

Pradeep Vs. State of Kerala

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Court : Kerala

Decided On : Nov-28-2013

Judge : Honourable Mr.Justice K.Harilal

Appellant : Pradeep

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL THURSDAY, THE 28TH DAY OF NOVEMBER 2013 7TH AGRAHAYANA, 1935 CrI.Rev.Pet.No. 2295 of 2013 ----- CRL.A4002010 of ADDITIONAL SESSIONS COURT (ADHOC-I), THRISSUR CC8352007 of J.M.F.C., KUNNAMKULAM REVISION PETITIONERS/APPELLANTS/ACCUSED: ----- 1. PRADEEP S/O.KUNJAPPU, UPPUNGAL HOUSE, PATHANGADI MANGAD, THALAPPILLY TALUK, THRISSUR 2 SATHEESAN S/O.KUNJAPPU, UPPUNGAL HOUSE, PATHANGADI MANAGD, THALAPPILLY TALUK , THRISSUR 3 ABHILASH, S/O.APPU, KANJIRAKKATIL HOUSE, PONNAM, MANGAD, PORKULAM, THALAPPILLY TALUK, THRISSUR BY ADV. SRI.JACOB SEBASTIAN RESPONDENTS/RESPONDENTS/COMPLAINANT: ----- STATE OF KERALA REP.BY PUBLIC PROSECUTOR , HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI. ROY THOMAS THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28/11-2013, THE COURT ON THE

SAME DAY PASSED THE FOLLOWING: OKB K.HARILAL, J.

----- Crl.R.P. No.2295 of 2013 -----
----- Dated this the 28th day of November, 2013 -----

ORDER

The revision petitioners are the accused Nos.1 to 3 in C.C.No.835/07 on the files of the Judicial First Class Magistrate's Court, Kunnankulam. They were charge sheeted and prosecuted for the offences punishable under Section 341, 323, 324 r/w 34 of the Indian Penal Code. After trial, they were found guilty of the said offences and convicted thereunder. Feeling aggrieved, though they had preferred Crl.Appeal No.400/10 before the Court of Session, Thrissur Division, after re-appreciating the entire evidence on record, the learned Sessions Judge confirmed the verdict of guilty, conviction and sentence as such, without any interference. This Revision Petition is filed challenging the legality, propriety and correctness of the impugned judgment under challenge.

2. The prosecution case in brief, is that on 15.4.2007 at 5.30 p.m. while PW1 was sitting on a motor bike at Ponnampangan Junction, the accused persons in furtherance of their Crl.R.P.2295/13 :2: common intention attacked him. A2 caught hold of the collar of the shirt of PW1, A1 and A3 beat and stamped PW1, there at that time, A1 took a liquor bottle from his loin cloth and hit on the head of PW1 and as a result of that, he sustained injury. Thus, the accused have committed the above said offences.

3. To prove the occurrence, the prosecution has examined PWs.1 to 4, and marked Exts.P1 to P4 and MOs.1 and 2. No evidence either oral or documentary was produced in evidence. The accused pleaded not guilty and denied the entire charge against them.

4. Among the occurrence witnesses, PW1 is the de facto complainant, who sustained injury. PW2 is the independent witness who turned hostile to prosecution. PW3 is the person who accompanied PW1 at the time of the incident. He supported the version of PW1. PW4 is another witness who supported the

evidence of PW1. PW1 would swear that while he and PW3 were sitting on a motor bike at Mangatt Centre, the accused approached him and made altercation with him. A2 caught hold of his collar and A1 and A3 kicked and fisted him. A1 took a liquor bottle by name 'Golconda' and hit on his head. As a result CrI.R.P.2295/13 :3: of that, he sustained injury and became unconscious. Thereafter, he was taken to hospital and he has given Ext.P1 F.I.Statement.

5. The said version of PW1 is corroborated by two other witnesses who accompanied PW1 at the time of incident. After appreciating the evidence of PWs.1, 3 and 4, the trial court found that their evidence is credible and trustworthy and, though they were subjected to cross-examination, nothing tangible had been brought out to render their evidence unbelievable.

6. It is the case of the prosecution that PW1 sustained injury on his head by the attack. The injury caused to PW1 by the first accused would further get the assurance from Ext.P4 wound certificate, in which the doctor has noted the injury as stated by the prosecution. It is a specific case of PW1 that that injury was caused by the hit with a bottle containing liquor by name 'Golconda' and the broken pieces of the same was recovered from the place of occurrence and that fact further gets assurance from Ext.P2 scene mahazar. In Ext.P2 scene mahazar, it is specifically stated that the broken bottle was of liquor by name 'Golconda' and that the broken pieces of bottle was found very near to the place of occurrence. The evidence of Pws.1, 3 CrI.R.P.2295/13 :4: and 4 again gets assurance from Exts.P1 to P3 prosecution documents prepared contemporaneously after the alleged occurrence. After analysing the occurrence witnesses, the court below concurrently found that their evidence is trustworthy and believable. Going through the impugned judgment under challenge, I do not find any perversity in the appreciation of evidence of PWs.1, 3 and 4 from which those findings have been arrived at.

7. Re-appreciation of evidence is impermissible under the revisional jurisdiction unless it is found that the court below could not have arrived at such a finding on the basis of the materials on record, or those findings are perverse or unacceptable. Therefore, I am not inclined to re-appreciate the entire evidence on

record, in the absence of any kind of perversity in the appreciation of evidence of PWs.1, 3 and 4. Thus the prosecution case stands proved by their evidence coupled with Exts.P1 to P4 and recovery of MOs.1 and 2 series. Consequently, I confirm the conviction.

8. Coming to the sentence, the learned counsel for the revision petitioners submits that the sentence imposed on the CrI.R.P.2295/13 :5: revision petitioners is too harsh and disproportionate with the nature and gravity of the offences. Going by the judgment itself it could be seen that the accused are aged 37, 29 and 29 years respectively. On an analysis of the nature of occurrence, it could be seen that the incident was not a pre-meditated one. The injured and the accused are residents of the same locality. The prison term can be imposed to secure the interest of deterency. But, I am of the opinion that deterency in a case like this does not necessarily depend on the length of the term that the offenders spend behind the bars. At the same time, misplaced sympathy cannot also have any place in the criminal adjudicatory process. Having regard to the above proposition, I am inclined to reduce the substantive sentence of imprisonment imposed on the revision petitioners.

9. In supersession of the sentence imposed by the trial court and confirmed by the appellate court, the accused are sentenced to undergo simple imprisonment for 15 days each for the offence under Section 341 of the IPC, simple imprisonment for 20 days each for the offence under Section 323 of the IPC, simple imprisonment for one month each and also to pay a fine of CrI.R.P.2295/13 :6: Rs.3,000/- each for the offence under Section 324 of the IPC. In default of payment of fine, they shall undergo simple imprisonment for another one month more. The entire fine amount shall be given to PW1 as compensation under Section 357(1)(b) of the Cr.P.C. Sentence shall run concurrently. The Revision Petition is disposed of accordingly. Sd/- (K.HARILAL, JUDGE) okb. TRUE COPY P.A. TO JUDGE

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