

Balan Vs. State of Kerala

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Court : Kerala

Decided On : Jan-30-2014

Judge : Honourable Mr.Justice M.L.Joseph Francis

Appellant : Balan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE M.L.JOSEPH FRANCIS THURSDAY, THE 30TH DAY OF JANUARY 2014 10TH MAGHA, 1935 CrI.Rev.Pet.No. 1337 of 2003 ()
----- AGAINST THE

JUDGMENT

IN CRA5272001 of III ADDITIONAL SESSIONS (ADHOC) FAST TRACK COURT NO.1, THRISSUR AGAINST THE

ORDER

IN CC2901998 of J.M.F.C.-II, THRISSUR PETITIONER/APPELLANT/1ST ACCUSED: ----- BALAN S/O.KUMARAN, CHULLIPARAMBIL HOUSE, MANALUR, THRISSUR BY ADV. SRI.RAJIT RESPONDENT/RESPONDENT/COMPLAINANT & STATE: ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA

AT ERNAKULAM. R, BY PUBLIC PROSECUTOR, SHRI LIJU V. STEPHEN THIS
CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON2801-
2014, THE COURT ON301-2014 PASSED THE FOLLOWING: M.L. JOSEPH
FRANCIS J., - - - - - Crl.R.P. No.1337 of 2003 - - -
- - - - - Dated this the 30th day of January 2014

ORDER

This Crl.R.P. is filed by the first accused Balan in C.C. No.290 of 1998 on the file of Judicial First Class Magistrate Court No.2, Thrissur. The first accused, along with second accused was charge sheeted by the S.I. of Police, Anthikkad in Crime No.149 of 1998 for the offence under Sections 341, 323 and 326 read with Section 34 of the Indian Penal Code (in short 'the IPC').

2. The prosecution case is briefly as follows. On 19.5.1997 at about 5 a.m., PW2 Devu was accompanying her son-in-law PW5 Thankamani to the nearby road from her house Crl.R.P. No.1337 of 2003 :2: situated at Manalur. When PW2 reached near the road, both the accused in furtherance of their common intention of causing hurt to PW2, rushed towards her. First accused beat PW2 on her left hand with MO1 iron pipe and she sustained fracture on her left radius. When PW2 fell down second accused kicked her and caused hurt and both accused wrongfully restrained her before starting the attack on her.

3. Before the Magistrate court on the side of prosecution PWs 1 to 6 were examined and Exhibit Nos.1 to 6 were marked and MO1 iron pipe and MO2 knife were identified. No evidence was adduced from the defence side. The learned Magistrate on considering the evidence on record convicted and sentenced first accused to undergo rigorous imprisonment for two years under Section 326 of the IPC and to pay a fine of `5,000/- in default to undergo simple imprisonment for one more year. The first accused was convicted and sentenced to Crl.R.P. No.1337 of 2003 :3: undergo simple imprisonment for one month under Section 341 of the IPC and second accused was convicted and sentenced to undergo simple imprisonment for one month under Section 341 of the IPC and to undergo simple imprisonment for six months under Section 323 of the IPC. Second accused was also sentenced to pay a fine of `1,000/- in default to undergo simple imprisonment

for three months under Section 323 of the IPC. Against that conviction and sentence, accused Nos.1 and 2 filed Crl. Appeal No.527 of 2001 before IIIrd Additional Sessions Court, Thrissur, which was dismissed confirming the conviction and sentence. Against that judgment the first accused Balan alone filed this Crl. R.P.

4. Heard the learned counsel for the revision petitioner and learned Public Prosecutor. The learned counsel for the revision petitioner submitted that in this revision, the petitioner is challenging only the sentence imposed on him. The learned Crl.R.P. No.1337 of 2003 :4: counsel for the revision petitioner submitted that the matter is settled between the parties and that in view of that settlement, the sentence may be reduced.

5. PW2 Devu deposed that the occurrence took place in front of the shop of one Balan. At the time of occurrence, she was accompanying her son-in-law PW5. PW2 deposed that on seeing PW5, accused Nos.1 and 2 chased him and thereafter PW2 was attacked by the accused. She deposed that both the accused attacked her shouting that they would finish her. PW2 deposed that second accused caught hold on her hand and first accused gave a blow on her hand with MO1 iron pipe, as a result of which she sustained fracture on her left radius. PW2 deposed that she sustained injuries on her head and forehead and that second accused kicked her. PW5 is the son-in-law of PW2. PW5 gave more or less the same version regarding the occurrence. Medical evidence shows that PW2 sustained Crl.R.P. No.1337 of 2003 :5: fracture on her left radius and also sustained other injuries. Since the testimony of PWs 2 and 5 is corroborative each other and further corroborated by medical evidence, I am of the view that the Courts below are fully justified in convicting the first accused under Sections 341 and 326 of the IPC.

6. Since the occurrence took place 17 years ago and as the matter is settled between the parties, I am of the view that the sentencing first accused to undergo simple imprisonment for one month under Section 326 of the IPC and to pay a fine of `500/- under Section 341 of the the IPC, would meet the ends of justice. Accordingly this Crl.R.P. is allowed in part. The conviction of first accused Balan in

C.C. No.290 of 1998 on the file of First Class Judicial Magistrate Court No.II, Thrissur under Sections 326 and 341 of the IPC is confirmed. The sentence is modified and reduced and first accused is sentenced CrI.R.P. No.1337 of 2003 :6: to undergo simple imprisonment for one month under Section 326 of the IPC and he is also sentenced to pay a fine of `500/- under Section 341 of the IPC in default to undergo simple imprisonment for 7 days. The first accused is directed to surrender before the Judicial First Class Magistrate Court-II, Thrissur within one month to undergo the sentence. The first accused is also entitled to get set off under Section 428 of the Code of Criminal Procedure, if he had undergone detention during investigation. Sd/ M. L. JOSEPH FRANCIS, (JUDGE) dl/ // TRUE COPY // PA TO JUDGE

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