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Aliyar vs State of Kerala

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Court : Kerala

Decided On : Jan-31-2023

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : CRL.A/842/2006

Appellant : Aliyar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH TUESDAY, THE 31ST DAY OF JANUARY 2023 / 11TH MAGHA, 1944 AGAINST THE JUDGMENT DATED 03.04.2006 IN SC 758/2006 OF PRINCIPAL ASSISTANT SESSIONS COURT, NORTH PARAVUR APPELLANT: ALIYAR AGED 43 YEARS S/O.MOHAMMED, KANNAMKUDI HOUSE, KAVUMPURAM BHAGOM, AIMURY KARA, KOOVAPPADY VILLAGE. BY ADV SRI.V.RAJENDRAN (PERUMBAVOOR) RESPONDENT: STATE OF KERALA REPRESENTED BY CIRCLE INSPECTOR OF POLICE, PERUMBAVOOR. BY SMT.REKHA.S., SR.PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON

31.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This appeal has been filed by the accused No.2 in S.C.No.758 of 2006 on the files of the Principal Assistant Sessions Court, North Paravur (for short 'the court below') challenging the judgment dated 03.04.2006 convicting and sentencing him under Sections 341, 323 and 307 r/w Section 34 of IPC.

2. The prosecution case in short is that on 24.11.1997 at 08.00

p.m., the appellant and the accused No.1 in furtherance of their common intention wrongfully restrained PWs 1, 2 and 16 who were travelling in a car by halting an autorickshaw in front of the car and assaulted them with a broken soda bottle with an intention to kill them and thereby committed the offence.

3. The appellant/accused No.2 alone faced trial. The accused No.1 was absconding and the case against him was split up.

4. On the side of the prosecution, PWs 1 to 16 were examined

and Exts.P1 to P16 were marked. MOs 1 to 3 were identified. After trial, the court below found the accused No.2 guilty for the offences punishable under Sections 341, 323 and 307 r/w Section 34 of IPC and he was convicted for the said offences. He was sentenced to undergo

rigorous imprisonment for 7 years and to pay a fine of Rs.20,000/-, in default to suffer simple imprisonment for 1 year for the offence punishable under Section 307 of IPC, sentenced to undergo rigorous imprisonment for 1 year for the offence punishable under Section 323 of IPC and sentenced to undergo rigorous imprisonment for 1 month for the offence punishable under Section 341 r/w Section 34 of IPC. The said conviction and sentence are under challenge in this appeal.

5. I have heard Sri.V.Rajendran Perumbavoor, the learned counsel for the appellant and Smt.Rekha S., the learned Senior Public Prosecutor.

6. The learned counsel appearing for the appellant impeached

the findings of the court below on appreciation of evidence and resultant finding as to the guilt. The learned counsel submitted that the evidence of the injured and occurrence witnesses relied on by the court below are full of contradictions and omissions and could not have been relied on. The counsel further submitted that no overt act has been alleged and proved against the appellant so as to attract Section 307 of IPC. The counsel added that, at any rate, the offence under Section 307 of IPC is not attracted as the intention on the part of the appellant to cause death of PWs 1, 2 and 16 had not been established. The learned

Senior Public Prosecutor, on the other hand, supported the findings and verdict handed down by the court below and argued that, necessary ingredients of Sections 341, 323 and 307 r/w Section 34 of IPC had been established and the prosecution has succeeded in proving the case beyond reasonable doubt.

7. The prosecution mainly relied on the oral testimony of PWs

1, 2, 3, 4, 8, 9 and 16 and Exts.P4 and P5 to prove the incident and to fix the culpability on the accused. PWs 1, 2 and 16 are the injured. PW2 was driving the car involved in the incident. The accused No.1 was driving the autorickshaw and the accused No.2 was a passenger in the autorickshaw involved in the incident. PW1, 3 and 16 were passengers in the car. PW4 is an eyewitness who witnessed the incident. PWs 1, 2, 3 and 16 fully supported the prosecution case. PW4 also partly supported the prosecution case. PWs 8 and 9 are the doctors, who examined PWs 1 and 16. Exts.P4 and P5 are the wound certificates of PWs 1 and 16.

8. Going by the evidence given by PWs 1, 2, 3 and 16, it was the

accused No.1 who assaulted the injured (PWs 1 and 16) with a soda bottle. There is absolutely no case for the prosecution that the accused No.2 assaulted any of the injured with a soda bottle. There is also no case for the prosecution that the

accused No.2 used any weapon. The

overt act attributed against the accused No.2 is that he beat PWs 1, 2 and 16 with his hands. A reading of the evidence given by the PWs 1, 2 and 16 would show that while PWs 1, 2, 3 and 16 were returning in the car driven by PW2 after visiting Sabarimala, the autorickshaw driven by the accused No.1 was put across the car, both the accused got out of the autorickshaw and there were some altercation between them and PW2, who was driving the car. At that time, PWs 1 and 16 intervened and after a short while the accused No.1 ran to a nearby shop, took a soda bottle and assaulted PWs 1 and 16 with that soda bottle.

