

Vinod vs State of Kerala

Vinod vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1288892

Court : Kerala

Decided On : Aug-06-2024

Judge : Honourable Mrs. Justice C.S. Sudha

Appeal No. : CRL.A/2344/2006

Appellant : VINOD

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE C.S. SUDHA
TUESDAY, THE 6TH DAY OF AUGUST 2024 / 15TH SRAVANA, 1946
CRL.A NO. 2344 OF 2006 AGAINST THE JUDGMENT DATED
28.11.2006 IN SC NO.46 OF 2004 ON THE FILE OF COURT OF
SESSION, MANJERI CP NO.11 OF 2003 OF JUDICIAL MAGISTRATE
OF FIRST CLASS-I, PERINTHALMANNA APPELLANT/ACCUSED A1:
VINOD KALATHILCHALAKKAL HOUSE, VALAMBOOR AMSOM,
ERANTHODE. BY ADV SRI.K.ANAND RESPONDENT/COMPLAINANT:
STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT
OF KERALA. BY ADV.SANAL P.RAJ, PUBLIC PROSECUTOR THIS
CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON

31.7.2024, THE COURT ON 06.08.2024 DELIVERED THE FOLLOWING:

C.S.SUDHA, J.

Dated this the 6th day of August 2024

JUDGMENT

This appeal under Section 374(2) Cr.P.C. has been filed by the first accused aggrieved by the judgment dated 28/11/2006 in S.C.No.46/2004 on the file of the Court of Session, Manjeri, challenging the conviction entered and sentence passed against him for the offences punishable under Sections 342 and 307 IPC. The appellant will be referred to in this appeal as the accused.

2. The prosecution case is that the accused persons two in

number with the intention of committing the murder of PW5, the daughter of PW8, as she refused to elope with the first accused, and in furtherance of their common intention, the second accused took PW5 to the house of one Koyatha where the first accused was waiting. When PW5 reached the said house, the first accused

wrongly confined her by closing the door of the room and then poured kerosene on her and set her ablaze by which PW5 sustained burn injuries. The accused are alleged to have attempted to commit murder of PW5. The incident took place on 28/01/2001 at 11:30 a.m. Thus, the accused are alleged to have committed the offences punishable under Sections 342 and 307 read with Section 34 IPC.

3. On the final report being submitted, the jurisdictional

magistrate after complying with the statutory formalities, committed the case against the accused persons to the Sessions Court concerned, which court took the case on file as S.C.No.46/2004 and thereafter made over the case to the Additional Sessions Judge, Fast Track Court No.III (Ad hoc), Manjeri, for trial and disposal.

4. On 11/08/2005, a charge under Sections 342 and 307 IPC read with Section 34 IPC was framed, read over and explained to the accused, to which they pleaded not guilty.

5. The prosecution examined PW1 to PW11 and got

marked Exts.P1 to P11 and MO.1 to MO.3. After the close of the prosecution evidence, the accused were questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against them in the evidence of the prosecution. The accused denied all those circumstances and maintained their innocence.

6. As the Sessions Court did not find it a fit case to acquit the accused under Section 232 Cr.P.C., they were asked to enter on their defence and adduce evidence in support thereof. DW1 was examined on the side of the accused. No documentary evidence was adduced by the accused.

7. On an appreciation of the oral and documentary

evidence and after hearing both sides, the trial court by the impugned judgment found the first accused guilty of the offences punishable under Sections 342 and 307 IPC. Hence he has been

sentenced to rigorous imprisonment for five years and to a fine of 30,000/- and in default of payment of fine, to simple imprisonment for one year for the offence under Section 307 IPC and to rigorous imprisonment for six months and to a fine of 1,000/- and in default of payment of fine, to simple imprisonment of two months for the offence punishable under Section 342 IPC. The fine amount if realised has been directed to be paid to PW5 as compensation under

Section 357(1)(b) Cr.P.C. The second accused was found not guilty of the offences charged against her and hence she was acquitted under 235(1) Cr.P.C. Aggrieved, the first accused has come up in appeal.

8. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the accused are sustainable or

not.

9. Heard both sides.

10. The incident is alleged to have taken place on eyewitnesses to the incident except PW7, a person residing near the place of occurrence. PW7 also did not see the actual act of the

accused setting PW5 ablaze. But he saw PW5 rushing out of the house and running towards her house. PW5 deposed that on the previous day of the incident and on the date of the incident, the second accused, her friend, approached her and told her that the first accused wanted to talk to her. The second accused took her to the rear side of her grandmother's house where the first accused was waiting. The first accused asked her to join him, which she refused

and left the place. The next day, the second accused again approached her and as insisted by the former, PW5 accompanied her to the place of occurrence, which is the house of the second accused's aunt. Once they reached house, the second accused left the place. When PW5 entered the house, only the first accused was present. The first accused again reiterated his demand to PW5 to join him. She again refused and tried to go out of the room. The first accused then closed and bolted the room. When PW5 tried to

cry out for help, the first accused closed her mouth with his palm. He then told her that if she was not inclined to join him, then both could end their lives. He poured kerosene from a lamp kept in the pony wall/half wall of the room, took a match box from his pocket and lit her. She screamed out for help and attempted to run out.

