

Kunhamutty Vs. State of Kerala

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Court : Kerala

Decided On : Jul-31-2013

Judge : Honourable Mr. Justice B.Kemal Pasha

Appellant : Kunhamutty

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE B.KEMAL PASHA WEDNESDAY, THE 31ST DAY OF JULY 2013 9TH SRAVANA, 1935 CrI.Rev.Pet.No. 2510 of 2003 ()
----- AGAINST THE JUDGMENT IN CrI.Appeal No. 206/2001 of SESSIONS COURT, MANJERI DATED 30 06-2003 AGAINST THE JUDGMENT IN CC 410/1997 of J.M.F.C.,TIRUR DATED 26 09-2001 REVISION PETITIONERS/APPELLATNS/ACCUSED:

----- * 1. KUNAMUTTY, S/O.ALIKUTTY KURIKKAL (DIED) CHENGAMPALLI COLONIYIL, CHERIAMUNDAM, THALAKADATHUR (TIRU POLICE STATION LIMIT) 2. ISMAIL, S/O.KUNHAMMUTTY RESIDING AT - DO - 3. ALI, S/O.ALIKUTTY KURIKKAL, RESIDING AT - DO - BY ADVS.SRI.K.RAMACHANDRAN SRI.P.RAMACHANDRAN RESPONDENT/RESPONDENT/COMPLAINANT:
----- STATEOF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA ERNAKULAM BY PUBLIC PROSECUTOR SMT.SHEEBA M.T. THIS CRIMINAL

REVISION PETITION HAVING BEEN FINALLY HEARD ON 31-07-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: B.KEMAL PASHA, J.

..... Crl.R.P. No.2510 of 2003 D
..... Dated this the 31st day of July,
2013

ORDER

~ ~ ~ ~ ~ As the 1st petitioner died during the pendency of this Crl.R.P., presently this petition is being prosecuted by petitioners 2 and 3 alone. It seems that petitioners 2 and 3 are A2 and A3 in C.C. No.410/1997 of the Judicial First Class Magistrate's Court, Tirur for the offences under Sections 447, 324 and 326 read with Section 34 IPC. The trial court found the accused guilty of the offences punishable under Sections 326 and 324 IPC and convicted and sentenced them thereunder.

2. The matter was taken up in appeal before the Sessions Court, Manjeri through Criminal Appeal No.206/2001. It seems that the learned Sessions Judge has committed an error in sentencing the appellants for the Crl.R.P.2510/2003 :

2. : offence under Section 323 IPC also, along with Sections 324 and 326 IPC. The learned Sessions Judge could not have sentenced the appellants for the offence under Section 323 IPC also, when it was an appeal preferred by the appellants themselves against the conviction and sentence against them for the offences under Sections 324 and 326 IPC only. It cannot be said that the charge against the 1st petitioner will abate on his death, as sentence of fine was also imposed on the 1st petitioner. It seems that the appellate court has modified the sentence of imprisonment imposed by the trial court on the appellants as sentence of simple imprisonment for three months each. Along with that, the lower appellate court imposed a fine of 1,000/-, in default, to undergo simple imprisonment for one month each on the appellants under Section 323 IPC also. Without much discussion, the sentence imposed by the court below for the offence under Section 323 IPC is only to be set aside. Crl.R.P.2510/2003 :

3. :

2. The prosecution case is that on 15.02.1997, at 6 p.m., the petitioners, in furtherance of their common intention, trespassed into the property of PW1 with wooden reapers and beat PW1. On seeing it, his sister PW2 came to his rescue. She was also beaten with wooden reapers, thereby she suffered a fracture of her right hand.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor. The learned counsel for the petitioners has pointed out that the conviction and sentence for the offences under Sections 324 and 326 IPC are bad in law, and thereby the petitioners are entitled to a clean acquittal. It is also argued that there is no evidence to show that any dangerous weapons were used for the commission of the alleged acts and, therefore, at any stretch of imagination, an offence under Section 324 or 326 IPC will not lie.

