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Santhosh Vs. Circle Inspector

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Court : Kerala

Decided On : Jan-02-2014

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Santhosh

Respondent : Circle Inspector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN THURSDAY, THE2D DAY OF JANUARY201412TH POUSHA, 1935 CRL.A.No. 1510 of 2003 (E) ---------- AGAINST THE

ORDER
/

JUDGMENT
IN SC No.114/2003 of ADDL. SESSIONS COURT, FAST TRACK No.II (ADHOC), THRISSUR DATED2008-2003 APPELLANTS: ACCUSED Nos.1 & 3: ---------- 1. SANTHOSH, S/O.JOHNY, AGED23YEARS, KAVUNGAL HOUSE, POOCHATTIL, NADATHARA VILLAGE, THRISSUR.

2. ROY, S/O.PULIKKAL POULOSE, AGED30YEARS, THALORE DESOM, THRISSUR TALUK. BY ADVS.SRI.C.A.CHACKO SMT.SONIYA.M RESPONDENT:COMPLAINANT : ---------- THE CIRCLE INSPECTOR

OF POLICE, THRISSUR EAST POLICE STATION, THRISSUR, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI.N.SURESH THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON0201-2014, ALONG WITH CRA.No.1619/2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: V.K.MOHANAN, J.

---------- Crl.A.Nos.1510 & 1619 of 2003 ---------- Dated this the 02nd day of January, 2014

JUDGMENT

As the above two appeals arising out of very same judgment dated 20/8/2003 in S.C.No.114 of 2003 on the file of the court of the Additional Sessions Judge, Fast Track No.II (Adhoc Court), Thrissur, at the instance of different accused in the same sessions case and as the facts and circumstances and the questions of law involved are identical, the above appeals are heard together and being disposed of by this common judgment.

2. The prosecution case is that, the accused three in numbers, due to animosity towards PW.1-the injured in this case as he had gone along the inhabitants of Laksham veedu colony, where PW.1 was residing with his family, when the colony people went to the Ollur Police Station for filing a mass petition against the first accused herein and some others, who assaulted the son-in-law of PW.1 and the colony people were Crl.A.Nos.1510 & 1619 of 2003 2 threatened by brandishing sword by A1 and some others, after having trespassed into the dry cleaning shed constructed on the back side of the house of one Samson namely, PW.3, in T.B. Road, Thrissur at about 11 a.m. on 5/9/2001 with an intention to kill PW.1 and towards materlising the above common intention A1 gave two blows with an iron rod on the back side of the head of PW.1 and when he fell down A1 on sitting his chest fisted on his face and on various parts of his body and A2 in that incident attacked PW.1 by using a piece of brick and inflicted injury on his chest and A3 fisted on the face and chest of PW.1. Thus, according to the prosecution, the accused three in numbers have committed the offences punishable under Sections 452, 323, 324 & 307 read with Section 34 of IPC. Accordingly Crime No.853 of 2001 was registered in the Thrissur East Police Station for the offences

punishable under Sections 452, 323, 324 & 307 read with Section 34 of IPC and on completing the investigation, a report was filed in the Judicial First Class Magistrate Court-I, Thrissur, from where Crl.A.Nos.1510 & 1619 of 2003 3 the case was committed to the Sessions Court, from where the same was made over to the present trial court for disposal.

