

Sukumaran @ Suku Vs. State,rep.by Public Prosecutor,h.C.,ekm.

Sukumaran @ Suku Vs. State,rep.by Public Prosecutor,h.C.,ekm.

SooperKanoon Citation : sooperkanoon.com/1130883

Court : Kerala

Decided On : Feb-18-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Sukumaran @ Suku

Respondent : State,rep.by Public Prosecutor,h.C.,ekm.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR. JUSTICE A.HARIPRASAD TUESDAY, THE18H DAY OF
FEBRUARY201429TH MAGHA, 1935 CRL.A.No. 2152 of 2003 ()
----- AGAINST THE

ORDER

/

JUDGMENT

IN SC3602001 of SESSIONS COURT, THODUPUZHA DATED1912-2003
APPELLANT/ACCUSED IN S.C N.360/2001 : -----
SUKUMARAN @ SUKU, AGED37YEARS, S/O NARAYANAN,
KARUMALKKOTTIL HOUSE, VANNAPPURAM VILLAGE, VANNAPPURAM,
IDUKKI DISTRICT. BY ADV. SRI.A.P.SUBHASH.
RESPONDENT/COMPLAINANT IN S.C NO.360/2001:
----- STATE REPRESENTED BY PUBLI

PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.JASMINE. THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-02-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: amk 'C.R' A.HARIPRASAD, J.

----- Crl. Appeal No.2152 of 2003
----- Dated this the 18th day of February, 2014.

JUDGMENT

Appeal filed under Section 374(2) Cr.P.C. The appellant was charged for offences punishable under Sections 323, 427 and 294(b) I.P.C and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act of 1989'). After an elaborate trial, the learned Sessions Judge convicted the appellant for offences punishable under Sections 323 and 427 I.P.C and Section 3(1)(x) of the Act of 1989 and imposed sentences on him. The appellant was acquitted of the offence under Section 294(b) I.P.C. Aggrieved by the conviction and sentence, the appellant has come up in appeal.

2. Case against the appellant, as borne out from Ext.P1 First Information Statement and the Final report, is as follows : Appellant is not a member of Scheduled Caste or Crl. Appeal No.2152 of 2003 2 Scheduled Tribe. On account of his animosity towards PW1, who is a member of Hindu Pulaya Community, a Scheduled Caste in the State, at about 12 hours in the noon on 22-12-1997, the appellant intentionally insulted her within public view by abusing her in filthy language and calling her caste name. Further, the appellant voluntarily caused hurt to PW1 by beating with hand on her head. Appellant pulled her down on to the road dragging her by hair. Appellant fisted and kicked her on left buttock and left shoulder with an intention to humiliate her and also caused loss of Rs.300/- to her. To substantiate this prosecution case, PW's 1 to 13 were examined. Exts.P1 to P9 are the documents marked. DW1 is the witness cited by the defence. Ext.D1 is the document relied on by the defence.

3. Heard the learned counsel for the appellant and the learned Public Prosecutor.

4. Learned Sessions Judge meticulously considered the Crl. Appeal No.2152 of 2003 3 oral evidence adduced in this case. PW1 is the injured/defacto complainant. It is her definite case that the appellant enticed her married daughter on the pretext of love and later she committed suicide. In connection with that incident, the appellant and PW1 were at loggerheads. On the date of occurrence, she went to the Government Hospital, Vannapuram to get medicines as she was unwell. Thereafter, she went to a bank for redeeming gold ornaments pledged. At that time, PW4 also accompanied her. PW4 is her brother's daughter. The appellant is a head load worker. When they reached the High range Junction, the appellant was found standing by the side of the road. On seeing PW1, the appellant without any provocation started abusing her by using obscene words. On hearing the filthy words, PW1 reacted by saying that the appellant was responsible for the death of her daughter. Infuriated by her words, the appellant intensified the shower of abuse on her in front of general public. Crl. Appeal No.2152 of 2003 4 Thereafter, he physically assaulted her by beating and pulling down her by catching the lock of hair. He torn the saree and blouse worn by the appellant. Her case that gold ornament worn by her was lost in the melee was not accepted by the trial court for want of evidence. PW1 deposed that the appellant pretended love to her daughter. Later, she was given in marriage to another man. Appellant used to visit the matrimonial home of her daughter and caused lot of problems. Then PW1's daughter was lured to go along with the appellant to Payyannoor and they lived for sometime as husband and wife. On 10-02-1997 she consumed poison and committed suicide. PW1 alleged that it was on account of the appellant's misdeeds she lost her daughter. Fact remains clear that both PW1 and appellant were enemical to one another.