4. According to PW1, he was beaten by the petitioners with wooden reapers, which were identified as CrI.R.P.2510/2003 :

4. : MO1 series. The evidence of PW1 does not contain any description of MO1 series. According to PW2, she was also beaten by the petitioners with wooden reapers thereby she sustained a fracture of her right hand. She also identified MO1 series as the wooden reapers. Her evidence also does not show any description of MO1 series. PW3 is the independent witness cited by the prosecution to prove the occurrence. His only evidence is that, on hearing the tumult, he rushed to the scene and saw the petitioners standing there with wooden reapers. He has conceded that he did not see the petitioners attacking either PW1 or PW2; but he has spoken to about their presence at the scene of occurrence.

5. The version of PW2 before PW4 Doctor, who examined her and prepared Ext.P2 wound certificate, has also to be appreciated. Her version before PW4 was that she was beaten with iron rod. PW7, who was the investigating officer, has stated in evidence that he could not CrI.R.P.2510/2003 :

5. : trace out any iron rod. It seems that the opinion expressed by PW4 in Ext.P2 that the injury could be caused as alleged is based on the version given by PW2 to him that she was beaten with an iron rod. In order to cause a fracture, in normal

course, some sort of heavy weapon is required, or a forcible fall is required. It seems that MO1 series were not shown to PW4 during his examination. He was not asked whether such an injury allegedly sustained by PW2 could be caused by beating with MO1 series. In short, there is no evidence to show that MO1 series were dangerous weapon, or weapons of offence, as contemplated under Sections 324 and 326 IPC. When there is no evidence to prove that MO1 series could be made use of as weapons of offence, conviction under Sections 324 and 326 IPC cannot be sustained. The learned counsel for the petitioners has argued that the X-ray was not produced and, therefore, it could not be said that grievous hurt was caused. The learned counsel for the petitioners has relied on the decision Crl.R.P.2510/2003 :

6. : in Babaji Seth and others Vs. State of Orissa [2008 (2) Cri. 692 (Ori)] rendered by the Orissa High Court, wherein it was held that the non production of X-ray plates by the prosecution creates doubt against the prosecution and cannot be said to have proved that the injury sustained by the victim was grievous in nature. In this particular case, I am of the view that the said decision has no application. In that case, there was no other evidence to show that the witness had sustained grievous hurt. In the present case, the evidence of PW4 and the contents of Ext.P2 clearly reveal that PW2 had sustained grievous hurt.

6. On a close scrutiny of the evidence adduced by the prosecution and the observations made by the trial court as well as the appellate court, it seems that the prosecution could prove that PW2 sustained grievous hurt. At the same time, as I have stated earlier, there is no evidence to show that it was caused with the aid of any dangerous weapon or weapon of offence. Matters being so, the acts of the Crl.R.P.2510/2003 :

7. : petitioners in causing the fracture of the right hand of PW2 have clearly resulted in an offence under Section 325 IPC, instead of the offence under Section 326 IPC. It seems that some minor injuries were caused to PW1 also. As there is no evidence to show that those injuries were caused by the use of any dangerous weapons or weapons of offence, the acts of the petitioners in causing those injuries will result in an offence under Section 323 IPC. From all these, I am

satisfied that the conviction and sentence passed by the appellate court are liable to be set aside. It stands proved that the prosecution could prove the guilt of the petitioners for the offences under Sections 325 and 323 IPC, and I convict them thereunder.

7. Regarding sentence, I am of the view that a sentence of imprisonment till the rising of the court under Section 325 IPC and to pay fine of 5,000/- each and a sentence of imprisonment till rising of the court for the offence under Section 323 IPC on petitioners 2 and 3 will CrI.R.P.2510/2003 :

8. : meet the ends of justice in this case. In the result, this CrI.R.P. is allowed in part and the conviction and sentence passed by the courts below are set aside. Petitioners 2 and 3 are convicted under Sections 325 and 323 IPC and they are sentenced to undergo imprisonment till the rising of the court under Sections 325 and 323 IPC and to pay a fine of 5,000/- each, in default, to undergo simple imprisonment for one month each for the offence under Section 325 IPC. The fine amount, if paid or recovered, shall be paid to PW2 as compensation under Section 357(1) Cr.P.C. Sd/- (B.KEMAL PASHA, JUDGE) aks/31/07 // True Copy // PA to Judge

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