SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Unnikrishnan Vs. State of Kerala

Unnikrishnan Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1127326

Court : Kerala

Decided On : Jan-24-2014

Judge : Honourable Mr.Justice K.Harilal

Appellant : Unnikrishnan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL FRIDAY, THE24H DAY OF JANUARY20144TH MAGHA, 1935 Crl.Rev.Pet.No. 67 of 2013 () ---------- (

JUDGMENT
IN CRA3472010 OF ADDITIONAL DISTRICT COURT (ADHOC), THRISSUR DATED2809-2012

JUDGMENT
IN CC4172007 OF JUDICIAL FIRST CLASS MAGISTRATE CURT, WADAKKANCHERY) PETITIONERS/APPELLANTS/ACCUSED: ---------- 1. UNNIKRISHNAN S/O.VELAYUDHAN, KALAPURAKKAL HOUSE, KODAKARA THRISSUR.

2. VASU S/O.KUTTAN, MUKKUTTIVALAPPIL HOUSE PUNNAPARAMBU COLONY, THEKKUMKARA, THRISSUR. BY ADV. SRI.P.K.SAJEEV

RESPONDENT/RESPONDENT/COMPLAINANT: ---------- 1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA. ADDITIONAL RESPONDENTS:

2. THANKAMMA, W/O. PAPPU, VADAKKEKARA HOUSE PUNNAMPARAMBU COLONY, THEKKUMKARA VILLAGE, THEKKUMKARA P.O, THALAPPILLY TALUK, PIN-680608.

3. SUNITHA, D/O. PAPPU, VADAKKEKARA HOUSE, PUNNAMPARAMBU COLONY, THEKKUMKARA VILLAGE, THEKKUMKARA PO, THALAPPILLY, PIN-680 608.

4. PAPPU, S/O. THOMMEN, VADAKKEKARA HOUSE, PUNNAMPARAMBU COLONY, THEKKUMKARA VILLAGE, THEKKUMKARA PO, THALAPPILLY TALUK, PIN-680608.

5. LEELA, W/O. UNNI, MELEMBATTU HOUSE, PUNNAMPARAMBU, THEKKUMKARA VILLAGE, THEKKUMKARA P.O, THALAPPILLY TALUK, PIN-680 608. (R2 TO R5 ARE IMPLEADED AS ADDITIONAL RESPONDENTS AS PER

ORDER

DATED1112.2013 IN CRL.M.A.908/2013 IN CRL. R.P.NO.67/2013) R2,R4,R5,R BY ADV. SRI.LIJOY P.VARGHESE R BY PUBLIC PROSECUTOR SRI. ROY THOMAS. THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON2401-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: SCL. K. HARILAL, J.

---------- Crl.R.P. No.67 of 2013 ---------- Dated this the 24th day of January, 2014

ORDER

The revision petitioners are the accused in C.C. No.417/07 on the files of the Judicial First Class Magistrate's Court, Wadakkanchery. They were charge sheeted and tried for the offences punishable under Secs.323, 341 and 447 read with Sec.34 of the Indian Penal Code. After trial, the learned Magistrate found the

revision petitioners guilty of the offences under Secs.323 and 447 read with Sec.34 of the IPC and acquitted of the offence under Sec.341 of the IPC. They were sentenced to undergo simple imprisonment for for one month each under Sec.323 of the IPC and to undergo simple imprisonment for one month each under Sec.447 of the IPC. Feeling aggrieved, though they had preferred Crl. Appeal No.347/10 before the Court of Session, Crl.R.P.No.67 of 2013 2 Thrissur Division, after re-appreciating the evidence on record, the learned Sessions Judge also confirmed the verdict of guilty, conviction and sentence, as such, without any interference. The legality, propriety and correctness of the concurrent findings of conviction entered and the sentence imposed on the revision petitioners are under challenge in this revision petition,.

2. The prosecution case, in brief, is that on 27/8/2004 at 8 p.m., the accused, in furtherance of their common intention, committed criminal trespass into the property of P.W.1. The accused wrongfully restrained P.W.1 and voluntarily caused hurt to P.Ws.1, 2 and 7 and Witness No.2 by beating and kicking them. On the strength of the First Information Statement lodged by P.W.2, the case was registered against the revision petitioners.

