

Arun Vs. State of Kerala

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Court : Kerala

Decided On : Oct-24-2013

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Arun

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN THURSDAY, THE 24TH DAY OF OCTOBER 2013 2ND KARTHIKA, 1935 CRL.A.No. 2298 of 2009 ----- SC NO. 79/2008 OF ADDL.DISTRICT AND SESSIONS COURT (ADHOC)-II, KOTTAYAM DATED 30-10-2009 ... APPELLANT(S)/ACCUSED:: ----- ARUN, S/O.SIVAN, KUTHUKALLUMKAL VEEDU, ARPOOKARA VILLAGE AND KARA, KOTTAYAM. BY ADV. SRI.SURIN GEORGE IPE RESPONDENT(S)/COMPLAINANT:: ----- STATE OF KERALA, REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.P.MAYA THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24-10-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Kss Crl.A.No.2298/2009 APPENDIX APPELLANT'S ANNEXURES: ANNEX.A1: NOTARIZED COPY OF THE CERTIFICATE ISSUED BY THE MARRIAGE OFFICER, ETTUMANOOR UNDER SECTION 16 OF THE SPECIAL MARRIAGE ACT. ANNEX.A2: NOTARIZED COPY OF THE IDENTITY

CARD ISSUED BY THE ELECTION COMMISSION OF INDIA DTD. 30/03/2012.
ANNEX.A3: AFFIDAVIT SWORN IN BY THE PROSECUTRIX (PW-1) DTD.
22/10/2013. RESPONDENT'S ANNEXURES: N I L /TRUE COPY/ P.A.TO JUDGE
Kss P.BHAVADASAN, J.

----- Crl. Appeal No.2298
OF2009----- Dated this the 24th day of October, 2013.

JUDGMENT

The accused was prosecuted for the offences punishable under Sections 450, 376, 366 and 506(II) of Indian Penal Code. He was found guilty of the offences under Sections 450, 376 and 366 IPC. He was, therefore, convicted and sentenced to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs.50,000/- with default clause of rigorous imprisonment for six months under Section 376 IPC and to suffer rigorous imprisonment for five years and to pay a fine of Rs.25,000/- with default clause of rigorous imprisonment for three months under Section 366 IPC and also to suffer rigorous imprisonment for five years and to pay a fine of Rs.25,000/- with default clause of rigorous imprisonment for three months under Section 450 IPC. It was also directed that if the fine amount was realised, a sum of Crl. Appeal No.2298/2009 2 Rs.50,000/- shall be paid to PW1 as compensation. The substantive sentences were directed to run concurrently. Set off as per law was allowed.

2. The allegation against the accused was that PW1, who is the victim in this case, was minor at the relevant time and on 22.05.2007 and 14.08.2007 at about 10 a.m, he trespassed into the house of the victim and promising to marry the victim and also threatening her with dire consequences, committed forced sexual assault on her.

3. On a complaint, crime was registered and after investigation, final report was laid. Cognizance of the offence was taken by the court concerned. On finding that the offences are exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Kottayam under Section 209 Cr.P.C. The said court made over the case to Additional District and Sessions Court (Adhoc-II), Kottayam

for trial and disposal. The latter court, on receipt of records and on appearance of the accused, framed charges for the offences already made mention of. To the charge, the accused pleaded not guilty and claimed to Crl. Appeal No.2298/2009 3 be tried. The prosecution therefore had PWs 1 to 20 examined and Exts.P1 and P28 marked. M.O.1 series to M.O.6 series were got identified and marked. Exts.D1 to D4 were marked on the side of defence.

4. After the close the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. He denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. On finding that he could not be acquitted under Section 232 Cr.P.C, he was asked to enter on his defence. But he chose to adduce no evidence.

5. From the materials available, the court below found the accused guilty. The conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal.

6. Learned counsel appearing for the appellant pointed out that the solitary evidence in the case is furnished by PW1 which, according to the learned counsel, does not pass scrutiny. The court below was therefore not justified in accepting her evidence and finding the accused guilty. The court below has also erred, Crl. Appeal No.2298/2009 4 according to the learned counsel, in holding that the evidence of PW6 supports the evidence of PW1. PW6's information regarding the incident is what is spoken to by PW1. That can only be a hearsay evidence.

7. After having heard the learned counsel for the appellant, the learned Public Prosecutor and also after having perused the evidence on record, there seems to be no justification to enter a finding of guilt by the court below.

8. PW1 is the victim in this case. She has spoken about the acts committed by the accused on the two days and the threat meted out to her. She has furnished Ext.P1 First Information Statement. The prosecution examined the parents of the victim as PWs 5 and 6. They also say about the acts committed by the accused on the victim.

9. At the time of hearing of the appeal, learned counsel appearing for the appellant pointed out that the accused has married the victim and they are leading a happy and peaceful life. Learned Public Prosecutor was directed to verify whether the said claim is correct. Crl. Appeal No.2298/2009 5 10. Today, when the matter is taken up, it is pointed out by the learned Public Prosecutor that the victim has been married by the accused and they are leading a happy matrimonial life. Moreover, Annexure A1, which is a marriage certificate, has been produced which would also show the marriage between the parties.

11. Considering the fact that the accused had married the victim and they are leading a peaceful and calm matrimonial life, it is felt that even though the convictions have to stand, the sentence awarded are highly excessive and maintaining those sentence would be in fact causing disharmony between the couple and it may cause rift between them.

12. Taking all the facts and circumstances of the case into consideration and the fact that the victim is married by the accused and they are leading a peaceful homely life, it is felt that the sentence imposed can be interfered with. Thus, while confirming the conviction for the offences under Sections 366, 376 and 450 IPC, the sentence awarded are set aside and instead the accused is sentenced to the period of Crl. Appeal No.2298/2009 6 detention already undergone by him on all three counts. The sentences shall be deemed to run concurrently. If he has paid the fine amount, the same shall be refunded to him. This Crl. Appeal is disposed of as above. P.BHAVADASAN JUDGE smp

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