

Joji vs State of Kerala

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Court : Kerala

Decided On : Jan-03-2024

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : Crl.Rev.Pet/1876/2006

Appellant : JOJI

Respondent : State of Kerala

Judgement :

CRL.REV.PET NO. 1876 OF 2006 AGAINST THE ORDER/JUDGMENT IN CRA 138/2005 OF ADDITIONAL SESSIONS COURT, THODUPUZHA AGAINST THE ORDER/JUDGMENT IN SC 508/2003 OF ASSISTANT SESSIONS COURT, KATTAPPANA REVISION PETITIONER/APPELLANTS/ACCUSED: 1 JOJI, S/O TOMAS, AGED 25, THEVARAKKARA VEEDU, CHETTUKUZH KARA, KARUNAPURAM VILLAGE. 2 JAYAN, S/O.VARKEY, AGED 37, CHERUKARAPPARAMBIL HOUSE, APPAPPIKADA BHAGAM, 3 REJI @ KUNJU, S/O.VELAYUDHAN, AGED 38, NADUCHIRA VEEDU, APPAPPIKADA BHAGAM, BY ADV SRI.S.NIRMAL KUMAR RESPONDENT/RESPONDENT: STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, BY ADV PUBLIC PROSECUTOR

SRI.SANGEETHARAJ N.B 03.01.2024, ALONG WITH Crl.Rev.Pet.2083/2006, 2127/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CRL.REV.PET NO. 2083 OF 2006 AGAINST THE ORDER/JUDGMENT DATED 23.02.2006 IN CRA 138/2005 OF ADDITIONAL SESSIONS COURT, THODUPUZHA AGAINST THE ORDER/JUDGMENT DATED 08.04.2005 IN SC 508/2003 OF ASSISTANT SESSIONS COURT,KATTAPPANA REVISION PETITIONER/APPELLANTS 1 & 6/ACCUSED 1 & 6: 1 VARGHESE @ KUNJUMON, S/O. GEORGE, KALAYAIL VEEDU, APPAPPIKADA BHAGAM, CHETTUKUZH KARA, KARUNAPURAM VILLAGE. 2 JACOB @ MANOJ, AGED 28 YEARS, S/O. GEORGE, KALAYAIL VEEDU, CHELLARKOVIL 1ST MILE, ANAKKARA KARA, ANAKKARA VILLAGE. BY ADVS. SRI.C.M.TOMY SRI.MATHEW SKARIA RESPONDENT/RESPONDENT/COMPLAINANT: STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, BY ADV PUBLIC PROSECUTOR SRI. SANGEETHARAJ N.B 03.01.2024, ALONG WITH Crl.Rev.Pet.1876/2006 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CRL.REV.PET NO. 2127 OF 2006 AGAINST THE ORDER/JUDGMENT DATED 23.02.2006 IN CRA 138/2005 OF ADDITIONAL SESSIONS COURT,THODUPUZHA AGAINST THE ORDER/JUDGMENT IN SC 508/2003 OF ASSISTANT SESSIONS COURT,KATTAPPANA REVISION PETITIONER/APPELLANT/ACCUSED: ALEXANDER @ LALICHAN, AGED 25 YEARS, S/O.DEVASIA THACHEDATHU VEEDU, APPAPPIKADA, BHAGOM, BY ADV SRI.GEORGEKUTTY MATHEW RESPONDENTS/RESPONDENT/APPELLANTS:

1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, 2 VARGHESE KUNJUMON, AGED 38 YEARS, S/O.GEORGE, KALAYIL VEEDU, APPAPPIKKADA BHAGOM, 3 JOJI, AGED 25 YEARS, S/O.THOMAS, THEVARAKKARA VEDU, APPAPPIKKADA BHAGOM, CHETTUKUZH KARA, KARUINAPURAM VILLAGE. 4 JAYAN, AGED 37 YEARS, S/O.VARKEY, CHERUKARAPARAMBIL HOUSE,

APPAPPIKADA BHAGOM, CHJETTIKUZH KARA, KARUNAPURAM VILLAGE. 5 REJI @ KUNJU, AGED 38 YEARS, S/O VELAYUDHAN, NADUCHIRA VEEDU, APPAPPIKADA BHAGOM, 6 JACOB @ MANOJ, AGED 28 YEARS, S/O.GEORGE, KALAYIL VEEDU, CHELLAN KOVIL, 1 MILE, ANAKKARA KARA, ANAKKARA VILLAGE. BY ADVS. C.M.TOMY PUBLIC PROSECUTOR SRI. SANGEETHARAJ N.R.

03.01.2024, ALONG WITH Crl.Rev.Pet.1876/2006 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Crl.R.P.1876 of 2006 is by accused No.3 to 5, Crl.R.P.2083 of 2006 is by accused No.1 and 6, and Crl.R.P.No.2127 of 2006 is by accused No.2, against the same judgment of conviction and the order of sentence passed by the trial court in a case charge sheeted by the police for the offence under Section 392 r/w Section 34 IPC and the confirmation of sentence and conviction by the first appellate court. The sentence awarded for the offence as against accused Nos.3 and 4 does not include any order of sentence of fine. Hence, by the death of accused Nos.3 and 4, the offence stood abated. The same is recorded.

2. The remaining accused are accused Nos.1, 2, 5

and 6. There are concurrent findings by both the courts below regarding the conviction for the offence punishable under Section 392 IPC, though they were charge sheeted for the offence punishable under Section 395 IPC. But being a minor offence, without a specific charge, it is permissible to lay conviction for the minor offence. As such, there is no legal impediment in awarding conviction and sentence for the minor offence under Section 392 IPC with the aid of Section 34 IPC. It is based on the oral testimony given by the witnesses examined by the prosecution, which consists of PW1 to PW19 and the documentary evidence- Exts. P1 to P16. The defence witness is DW1, and Exts. D1 to D4 were marked and MO1 to MO6 were identified. The concurrent findings rendered by both the courts below for the said offence under Section 392 IPC is resting on the oral

evidence tendered by the prosecution. Nothing was brought to the notice of this court in order to have an interference or to show any absurdity or perversity in the findings rendered by both the courts below. Hence, the findings of conviction for the offence under Section 392 r/w 34 IPC as against accused Nos. 1, 2, 5 and 6 deserves no interference.

3. On coming into the sentence, it does not

reflect a proper balance between the mitigating and aggravating circumstances. The learned counsel for the respective revision petitioner fairly submitted that the entire amount seized from the respective custody of the accused persons was given back to the de facto complainant and it is a first time offence. Taking into account all these and the attending circumstances, the learned counsel for the petitioners pressed for leniency in the matter and suggested that they are prepared to pay compensation in terms of money and suggested an amount of Rs.25,000/- each. Hence, the sentence will stand modified to the extent of pre-trial detention already undergone and a fine amount of Rs.50,000/- (Rupees Fifty Thousand only) each, in default to undergo simple imprisonment for a period of six months. All these Criminal Revision Petitions will stand allowed in part accordingly.
Sd/- P.SOMARAJAN JUDGE msp

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