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Vishnu Narayan @ Narayan vs the State of Kerala

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Court : Kerala

Decided On : Nov-30-2023

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : Crl.MC/882/2023

Appellant : Vishnu Narayan @ Narayan

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH AGRAHAYANA, 1945 CRIME NO.189/2017 OF Nedumudi Police Station, Alappuzha AGAINST THE ORDER/JUDGMENT SC 689/2018 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - III, ALAPPUZHA / III ADDITIONAL MACT, ALAPPUZHA

PETITIONER: VISHNU NARAYAN @ NARAYAN AGED 24 YEARS S/O CHANDRABABU, AGED 24 YEARS, VALAPPIL HOUSE, CHERTHALA THEKKU VILLAGE, CHERTHALA ALAPPUZHA DISTRICT, PIN-679335, PIN - 679335 BY ADV T.P.SANTHOSH KUMAR RESPONDENT: 1 THE STATE OF KERALA REP.BY POLICE STATION, THOROUGH PUBLIC

PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM-682031 2 VIJAYAKUMAR S/O NARAYANAN, AGE IS NOT KNOWN TO THE PETITIONER, PULARIYL HOUSE, NEDUMUDI PANCHAYAT, ALAPPUZHA DISTRICT, PIN-688001. SRI VIPIN NARAYAN (SR PP) THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.11.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Petitioner is the 3rd accused in Crime No.189 of 2017 of Nedumudi Police Station, Alappuzha District, which is now pending as SC No.689 of 2018 on the file of the Additional District and Sessions Court-III, Alappuzha. The petitioner faces prosecution for having committed the offences under Sections 306 and 451 of the Indian Penal Code. The 2 nd respondent is the defacto complainant.

2. The circumstances which led to registration of the crime

and filing of the final report are as follows: The 1st accused in the case was stated to be in love with the deceased Anju. They were studying together for B.Tech at K.R.Gouriyamma College, Thuravoor. The petitioner and the 2nd accused are stated to be friends of the 1st accused. The allegation is that the 1 st accused along with the 2nd and 3rd accused reached the house of the deceased on 12.03.2017 at 3.30 a.m. in the morning and the 1st accused entered the bedroom of the deceased and had sexual intercourse with her and while he was coming out of the bedroom, the parents of the deceased caught him and immediately thereafter the deceased locked the bedroom and committed suicide by hanging. According to the prosecution, the 1st accused has committed the offence punishable under Sections 306 and 451 of the Indian Penal Code and the 2nd and 3rd accused have abetted the offence.

3. The learned counsel appearing for the petitioner would

submit that the 2nd accused had approached this Court and filed Crl.M.C.No.4858 of 2018 seeking to quash the proceedings against him. It is submitted that this

Court by judgment dated 24.08.2022 had quashed the proceedings against the 2 nd accused. It is submitted that since the role ascribed to the petitioner/3 rd accused is no different from the role ascribed to the 2 nd accused. The proceedings against the petitioner are also liable to be quashed.

4. Heard the learned Public Prosecutor also.

5. The learned Public Prosecutor does not dispute the fact

that the proceedings against the 2nd accused have been quashed by this Court by Annexure-A3 judgment. Learned Public Prosecutor also does not dispute that the allegation against the petitioner/3rd accused is not different from the allegations against the 2nd accused at whose instance the proceedings were quashed as against him.

5. Having heard the learned counsel for the petitioner, the

learned Public Prosecutor and having perused Annexure A3 judgment, I am of the view that the petitioner is also entitled to succeed. This Court, while considering the case of the 2 nd accused, held as follows: 5. The learned counsel for the petitioner submitted that even if the entire prosecution evidence is believed in toto, no offence under Sections 306 and 451 of the IPC have been made out against the petitioner.

6. As stated already, the accused No. 1 and the deceased were

college mates and they were in love. The accused 2 and 3 are the friends of the accused No.1. Even according to the prosecution version, on the date of the incident, the 1 st accused along with the remaining accused went to the house of the victim at the midnight and the 1 st accused with victim had

> voluntary sexual intercourse and while the 1 st accused was coming out of the bedroom, he was caught red handed by the parents of the victim. Even according to the prosecution, there was absolutely no connection or relationship between the petitioner and the victim. There is no case that the petitioner entered into the compound of the house of the victim. It

appears that the petitioner and the 3 rd accused were arrayed as accused on the confession made by the accused No. 1 that he was accompanied by them.

7. It is settled that to constitute an offence of abetment of

suicide under Section 306 of the IPC, there must be proof of either any instigation or conspiracy or intentionally aiding or direct or indirect act of incitement to the commission of the offence of suicide [see Sukumaran and another V. State of Kerala (2022 (1) KHC 427]. There is absolutely no allegation in the final report that the petitioner has made any instigation or conspiracy or intentionally aided or incited the victim to the commission of the offence of suicide. Moreover, the records reveal that the victim committed suicide after her parents came to know that the 1st accused was along with her in the bedroom at midnight. Thus, the offence under Section 306 of the IPC is not at all attracted against the petitioner. There is no case for the prosecution that the petitioner trespassed into the house of the victim. Hence, Section 451 of the IPC is also not attracted.

I am in respectful agreement with the view taken by this Court while disposing of Crl.M.C.No.4858 of 2018. Since the role ascribed to the petitioner/3rd accused and the role ascribed to the 2nd accused (petitioner in Crl.M.C.No.4858/2018) is no different, I am of the view that this Crl.M.C. is also liable to be allowed. Accordingly, this Crl.M.C. is allowed and all further proceedings against the petitioner in SC No.689/2018 on the file of the Additional District and Sessions Court-III, Alappuzha will stand quashed. Sd/- GOPINATH P. JUDGE SSK/30/11 APPENDIX OF CRL.MC 882/2023 PETITIONER ANNEXURES Annexure 1 CERTIFIED COPY OF THE F.I.R IN CRIME NO. ALAPPUZHA Annexure 2 CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO. 189/2017 OF NEDUMUDI POLICE STATION, ALAPPUZHA DISTRICT Annexure 3 TRUE COPY OF THE ORDER IN CRL.MC.NO.4858/2018 DATED 24.08.2022 OF THE HON'BLE HIGH COURT

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