9. A person can be said to commit an offence under Section

307 of IPC when he has intention to commit murder and in execution of that intention does an act towards its commission. The court has to see the intention behind the act to come to the conclusion whether an offence under Section 307 of IPC is attracted or not. It is settled that to bring a case under Section 307 of IPC, the prosecution has to make out the facts and circumstances envisaged by Section 300 of IPC. If the ingredients of Section 300 of IPC are wholly lacking, there can be no conviction under Section 307 of IPC. The act committed by the accused must be an act capable of causing death in the natural and ordinary course of nature; and if the act complained of is not that description,

the accused cannot be convicted under Section 307 of IPC.

10. Coming to the evidence on record, it is true that there are

injuries on the vital parts to the body of PW1 and especially PW16. But the crucial question is whether the appellant/accused No.2 had definite intention to cause death of PWs 1 and 16. As stated already, initially there were altercation between the accused and PW2 and in the meanwhile PWs 1 and 16 intervened and they were attacked by both the accused. Thereafter the accused No.1 alone went to a nearby shop, took a soda bottle and assaulted PWs 1 and 16. In these circumstances, it cannot be said that the accused No.2 had an intention to cause death of PWs 1 and 16. The act if any attributed to the accused No.2 cannot be

termed as a predetermined one. Admittedly, the accused No.2 did not use any weapon. Considering all these aspects, I am of the view that there is no reliable evidence to come to the conclusion that there was intention or knowledge on the part of the accused No.2 to kill PW1 or

PW16. There is also no satisfactory evidence to come to the conclusion

that the act committed by the accused No.2 is an act capable of causing death in the natural and ordinary course of things. Therefore, I am of the view that the conviction against the appellant/ accused No.2 under Section 307 of IPC cannot be sustained.

11. As stated already, the prosecution has succeeded in proving that the appellant had wrongfully restrained PWs 1, 2 and 16 and beat

them with his hands. Therefore, the prosecution has succeeded in proving beyond reasonable doubt that the appellant committed the offences punishable under Sections 341 and 323 r/w 34 of IPC.

12. The next question is regarding the sentence. It is seen from

the record that the appellant was in judicial custody for a period of 113 days. Set off was allowed by the court below. The learned counsel for the appellant submitted that the substantive sentence may be confined to the said period he had already undergone.

13. The appellant is at present aged 60 years. It is submitted

that he is not involved in any other crime so far. The crime is of the year 1997. He has been facing the trauma of trial for the last 25 years. Considering all these facts and circumstances, I am of the view that substantive sentence can be confined to the period he had already undergone. At the same time, adequate compensation has to be ordered to be paid to the injured. The Supreme Court in Hari Kishan & Another v. Sukhbir Singh & Others [AIR 1988 SC 2127], highlighted the necessity of invoking the power under Section 357 of Cr.P.C by the court. The Apex Court

has recommended that the power

under Section 357 of Cr.P.C is to be exercised liberally so as to meet the ends of justice in the better way. The Apex Court has also observed that quantum of compensation may be determined by taking into account the nature of crime and justness of the claim by the victim and the ability of the accused to pay and the compensation must be reasonable. Considering these aspects, I am of the view that the compensation of Rs.25,000/- each to the injured (PW1, 2 and 16) would be just and reasonable.

14. In the light of the above findings, the conviction and

sentence passed by the Court below under Section 307 of IPC is set aside. The conviction passed by the Court below under Sections 341, 323 r/w 34 of IPC is confirmed. The sentence imposed by the court below is set aside, instead, the appellant is sentenced to undergo simple imprisonment for 113 days for the offence punishable under Section 341 of IPC. The appellant is also sentenced to undergo simple imprisonment for 113 days for the offence punishable under Section 323 of IPC and to pay a compensation of Rs.25,000/- (Rupees Twenty Five Thousand only) each to PW1, 2 and 16, in default to suffer simple imprisonment for a period of two years. The substantive sentence shall

run concurrently. Since, the substantive sentence of 113 days has

already been undergone by the appellant, it is treated as complied with. The total compensation amount of Rs.75,000/- (Rupees Seventy Five Thousand only) shall be deposited by the appellant within a period of two months from today. On such deposit, the court below is directed to issue notice to PW1, 2 and 16 and release the amount to them or to their legal heirs, if they are not alive. The appellant is directed to produce the receipt showing the deposit of the compensation amount before this Court.

The appeal is allowed in part as above. Sd/- DR.KAUSER EDAPPAGATH, JUDGE AS

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