But she was not able to do so as the door was closed. PW5 then lay on the ground and rolled over. The accused opened the door and left the house. She got up and ran out of the house. Her mother, PW8 who had gone out nearby for work, was informed. PW8 returned and along with some others, PW5 was taken to the hospital.

11. PW1, Assistant Surgeon, Taluk Hospital, Perinthalmanna deposed that she had examined PW5 on 28/01/2001 at 03:00 p.m. According to PW1, on examining

PW5, she saw the following injuries on her body - 1. Superficial burns on both upper arms and forearms.

2. Both thighs on the front portion.

3. Chest involving breast.

4. Breast both.

5. Abdomen involving umbilicus.

The wound certificate issued by PW1 has been marked as Ext.P1. According to PW1, all the injuries were burn injuries. In Ext.P1 wound certificate, the alleged cause is stated to be - 'clothes caught fire'.

12. Ext.P10 is the statement given by PW5, to a woman

police constable (W.P.C.) on 03/02/2001 at 05:00 p.m. This is apparently before the crime was registered. Ext.P10 is described as a petition, that is, 'P.T.N.No.32/H1/2001'. In Ext.P10, PW5 has stated that for the past six months, she had been in a relationship with the first accused, her neighbour. The first accused had sent her a letter. When her brother came to know of the same, he discouraged her from the relationship. She has thereafter not spoken to the first accused. The first accused left for Thrissur. A few days back, he returned home. Last Saturday, as directed by the

first accused, the second accused came and called her. She went along with the second accused to the rear side of her grandmothers house. The first accused, who was waiting there, asked her whether she would join him. She refused his request. Last Sunday, when she was proceeding to her neighbours house for watching TV, the second accused again approached her and told her that the first accused wanted to meet her and that he wanted to convey something urgent and that the latter was at her aunts house. PW5

then accompanied by the second accused went there. The first accused called her inside the house on the pretext that he wanted to say something to her. She went inside. Both of them were standing near the pony wall/half wall and talking. There

was a lighted kerosene lamp on the wall. The lamp fell on her when her hand accidentally hit the lamp and thus she sustained the burns. She was taken to the hospital by autorikshaw driver Dasan and one Ayyappan.

13. PW7, a neighbour, supported the prosecution case. As

noticed earlier, PW7 has not seen the entire incident. PW7 deposed that on the day of the incident while he was at home, he heard a cry. When he came out of his house, he saw PW5 rushing out of the house of Koyatha with both her hands raised and running towards her house.

14. PW8, the mother of PW5, also supports the prosecution

case. According to PW5 and PW8, they did not initially reveal the actual cause of the incident either to the doctor or to the police. They were persuaded, intimidated and threatened into not revealing the actual facts before the police and hence the reason why the cause in Exts.P1 and P10 was stated to be accidental burns. PW8 deposed that she had advised her daughter not to reveal the truth. Both of them have a case that the accused and his near and dear

ones intervened after the incident and persuaded them from revealing the true facts. They promised to render all necessary help including financial help for the treatment of PW5 and also expenses of plastic surgery, if necessitated. According to PW8, Ext.P11 is the copy of the agreement entered into with the relatives of the accused. Though they promised all help, thereafter they retracted and went back on their promise. Hence, PW5 gave Ext.P6 FIS resulting in the registration of the crime.

15. According to PW11, the then Circle Inspector,

Perinthalmanna, who had conducted the initial investigation, he received reliable information that the statements in Ext.P10 of PW5 were false and hence the statement of PW5 was again taken, which was on 26/02/2001 at 17:30 hours, i.e., Ext.P6 FIS and thereafter Crime No.185/2001 was registered. PW11 also deposed that it was PW9 who had conducted the further investigation and PW10 who had verified the investigation and submitted the charge sheet. PW11 admitted that

PW8 had given him a copy of Ext.P11

agreement. He was hoping to recover the original. But in the meantime, he was transferred and hence the reason why the copy of Ext.P11 remained in the CD file.