3. When the accused appeared, a formal charge was framed against them for the offences punishable under Sections 452, 323, 324 & 307 read with Section 34 of IPC and when the said charge was read over and explained to the accused, they denied the same and pleaded not guilty. Consequently, the trial was proceeded further, during which the prosecution adduced its evidence by examining PWs.1 to 11 and by producing Exts.P1 to P18 documents. MOs.1 to 3 are also identified and marked as material objects. Except the marking of Exts.D1 to D3 the contradictory portion of 161 statement of PW.1, no other evidence is adduced by the defence. The trial court finally found that all the charges levelled against the accused are proved and accordingly the accused are found guilty under Sections 452, 323, 324, 307 read with Section 34 of IPC and they are convicted thereunder. On such conviction the accused are sentenced to undergo Crl.A.Nos.1510 & 1619 of 2003 4 rigorous imprisonment for one year each under Section 452 read with Section 34 of IPC, rigorous imprisonment for one year each under Section 324 r/w 34 of the IPC and rigorous imprisonment for three months each under Section 323 read with Section 34 of IPC. Each of the accused are sentenced to undergo rigorous imprisonment for two years and a fine of `10,000/- in default rigorous imprisonment for one year more for the offences under section 307 read with Section 34 of the IPC. While ordering to run substantial sentences, under various heads, concurrently, set off is allowed under Section 428 of Cr.P.C. and it is also ordered that, out of the fine imposed, `7,500/- each as compensation to PW.1-the injured. Aggrieved by the above order of conviction and sentence, the accused therein preferred these two separate appeals. Crl.A.No.1619 of 2003 is preferred by A2, whereas Crl.A.No.1510 of 2003 is a joint appeal preferred by A1 and A3 in the very same Sessions Case. Crl.A.Nos.1510 & 1619 of 2003 5 4. Heard Sri.C.A.Chacko, the learned counsel for the appellants in Crl.A.No.1510 of 2003 preferred by accused Nos.1 and 3 in the above Sessions Case and Sri.P.Vijaya Bhanu, the learned Senior counsel appearing for the appellant in Crl.A.No.1619 of

2003 preferred by the second accused in the very same Sessions Case.

5. As I indicated earlier, to prove the incident, though the prosecution has examined PWs.1, 3 and 4, PW.4 turned hostile towards the prosecution. PW.1 is the injured and PW.3 is an employer, who gave the statement to the police, on the basis of which the above crime was registered. According to the prosecution, on seeing the above incident, PW.3 the employer of PW.1 informed the matter to the police over telephone and thereafter he took Paily the injured to Medical College Hospital and he was examined by the Doctor attached to the Medical College Hospital and he was admitted in the hospital. When PW.1 was admitted in the hospital, intimation was given to the police, on the basis of which, PW.8 the Head Crl.A.Nos.1510 & 1619 of 2003 6 Constable deputed to the police aid post in the Medical College Hospital, Trichur went to the casualty ward and according to the prosecution, as the injured was lying in a serious condition, PW.8 recorded the First Information Statement from PW.3, who brought the injured to the hospital, at about 3 p.m. and thereafter he handed over Ext.P2 statement to PW.9 the Head Constable, who was in charge of Town East Police Station, Thrissur, who in turn registered Crime No.853 of 2001 in the Town East Police Station, Thrissur. The investigation was undertaken by PW.10 the then Circle Inspector of Police, Thrissur Town East Police Station and he proceeded to the place of occurrence and prepared a scene mahazar in the presence of the witnesses and he had seized certain material objects and seized certain documents and he had also arrested the accused on various dates and on the basis of the confession statement given by A1 and A2, certain material objects were seized and on completing the investigation he laid the charge. Thus, when PW.1 was examined, he had identified MO.1 iron Crl.A.Nos.1510 & 1619 of 2003 7 rod used by A1 to inflict injuries on the back of PW.1's head and MO.2 piece of brick used by A2 to inflict injury on his face. PW.2 is the then Village Officer of Thrissur Village, through whom Ext.P1 sketch plan of the place of occurrence was got prepared by the prosecution. PW.3 is the employer of PW.1 and when he was examined, Ext.P2 F.I.Statement given by him to PW.8 is identified and the same is marked through PW.3. As I mentioned earlier, another witness examined as eye witness is PW.4, but he turned hostile and thus, while he was examined, Exts.P3, P4, P5 and P6, which are the contradictory portions of his 161 statement, are marked by the

