

Tomichan vs State of Kerala

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Court : Kerala

Decided On : Oct-31-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : CRL.A/901/2007

Appellant : Tomichan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA,
1945 AGAINST THE ORDER/JUDGMENT SC 685/2004 OF
ADDITIONAL SESSIONS COURT (ADHOC)-II, THODUPUZHA
APPELLANTS/ACCUSED: 1 TOMICHAN @ ANTONY MATTATHIL
VEEDU, VATHIKKUDI VILLAGE,, THOPRAMKUDIKKARA. 2 WILSON
JOSEPH S/O.JOSEPH, ARUKAKKAL HOUSE, THOPRAMKUDI
KARA,VATHIKUDY VILLAGE. BY ADV SRI.S.RAJEEV
RESPONDENTS/COMPLAINANT: 1 STATE OF KERALA PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM. (CRIME
NO.7/2003 OF MURIKKASSERY, POLICE STATION). ADDL.R2: REJI

JOSEPH

AGED 52 YEARS, S/O JOSEPH, NOW RESIDING AT NEEDUKUNNEL HOUSE, THOPRAMKUDY, IDUKKI DISTRICT - 685 604 ADDL.R3: JOSE @ JOSE, AGED 59 YEARS, S/O CHACKO, MALEPPARAMBIL, THOPRAMKUDY P O, VATHIKKUDY VILLAGE, IDUKKI TALUK - 685609 (ADDL. R2 & R3 ARE IMPEADED AS PER ORDER DATED BY ADVS. No Advocate K.K.DHEERENDRAKRISHNAN N.P.ASHA THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 31.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Heard both sides.

2. The finding rendered by the trial court is

under Section 307 IPC. The injury alleged to have been sustained comes to four in numbers. The first one is only a contusion and second, third and fourth one are three incised wounds, having a measurement of 4.5X2 for the first two and the last one 4X2cm. The first two is on the left elbow and left forearm respectively and the third one is just beneath the shoulder. The weapon used for inflicting injury is MO1. On FSL Examination, though blood stain was found, it was not detected as that of human blood, within its identity. The knife was recovered as it was surrendered by the accused before the police. PW1 & PW11 had identified the MO1 weapon used for inflicting injury. PW11 had also sustained injuries, which are reported as contusion. No wound certificate was produced in order to show the nature and extent of injury alleged to have been sustained

by PW11. There is a counter case also by which the accused Nos. 1 and 2 also received injuries, which are well evident from Ext.P6 & P7. In fact,

PW4 deposed in tune with the initiation of the crime and the nature of alleged occurrence. It was in a scuffle they had sustained injuries, though there is user of a sharp edged weapon involved in the crime, it is not safe to fasten criminal liability under Section 307 IPC, solely on the medical evidence given by the doctor pertaining to the chance of death if no proper treatment was given in time. The injuries are very minor, though incised in nature. Nothing was spoken to by the doctor, regarding the time schedule or duration for a possibility of death on account of the above said injuries. On the other hand, the injury will reveal the nature of alleged offence. Hence, it may be one which is at the most punishable under Section 324 IPC, since there is user of a sharp edged weapon for inflicting the injury. Hence, the conviction and sentence for the offence under Section 307 IPC against the accused

will stand set aside. The accused is found guilty for the offence under Section 324 IPC. The occurrence was on 27/01/2003. At that time, the offence punishable under Section 324 IPC is compoundable and as such, the compounding petition submitted by the de facto complainant, PW1 & PW11, who are additional respondent Nos 2 and 3, are accepted. Hence, the offence punishable under Section 324 IPC will stand compounded and the accused is given the benefit of acquittal based on the compounding recorded as above. The appeal will stand allowed accordingly.

Sd/- P.SOMARAJAN JUDGE sms

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