16. Though PW5 and PW8 were extensively cross-

examined, nothing was brought out to discredit their testimony except some minor discrepancies which has not gone to the root of the prosecution case. It is true that there is delay in registering the crime, which was registered only on 26/02/2001, whereas the incident in this case took place on 28/01/2001. The crime was registered, nearly a month after the incident. However PW5 and PW8 have narrated the circumstances for the delay. PW5 and PW8 admittedly belong to an economically weaker section of the society. The accused is their neighbour. PW5 and the accused belong to two different communities. PW5 was just 14 years old at the time of the incident. Evidence has come on record that the husband of PW8 is not residing with them. He seems to have deserted the family. In such circumstances, one cannot find fault with PW5 or PW8 for having fallen for the words of the accused and his relatives to hush up the matter when an offer of financial help also was made. It is true that Ext.P11 is only a photocopy of the agreement. But PW8 deposed that the person in whose custody the original was, is no

more. Hence, it became impossible for PW8 to get the original of Ext.P11.

17. Section 65 of the Indian Evidence Act, 1872 deals with

cases where secondary evidence relating to documents can be given. Clause (a) dealing with one circumstance says that when the original is shown or appears to be in the possession or power of any person out of reach of, or not subject to, the process of the court and when, after the notice mentioned in Section 66 is given, such person does not produce it. Another circumstance referred to is in Clause

(c) which says that when the original has been destroyed or lost or

when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect produce it within a reasonable time. Section further says that in cases coming under Clauses (a) and (c), any secondary evidence of the contents of the document is admissible. The testimony of PW8 that the original was in the possession of a person who is no more, has not been challenged, discredited or disproved. That being the position, it was impossible for her to produce the original of the document. PW8 has made out a ground for bringing secondary evidence on record. Hence Ext.P11, a piece of secondary evidence, can certainly be admitted in evidence.

18. Ext.P11, in Malayalam, seen executed on 04/02/2001, translated roughly reads thus -

Agreement made on 04.02.2001 - February Agreement entered between Kalathum Chalakal Kuttan, Eramthodu Desom, Valambur Amsom and Kunji Lakshmi d/o Valli, Mambikunnath, do Desom, do Amsom. Sabitha, daughter of aforementioned 2nd party Kunji Lakshmi sustained a fire burn injury from Vinod, son of aforementioned 1st party Kuttan and she is presently undergoing treatment in Govt. Hospital, Perinthalmanna. Whereas it has been agreed by the first party and the following persons such as,

1. Mambikunnath Ayyappan, s/o Ayyappan,
2. Mambikunnath Kuttan, s/o Ayyappan,
3. Mambikunnath Koyatha, s/o Ayyappan that they shall meet all the medical expenses (plastic surgery if necessary) required for regaining the complete health of this

child. Therefore, it is jointly agreed by Sabitha, Swapna, Subash who are the children of 2nd party Mambikunnath Kunji Lakshmi, her sister Vimala and mother Valli, to withdraw the existing complaint regarding the same before the Police Station. It is agreed and assured that hereafter, there

will not be any argument, counterargument or onslaught from either side in violation of the above agreement. If anything happens against the same, Subash, s/o Mambikunnath Kunji Lakshmi shall be responsible from the side of 2nd party and Mambikunnath Kuttan and Mambikunnath Koyatha shall be responsible from the side of 1st party. The same is agreed in the presence of following witnesses who have affixed their signature below. ...

19. Ext.P11 is seen signed by the parties to the document. The accused and his relatives seem to have gone back on their

words and no help rendered to PW5. The case of accidental burns is most improbable because the incident took place at noon. Therefore, there seems to be no necessity for a lighted lamp to be present on the wall. It was submitted by the learned counsel for the accused that the room was dark and hence the reason why the lamp was lighted. Absolutely no evidence has come on record to support

the said stand of the accused. Therefore it is highly unlikely for a lighted lamp to have been present in the room. Even assuming that the lamp had accidentally fallen, the question that naturally arises is what was the accused doing at that time. There is no case for the accused that he had attempted to save PW5. No such evidence has

also come on record. He left the place immediately after the

incident. The accused seems to have come prepared because according to PW5, he had taken the match box from his pocket. It appears that the first accused just could not swallow or accept his rejection by PW5 and hence went on to commit the dastardly act. The circumstances clearly explain the delay which in no way raises doubts regarding the prosecution case. The background from which PW5, PW8 and the accused come, must also be kept in mind when

appreciating the evidence on record. The testimony of DW1, an autorikshaw driver does not in any way help the accused because he merely reiterates the defence case. The testimony of DW1 also shows that PW5 did sustain burns and had been

taken to the

hospital. Given the situation/background in which PW5 and PW8 were placed, they cannot be faulted with for falling for the words of help as seen in Ext.P11. No reasons have come on record to show as to why PW5 and PW8 should falsely implicate the accused in this case. Hence I find no reasons to disbelieve their testimony.