prosecution. PW.5 is an attestor to Ext.P7 scene mahazar and he is also an attestor to Ext.P8 recovery mahazar prepared by PW.10 with respect to recovery of MO.1 iron rod used by accused No.1 and recovered in pursuant to his confession. Similarly, PWs.6 and 7 are also attestors to Ext.P9 prepared by PW.10 connected with the recovery of MO.2 effected on the basis of the disclosure statement of A2 under Section 27 of the Evidence Crl.A.Nos.1510 & 1619 of 2003 8 Act. PW.8 is the Head Constable, who recorded Ext.P2 F.I.Statement given by PW.3. PW.9 is the then Head Constable attached to Thrissur East Police Station, who registered Ext.P10 F.I.R. on the basis of Ext.P2 F.I.Statement handed over by PW.8. PW.10 is the then C.I. of Police, who had undertaken the investigation in the above crime and finally laid the charge. Thus, when PW.10 was examined, Ext.P7 scene mahazar, Ext.P8 recovery mahazar with respect to the seizure of MO.1 and Ext.P9 recovery mahazar with respect to seizure of MO.2 recovery under Section 27 of the Evidence Act on the basis of the disclosure statement made by A1 and A2 are marked through him. During the examination of PW.10, Ext.P11 property list with respect to blood stained double dhoti worn by PW.1 at the time of the incident, Ext.P12 seizure mahazar dated 8/9/2001 by which PW.10 had taken into custody of the petition register-2001 of Ollur Police Station, Ext.P13 seizure mahazar dated 8/9/2001 for taking into custody of the mass petition dated 01/09/2001, Ext.P14 mass Crl.A.Nos.1510 & 1619 of 2003 9 petition dated 01/09/2001, Ext.P15 property list dated 8/9/2001 for producing Exts.P12 to P14, P16 relevant page of Ext.P12 of petition register-2001 of Ollur Police Station, are marked through PW.10. PW.11 is the surgeon attached to Medical College Hospital, Thrissur, who attended PW.1 and noted injuries on his body in the wound certificate issued by him. Thus, when PW.11 was examined, Ext.P.17 wound certificate and Ext.P18 discharge certificate with respect to PW.1 are marked through him. These are the evidences and materials referred to by the learned Judge in the impugned judgment in support of his finding and convicting the appellants.

6. Mr.C.A.Chacko the learned counsel for the appellants appearing for accused Nos.1 and 3 submitted that, the trial court is wrong in convicting the appellants, since the prosecution has not succeeded in proving its allegation against the appellants beyond reasonable doubt, particularly, the registration of the crime itself

rendered as doubtful since PW.3 is not an eye witness in view of his Ext.P2 F.I. Statement. It is Crl.A.Nos.1510 & 1619 of 2003 10 also the contention of the learned counsel that, the medical evidence consists of the testimony of PW.11 and Ext.P17 wound certificate and Ext.P18 discharge certificate are not sufficient to corroborate the evidence of PW.1-the injured and the claim of PW.1 about the injuries sustained by him are not tallying with the contents of Ext.17 wound certificate. It is also contended that the motive suggested by the police is proved as false, since PW.1 is not a signatory to Ext.P14 mass petition in spite of the fact that the allegation is that his son in law was attacked by A1 and others. It is also the contention of the learned counsel that, the prosecution has miserably failed to establish the identity of the accused. Whereas Sri.Vijaya Bhanu, the learned Senior counsel for the 2nd accused, who preferred Crl.A.No.1619 of 2003 it is submitted, particularly in the light of the decision reported in Mohd. Iqbal M.Shaikh & Others Vs. State of Maharashtra [1998 (4)SCC494 that, the prosecution has miserably failed to establish the identity of A2 and the trial court has gone wrong in accepting the Crl.A.Nos.1510 & 1619 of 2003 11 evidence of prosecution against A2 with respect to his identification, since the police initially had shown A2 in the Police Station to PWs.1 and 3. Thus, the learned counsel appearing for the appellants are unanimous in their submission that the prosecution has not succeeded in proving its allegation against the appellants beyond reasonable doubt and therefore the trial court has gone wrong in convicting the appellants and therefore the appellants are entitled to get an acquittal.

7. On the other hand, the learned Public Prosecutor submitted that, the accused among which A1 is a neighbour residing in the very same colony of PW.1 and therefore the evidence adduced by PW.1 identifying the accused can be acted upon particularly when during the course of investigation of the crime police shown A1 to A3 to PW.1 and PW.3 and they have reaffirm the identity of those accused during the trial of the case. The other evidence of PWs.1 and 3, according to the learned Public Prosecutor, free of any Crl.A.Nos.1510 & 1619 of 2003 12 doubt or infirmities or contradictions and therefore the trial court is fully justified in accepting their evidence and convicting the appellants and as such no interference is warranted.

8. I have carefully considered the contentions advanced by the learned counsel for the appellants as well as the learned Public Prosecutor and I have perused the evidence and materials on record.