5. PW1 was subjected to tough cross examination. It was suggested in cross examination that PW1 was in the habit of Crl. Appeal No.2152 of 2003 5 filing false cases against all persons, including the appellant. She stoutly denied all the suggestions. In spite of challenges raised in cross examination, her version that the appellant abused her and physically assaulted her remain credible. PW1 stated that PW4 also witnessed the incident.

6. PW4 is the niece of PW1. It is her assertion that she accompanied PW1 to hospital and the incident happened while they were returning home. PW4 also testified the details regarding the incident. It is her version that on seeing PW1, the appellant became wild and started abusing her. There was a wordy dual between the appellant and PW1. Then the appellant unleashed physical assault to her and caused her fall on to the tar road. PW3 stuck to her version despite searching cross examination. The physical assault meted out and uttering of bad words to PW1 by the appellant have been elaborately narrated by PW4. There is perfect harmony between the testimony of PW Crl. Appeal No.2152 of 2003 6 1 and 4. PW2 is a person known both to the appellant and PW1. She also testified about the incident. Her testimony also render support to that of PW's 1 and 4. The defence case that PW1 attempted to cause hurt to the appellant by using an umbrella and the appellant only tried to ward off the attack by PW1 have been denied by PW's 1, 2 and 4. Version of PW2 regarding the incident remains believable in spite of tough cross examination. PW3 issued Ext.P2 caste certificate. The fact that the appellant is not a member of the Scheduled Caste or Scheduled Tribe is not in dispute. Further more, PW1 is a member of Scheduled Caste community is also not in dispute. PW5 also witnessed the incident. He supported the prosecution case by saying that he saw the altercation and the appellant swirling PW1 by holding her hair. At that time, the appellant was shouting obscene words at PW1. This witness also supported the prosecution case to a great extent. PW6 is a witness, who signed on Ext.P4 scene Crl. Appeal No.2152 of 2003 7 mahazar. PW7 is a witness, who signed on Ext.P5 recovery mahazar. By that mahazar, the torn saree and blouse worn by the appellant at the time of incident were produced before the court.

7. PW8 is the Doctor, who treated PW1 from the hospital and issued Ext.P6 wound certificate. Ext.P6 wound show that she was hospitalized on 22-12-1997 at about 1.30 p.m, i.e., immediately after the incident. In Ext.P6 wound certificate, it is mentioned that the appellant (Suku) caused hurt to her. This document and the testimony of PW8 remain unchallenged. Similarly, the evidence tendered by PW9, who recorded Ext.P1 First Information Statement of the appellant from the hospital and that of PW10, who registered First Information Report (Ext.P8) are perfectly believable. PW11 was working as Circle Inspector of Police at the material time.

He conducted investigation as directed by the Deputy Superintendent of Police, Thodupuzha. He prepared Ext.P4 CrI. Appeal No.2152 of 2003 8 scene mahazar. PW12 was the Deputy Superintendent of Police, Thodupuzha at the material time. On 24-12-1997 and 25-12-1997 he was on leave. He handed over charge of his office during his absence to a Senior Circle Inspector of Police (PW11). On 26-12-1997, PW12 rejoined duty. Thereafter, he took over the investigation. It is the evidence of PW12 that he verified the investigation done by PW11. He questioned all the witnesses once again. As they had already stated everything to PW11 and nothing new was left to be stated further, PW12 did not record their statements again. This is his version at the time of evidence. PW13 was the Deputy Superintendent of Police, Thodupuzha at the material time. He conducted a part of the investigation.

8. Defence counsel cross examined this witness touching upon the legality and propriety of investigation done by the Circle Inspector of Police (PW11). Learned Sessions CrI. Appeal No.2152 of 2003 9 Judge relied on the testimony of the above said witnesses to find that the appellant abused her and attacked her as alleged by PW1. Court below found that in the course of push and pull and manhandling of PW1 the dress worn by her was damaged. But the contention that PW1 lost gold ornament was not accepted by the court below. Hence, the appellant was convicted under Sections 323 and 427 I.P.C. Court below convicted the appellant under Section 3(1)(x) of the Act of 1989 also. However, the court below acquitted the appellant for an offence punishable under Section 294(b) I.P.C. That acquittal has become final.