20. The testimony of PW5, makes it clear that when she had entered the room the accused had prevented her from going outside

by closing and bolting the room. A clear case of wrongful confinement as contemplated under Section 342 IPC has been clearly made out. The accused is also charged with the offence under Section 307 IPC, as per which if any person does any act with such intention and knowledge and under such circumstances that, if he by that act caused death, would be guilty of murder.

21. In *Om Parkash v. State of Punjab*, AIR 1961 SC

1782, the Apex Court held that a person commits an offence under Section 307 IPC when he has an intention to commit murder and, in pursuance of that intention does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. The intention to commit the offence of murder means that the person concerned had the intention to do an act with the necessary intention or knowledge mentioned in S.300. 21.2. The Apex Court in *State of Maharashtra v. Kashirao*, AIR 2003 SC 3901 has referred to the essential ingredients required to be proved in the case of an offence under Section 307 as - (i) that the death of a human being was attempted;

(ii) that such death was attempted to be caused by, or in

consequence of the act of the accused; (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently

dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for

incurring the risk of causing such death or injury. In an offence under Section 307 all the ingredients of the offence of murder are present except the death of the victim. For the application of Section 307 it is not necessary that the injury capable of causing death should have been actually inflicted. 21.3. In *Parsuram Pandey v. State of Bihar*, (2004)13

SCC 189, it has been held that for the purpose of Section 307, what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. The Section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of Section 307, there can be no offence 'of attempt to murder'. Intent which is a state of mind

cannot be proved by precise direct evidence, as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place. (See also *Bipin Bihari v. State of M.P.*, (2006)8 SCC 799 and *Anjani Kumar Chaudhary v. State of Bihar*, AIR 2014 SC 2740).

21.4. In *Abhayanand Mishra v. State of Bihar*, AIR 1961 SC 1698 it has been observed that if the attempt of the accused succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence.

22. When the matter was taken up for hearing, it was

submitted by the learned counsel for the accused that the matter has been settled between the parties and C.M.Application Nos.1/2024 and 2/2024 have been filed for impleading PW5 as the additional second respondent and to record the

compromise under Section 320 and 482 Cr.P.C. Apparently Section 320 Cr.P.C. is not applicable because the offence under Section 307 IPC is not a compoundable offence.

23. The Apex Court in *Gian Singh v. State of Punjab*, 2012(4) KLT 108, *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466 and in *State of Madhya Pradesh v. Laxmi Narayan*,

(2019) 5 SCC 688 has held that the High Court by invoking

Section 482 Cr.P.C. can quash criminal proceedings in relation to non-compoundable offences also where the parties have settled the matter between themselves notwithstanding the bar contained under Section 320 Cr.P.C., if it is warranted in the given facts and circumstances of the case or to ensure the ends of justice or to prevent abuse or process of the court. The Apex Court has laid down the parameters for quashing non-compoundable offences and it has been held that such power is not to be exercised in cases

which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc., since such offences are not private in nature and have a serious impact on the society. It was also held that Section 307 IPC is an offence of heinous nature and therefore is to be generally treated as a crime against society and not against the individual alone. It was further held that the High Court should not rest its decision merely because there is a mention of Section 307 IPC in the FIR or that the charge is framed under the provision. It would be open to the High Court to examine as to whether the incorporation of Section 307 IPC is there for the sake of it or whether the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury was inflicted on the vital/delicate parts of the body, the nature of weapons used, etc. The medical report in respect of the injuries by the victim can generally be the guiding factor. It has also been held that when

once conviction has already been recorded with respect to a heinous crime, there is no question of sparing a convict found guilty of such crime.

24. The ingredients of the offence under Section 307 IPC are

clearly made out from the evidence on record and hence there cannot be any question of quashing the proceedings on the ground that the parties have arrived at a settlement. After having entered into Ext.P11 agreement, the accused and family backs out of the same which constrained PW5 and PW8 to approach the police. A full-fledged trial was conducted. PW5 and PW8 were extensively cross examined and after all these years, the accused left with no other option has come up with this offer of settlement. Crimes of this nature are increasing day-by-day and therefore quashing such proceedings would only send a wrong message to the society at large. Hence, the applications for impleading and quashing will stand dismissed. I do not find any infirmity or illegality in the findings of the trial court calling for an interference by this Court.

Hence this appeal is liable to be dismissed. In the result, the appeal is dismissed. Interlocutory applications, if any pending, shall stand closed. Sd/- C.S.SUDHA
JUDGE ami/

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