9. In the light of the rival contentions and in the light of the evidence and materials on record, the questions that arose for consideration are, whether the prosecution has succeeded in establishing that the accused three in numbers in furtherance of their common intention attempted to commit murder of PW.1 and whether it is proved that the accused or any of them voluntarily caused PW.1 by beating his hand and by dangerous weapons and whether the prosecution has proved that the accused trespassed into the shed in the possession of PW.3 for committing an offence and whether the Crl.A.Nos.1510 & 1619 of 2003 13 trial court is justified in convicting all the appellants for the offences charged against them. As I indicated earlier, to prove the allegation against the accused, and particularly to establish the occurrence, the prosecution mainly depends upon the evidence of PWs.1 and 3 among which PW.1 is the injured and PW.3 is the person, who gave Ext.P2 F.I.S. are also a witness to the incident. Though PW.4 cited and examined as eye witness to the incident, he had turned hostile towards the prosecution. Therefore, the prosecution constrained to depend upon the evidence of PWs.1 and 3 to establish its case against the accused. PW.1 is the injured, who had deposed fully in terms of the prosecution allegation and he had identified all the accused during the trial. Regarding the incident, according to me, the evidence of PWs.1 and 3 are in tact. There is no substantial contradictions or infirmities in their evidence. When PWs.1 and 3 were examined, they gave a clear account about the incident under which PW.1 sustained injuries. The incident originated while PW.1 was working in Crl.A.Nos.1510 & 1619 of 2003 14 the dry cleaning shed constructed by PW.3 and when he was engaged in his working, two identifiable persons came there and enquired him about Paily and PW.1 replied in the negative, it is at that point of time, A1 came there and saying that it was PW.1 with whom they enquired about Paily and A1 exhorted to kill PW.1 and with that he inflicted two blows on the back of the head of PW.1 with MO.1 iron rod. PW.1 has further deposed that, when he fell down on receiving the head injuries and at that time A1 sat on the chest of PW.1 and fisted on his face and all over his body. PW.1 has got prior acquaintance with A1 as both of them are residents of Laksham veedu colony and

it was A1, who assaulted the son-in-law of PW.1. The above evidence of PW.1 is further corroborated by the evidence of PW.3, who is the employer of PW.1 and who was present at the time of the incident. When PW.3 was examined in the court, he had given a clear account with the evidence in tune with the deposition of PW.1. But suffice to say, when PW.8 recorded Ext.P2 F.I.S. of PW.3, the same is seen Crl.A.Nos.1510 & 1619 of 2003 15 recorded as a hearsay statement. Going by Ext.P2, it can be seen that, all what recorded therein as told by PW.1 to PW.3. But the substantial evidence of PW.3 made before the court shows that he had seen the entire incident. As rightly observed by the learned Judge of the trial court, PW.8 recorded Ext.P2, not in the passion as first information within the knowledge of PW.3, probably due to extraneous consideration or to help the accused. Even a police constable, even if he is a new entrant not likely to record a FIS in the passion or manner as recorded by PW.8, unless he had some oblique motive. So, the above calculated attempt of PW.8 to save the accused cannot be taken as a ground to disbelieve PW.3 or to hold that he was making improvements when he was examined during the trial. According to me, even if the evidence of PW.3 is excluded, the sole evidence of PW.1 itself is sufficient to prove the incident and which evidence of PW.1 is further corroborated by the evidence of PW.11 the Doctor, who examined him and who issued Ext.P.17 wound certificate. Crl.A.Nos.1510 & 1619 of 2003 16 So, according to me, the above evidence of PW.1 as well as the evidence of PW.3 supported by the evidence of PW.11 and the contemporaneous document Ext.P.17 would positively proved that PW.1 had sustained injuries at the dry cleaning shed of PW.3 at about 11 a.m. on 5/9/2001.