3. To prove the prosecution case, P.Ws.1 to 9 were examined and Exts.P1 to P7 were marked. The accused pleaded not guilty; but no evidence was adduced in defence. When incriminating circumstances were put to him under Crl.R.P.No.67 of 2013 3 Sec.313 of the Cr.P.C., he denied all the circumstances.

4. The learned counsel for the revision petitioners submits that the courts below miserably failed to appreciate the facts and evidence in its correct perspective. The courts below went wrong in relying on the evidence of P.Ws.1, 2 and 7 only. The evidence of P.Ws.1, 2 and 7 is not corroborated by any independent evidence. The sum and substances of the argument is that the prosecution failed to prove the charge against the accused beyond doubt.

5. Per contra, the learned Public Prosecutor advanced arguments to justify the verdict of guilty found against the revision petitioners. According to him, the prosecution had succeeded in proving the case beyond doubt. In support of the arguments advanced by the Public Prosecutor, the learned counsel appearing for

the additional respondents who are the injured in the instant case also advanced arguments to justify the impugned judgment under challenge.

6. Coming to the evidence, it could be seen that PWs.1, Crl.R.P.No.67 of 2013 4 2 and 7 were examined as injured witnesses. PW1 is the de facto complainant. She gave a statement in tune with the statement given in Ext.P1 F.I.Statement. According to her, her second son is a mentally ill person whom the revision petitioners had manhandled at Punnamparambu centre. Later, they came to the house chasing him for further attack, she resisted the same and then she was also manhandled by the revision petitioners. According to her, she was beaten and stamped by the accused, when CWs. 2, 3 and 4 intervened they were also manhandled by the accused and all of them went to hospital for treatment.

7. The oral account of the overt act done by the accused is corroborated by the evidence of PWs.2 and 7 who are also injured. After appreciating the evidence of these witnesses, the courts below concurrently placed reliance to find guilt of the accused. Further, their evidence gets assurance from the medical evidence. PW4 is the medical officer who attended the injured and issued Exts.P2 to P5 wound certificate. It is also observed by the court below that though the Doctor was Crl.R.P.No.67 of 2013 5 cross-examined into minute details, nothing brought out to discredit his evidence. Thus, the oral account of the injured stands corroborated by medical evidence. I do not find any kind of illegality or impropriety in the said findings and there is no perversity in the appreciation of evidence from which those findings have arrived at. Consequently, I confirm the verdict of guilty.

8. Coming to sentence, the learned counsel for the revision petitioners submits that the sentence imposed on the accused are disproportionate with the nature and gravity of the offence and it is too excessive and harsh. Prison term can be imposed to secure the interest of deterrence. But, deterrence in a case like this does not necessarily depend upon the length of the term that the offender spends behind the Bar. Victimology is a concept developed in the criminal jurisprudence by the passage of time. Certainly, the grievance of the victims must be compensated and it can be by paying adequate compensation. At the same time, misplaced sympathy cannot also have any place in the Crl.R.P.No.67 of 2013 6

criminal adjudicatory process. Therefore, I am inclined to take a balanced view. Consequently, the substantive sentence of simple imprisonment for one month will stand reduced and modified to simple imprisonment for one day till rising of the court. But, in lieu of the reduction in substantive sentence, the revision petitioners shall pay substantial amount to the injured by way of compensation.

9. In supersession of the sentence imposed by the trial court and confirmed by the appellate court, the revision petitioners are sentenced to undergo simple imprisonment for one day till rising of the court and to pay a compensation of 12,500/- each under Sec.357(3) for the offence under Sec.323 of the Indian Penal Code. Further, the revision petitioners are sentenced to undergo simple imprisonment for one day till rising of the court only under Sec.447 of the Indian Penal Code and the substantive sentence of simple imprisonment for one day will run concurrently. The revision petitioners shall deposit the compensation amount in the trial court within two months and the same shall be disbursed equally to Crl.R.P.No.67 of 2013 7 Pws.1, 2, 7 and CW2. The revision petitioners shall appear before the trial court to suffer substantive sentence of simple imprisonment for one day on or before 24th March, 2014 with sufficient proof to show payment of compensation.

10. Warrant, in execution of the sentence imposed on the revision petitioners under the impugned judgment shall be kept in abeyance till 24th March, 2014. The Criminal Revision Petition is disposed of accordingly. K.HARILAL, JUDGE. Nan/stu //True copy// P.A to Judge

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com