9. Learned counsel for the appellant raised a serious legal question by contending that the charge under Section 3(1) (x) of the Act of 1989 is not maintainable as the case was investigated by an Officer not authorised by the provisions of the Act of 1989. Section 9 of the Act of 1989 deals with conferment of powers by the State Government on certain CrI. Appeal No.2152 of 2003 10 officers for the prevention of and for coping with any offence under the Act. Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 reads as follows : " 7. Investigating Officer.- (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The

investigating officer shall be appointed by the State Government/ Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time. (2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Crl. Appeal No.2152 of 2003 11 Director General of Police of the State Government. (3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution the officer in- charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer. " On a careful reading of the said Rule, it can be seen that the offences coming under the Act of 1989 can be investigated only by a police officer not below the rank of a Deputy Superintendent of Police. More over, such investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police. The Section further says that the appointment shall be made after taking into account his past experience, sense of ability and justice to perceive the implications of the case and to investigate it in the right lines Crl. Appeal No.2152 of 2003 12 within the shortest time possible. So the personal qualities expected of a Deputy Superintendent of Police, who should be authorised to investigate the case, have also been delineated in the Rule.

10. Here in this case, PW12 deposed that when he entered on leave for two days, he handed over charge to the Circle Inspector of Police (PW11). Learned Public Prosecutor contended that the entire charge of PW12, who officiated at that moment as Deputy Superintendent of Police, was handed over to PW11. Therefore, there is no legal infirmity in PW11 conducting the investigation. Learned Public Prosecutor further contended that the investigation conducted by PW11 was verified and all the witnesses have been questioned over and again by PW12. That itself is a reason to find that there was no illegality in the procedure adopted by PW12, contended the learned Public Prosecutor. I am afraid, I am not able to accept this argument for Crl. Appeal No.2152 of 2003 13 obvious reasons. Rule 7 quoted above not only specifies the rank of the officer to be empowered to investigate the offences under the Act, but also prescribes the qualifications

required for such officers. Further, it is made clear that such officers shall be appointed by the State Government/Director General of Police/Superintendent of Police. Without meaning any disrespect to the honesty, integrity and capacity of PW11, it can be said that PW12 was legally not competent to appoint PW11 in his place during his absence. Naming a person to investigate into the offences under Act of 1989 is the function of the State Government/Director General of Police/Superintendent of Police. An officer so named cannot delegate his functions or appoint another officer in his place however competent he may be. It is so evident from the provisions of Rule 7 extracted above. Learned counsel for the appellant submitted that except the ipse dixit of PW12, there is no evidence to show that PW11 CrI. Appeal No.2152 of 2003 14 was put in charge of PW12 during his absence, leave alone his legal right to do so. That argument is also forceful in the realm of facts. Therefore, I find that the investigation into the offences under the Scheduled Caste/Scheduled Tribe Act of 1989 was done by an Officer, who is not authorised by the Act.

11. Apex Court in State of M.P v. Chunnilal (2009(2) K.L.T335(S.C)) held as follows : "The provisions in S.9 of the Act, R.7 of the Rules and S.4 of the Code when jointly read lead to an irresistible conclusion that the investigation to an offence under S.3 of the Act by an officer not appointed in terms of R.7 is illegal and invalid." 12. The question was again examined by the Supreme Court in State of Andhra Pradesh v. Viswanadula Chetti Babu (2010)15 S.C.C103 and held thus : " We are, therefore, of the opinion that in view of the clear mandate of the Rules, it CrI. Appeal No.2152 of 2003 15 was only a specified Deputy Superintendent of Police who could investigate an offence under the Act. An investigation done by any officer below that rank and not specified as per Rule 7 would not be entitled to investigate any such offence. In the present matter the investigation has been made by an officer of the rank of an Assistant Sub- Inspector of Police. This was not permissible." Hence the only possible deduction is that the investigation of the offence under Act of 1989 was done in this case by an officer not authorized by the Act and therefore it is illegal and invalid.

13. Regarding the remaining part of the impugned judgment, I agree with the view taken by the learned Sessions Judge. The oral evidence tendered by PW's 1 to 5

clearly prove the incident and the criminal acts done by the appellant. Therefore, the convictions of the appellant for offences punishable under Sections 323 and 427 I.P.C have to be CrI. Appeal No.2152 of 2003 16 confirmed. Hence the appeal is disposed with following modifications. In the result, the appeal is partly allowed. Conviction of the appellant under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby set aside. Convictions of appellant under Sections 323 and 427 I.P.C are confirmed. Sentences imposed by the trial court are found to be reasonable and proper, warranting no interference. Therefore, the sentences under those heads are hereby confirmed. With this modification, the appeal is disposed of. All pending interlocutory applications will stand dismissed. Sd/- A.HARIPRASAD, JUDGE.
//True Copy// P.A to Judge amk

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