10. The further question to be considered is, whether the prosecution has succeeded that, PW.1 sustained injuries at the hands of the accused/appellants in the above incident. According to me, the available evidences are not sufficient to prove the involvement of accused Nos.2 and 3 in the above incident. But the presence of A1 and his overt act in inflicting injuries on PW.1 stands proved in view of the the evidence and materials on record. In this juncture, it is relevant to note that, when Ext.P.10 F.I.R. was registered, only the name of A1 was mentioned and other accused are shown as identifiable persons. During the chief-examination of PW.1 he had stated:- 2 . ..... Crl.A.Nos.1510 & 1619 of 2003 17 . (A1) . . . (correctly identified)." [Emphasis supplied]. Thereafter

PW.1 deposed about the overt act of A1 by which he sustained injuries. Subsequently, though PW.1 deposed about the overt acts of other accused, he has no claim that he had prior acquaintance with those persons. Suffice to say, no description of other accused were given by PW.1 to the police during the course of the investigation. Going by the evidence of PW.3, it can be seen that, he furnished the name of A1 on the basis of the information furnished by PW.1 and he has also no contact or previous acquaintance with the accused persons. So, how A2 and A3 implicated in the crime, Crl.A.Nos.1510 & 1619 of 2003 18 absolutely there is no evidence and the official witnesses of the prosecution are silent on this aspect. In this juncture, it is also relevant to note that, A2 and A3 were arrested at 8 P.M. on 7/10/2001 whereas A1 was arrested at 5 P.M. on 01/11/2001. The details of A1 were known to PW.1 even at the time of the alleged incident. The prosecution has no case that they have got the details of A2 and A3 from A1. Therefore, how A2 and A3 implicated in the above case, there is no explanation from the side of the prosecution. The trial court simply on the basis of the evidence of PW.1 and PW.3, who identified the accused during the trial of the case, opted to convict accused Nos.2 and 3 as well. It is also brought on evidence that, PWs.1 and 3 were identified A2 and A3 in the Police Station during the course of the investigation but still then the prosecution evidence does not disclose as to how A2 and A3 were traced out and implicated in the crime, in the absence of any evidence on description about the person of A2 and A3. So, in the light of the decision reported in Mohd. Iqbal M.Shaikh & Others Crl.A.Nos.1510 & 1619 of 2003 19 Vs. State of Maharashtra [1998(4) SC494 relied on by the learned counsel for the appellants, the evidence of PWs.1 and 3 with respect to the identity of A2 and A3, particularly, on the basis of the fact that the police had shown these accused previously to PWs.1 and 3, cannot be acted upon to base the conviction. So, according to me, though the prosecution has succeeded in proving its allegation against A1, the evidence on record are not sufficient to prove the prosecution allegation against accused Nos.2 and 3 particularly the identity of those accused and therefore accused Nos.2 and 3 are entitled to get the benefit of doubt. Therefore, I am unable to approve the conviction recorded by the trial court against accused Nos.2 and 3 though I am inclined to confirm the conviction of A1. Accordingly, the conviction recorded by the trial court against A1 is confirmed whereas conviction

with respect to A2 and A3 recorded by the trial court is set aside. As the conviction with respect to A1 is confirmed, the learned counsel for the said appellant submitted that, a lenient Crl.A.Nos.1510 & 1619 of 2003 20 view may be taken in the matter of sentence. According to me, A1 deserves no leniency since the proved case of prosecution shows that due to previous animosity, A1 had trespassed into the dry cleaning shop of PW.3 and assaulted PW.1, who was working there, by using MO.1 weapon and thus the injuries inflicted were on the vital part of the body of PW.1. Therefore, the above request of the learned counsel is rejected. In the result, Crl.A.No.1619 of 2003 preferred by A2 is allowed and Crl.A.No.1510 of 2003 is allowed in favour of A3, but dismissed against A1 and resultantly judgment dated 20/8/2003 in S.C.No.114 of 2003 of the court of the Additional Sessions Judge, Fast Track Court No.II (Adhoc), Thrissur is set aside to the extent it is against accused Nos.2 and 3 and the bail bond, if any, executed by them stands cancelled and they are set at liberty. Crl.A.No.1510 of 2003 so far as accused No.1 is concerned dismissed and his bail bond is cancelled and he is directed to appear before the trial court to receive the sentence on 03/02/2014 and in case of failure in appearing Crl.A.Nos.1510 & 1619 of 2003 21 before the trial court as directed above, the trial court is free to take coercive steps to secure the presence of A1 in the above Sessions Case and to execute the sentence imposed by the trial court. V.K.MOHANAN, JUDGE skj True copy P.A. to Judge

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