learned counsel for the petitioner submits that though the scope of revision in a case which was charge sheeted by the Police and ended in acquittal, is limited, so far as the case on hand is concerned, it can be seen on going through the judgment and the records that there was total failure of justice. I have gone through the copies of the depositions and the wound certificate made available to me. It is seen that PW3 - the victim woman has given evidence to the effect that the accused trespassed into her house and beat on her thigh and gluteal region with a wooden stick. It was stated that there was an allegation against PW3 that she had earlier beaten the daughter of the accused. But the fact that she was beaten by the accused on 15.04.1999 at about 11.00 a.m. is corroborated by the factors noted by PW5 in Ext.P2- wound certificate. The doctor noted contusion of 6 x 6 x 3 cm on the middle left thigh anteriorly and another contusion of 4 x 2 x 2 cm on CrI.R.P. No:

699. 2003 -4- the right gluteal area 4 cm above the 1st injury.

5. The learned counsel pointed out the specific allegation made by PW3 to the doctor that she - PW3 was beaten at 11.00 a.m. with a wooden stick. That would actually support the evidence given by PW3. It is further pointed out that PW7 - the independent witness has stated that he had seen the incident. Though, in cross examination it was stated by him that he reached the place of incident (the house of PW3) hearing a scream and when he reached the house he saw the accused coming out, he has also stated that he actually saw the accused trespassing into the house and beating PW3 with a wooden stick on her back.

6. PW1 has stated in one place that he actually saw the incident. He later deposed that he did not see the accused beating PW3 but saw the accused leaving the scene CrI.R.P. No:

699. 2003 -5- immediately after beating the incident and that the incident took place from inside the house of PW3. That part of the evidence was not challenged by the defence. There is also evidence of PW6, who deposed in court, that he saw the accused beating PW3 on her back and gluteal region. It was contended that PW6 was not present at the scene of occurrence and that had he been present he would have taken PW3 to the hospital. That conduct was projected by the learned

Magistrate to hold that PW6 did not actually see the incident. PW6 is related to PW3 and also to the accused. The accused is the cousin of PW3 as well. Therefore, since PW6 is related to PW3 and the accused, it cannot be said that he had any axe to grind in the matter.

7. It is pointed out by the learned counsel for the petitioner that PW3 had not sustained very serious injuries which did require immediate medical assistance and as per CrI.R.P. No:

699. 2003 -6- husband was not available, there was no necessity for him to take her immediately to the hospital. Therefore, that is not a conduct which can be projected to contend that PW6 was not present at the time of incident. The learned counsel submits that the evidence given by PW6 is natural and probable and so it can be relied upon to corroborate the evidence of PW3.

8. It is seen that the evidence was recorded by the learned Magistrate in a very casual and insincere way. It is seen that only one or two witnesses were written by the learned Magistrate as the deposition of some of the witnesses. Even if the A.P.P. did not put questions narrating the incident or narrating the role of the witnesses, the learned Magistrate cannot shirk his duty and responsibility. Section 165 of the Evidence Act gives ample power to the Magistrate to put such questions as are required to get at CrI.R.P. No:

699. 2003 -7- the truth and to write a proper judgment. It seems the learned Magistrate has approached the matter in a casual way because the accused is the cousin of PW3. No doubt, the case could have been settled between the parties. Though section 452 of IPC is compoundable, section 324 was compoundable with the permission of the court. However, it is not necessary at this stage to state anything regarding the same.

9. The evidence given by PW3 is corroborated by the evidence given by PW5 and Ext.P2 - wound certificate. The learned counsel submits that it is further corroborated by the evidence given by PWs 6 and 7 and also to some extent by the evidence of PW1- who was not cross examined by the accused. CrI.R.P. No:

699. 2003 -8- 10. According to the learned counsel, the evidence given by PW4 is also relevant. He was also not cross examined by the learned counsel for the accused. His evidence is to the effect that when he was walking along the way near the house he heard hue and cry from the house of PW3. When he reached there PW3 was lying and when he asked, PW3 was stated to have told that the accused beat her. That part of the evidence would be relevant under Section 6 of the Evidence Act. When that part of the evidence was not challenged by the accused, how can the court ignore the evidence given by that witness, the learned counsel further submits.

11. Considering all the aspects, I find that the judgment of acquittal passed by the learned Magistrate cannot be sustained. CrI.R.P. No:

699. 2003 -9- 12. In the result, this Criminal Revision Petition is allowed. The judgment of acquittal passed by the learned Magistrate is set aside. The case is remanded to the trial court for fresh disposal. The learned Magistrate will take up the case on 16.1.2013. The learned Magistrate will give opportunity to both sides to adduce further evidence if required. Sd/- N.K. BALAKRISHNAN, JUDGE //True Copy// P.A. to Judge jjj

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