

T.Mohanan vs State of Kerala

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Court : Kerala

Decided On : May-31-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Crl.Rev.Pet/2711/2004

Appellant : T.Mohanan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945 CRL.REV.PET NO. 2711 OF 2004 AGAINST THE JUDGMENT IN C.C.NO.164/1998 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,KUTHUPARAMBA CR.A.NO.267/2002 OF DISTRICT COURT & SESSIONS COURT,THALASSERY REVISION PETITIONERS/APPELLANT NOS. 3 & 6/ACCUSED 3 & 6:

1 T.MOHANAN S/O KUMARAN, AGED 37 YEARS COOLIE, P.O.VATTIPRAM, THALASSERY TALUK. 2 K.PAVITHRAN S/O.KANNAN AGED 32 YEARS BEEDI WORKER, P.O.PATHIRIYAD,

THALSSERY TALUK. BY ADV SRI.S.RAJEEV
RESPONDENT/RESPONDENT/COMPLAINANT: STATE OF KERALA
REPRESENTED BY PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM. BY ADV NOUSHAD K.A PUBLIC PROSECUTOR THIS
CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 31.05.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

BECHU KURIAN THOMAS, J.

===== Dated this the
31st day of May, 2023

ORDER

Revision Petitioners are the 3rd and 6th accused in C.C.No.164/1998 on the files of the Judicial First Class Magistrate

Court, Kuthuparamba. They were arrayed as accused along with seven others in the aforesaid case. By judgment dated 20.06.2002, the learned Magistrate found A1 to A6, A8 and A9 guilty for the offences under Sections 143, 147, 148, 448, 427 and 435 r/w Section 149 of the Indian Penal Code, 1860, and sentenced them to undergo imprisonment for various periods. On appeal to the Court of Sessions, Thalassery, in Criminal Appeal No.267/2002, the learned Session judge acquitted accused 1, 2, 4, 5 and 9 and confirmed the conviction and sentence imposed upon accused 3,6, and 8. This revision is preferred by accused 3 and 6, challenging their conviction and sentence.

2. Prosecution alleged that on 09.10.1997, the accused formed

themselves into an unlawful assembly and in prosecution of their common object, the accused committed rioting with deadly weapons after trespassing into the building where the defacto complainant was conducting a textile shop and destroyed the furniture and clothes kept there and also set fire to the articles, causing a loss of Rs.10,000/- and thereby committed the offences alleged.

3. Sri. S. Rajeev, the learned counsel for the revision petitioners,

contended that the prosecution evidence is not worthy of belief and the numerous contradictions ought to have been noted by the Trial Court as well as Sessions Court to acquit the accused. It was further submitted that the accused had not even been properly identified and therefore, they are liable to be acquitted.

4. Sri. Noushad. K. A, the learned Public Prosecutor on the other

hand contended that, as a court of revisional jurisdiction, the scope of interference is very limited and since two courts had concurrently found that the prosecution had proved its case beyond reasonable doubt and hence there is no scope for any interference by this Court.

5. On a perusal of the evidence in the case, and on appreciation

of the arguments advanced by the learned counsel for the petitioners as well as the learned Public Prosecutor, this Court notices that none of the witnesses for the prosecution had identified the accused in court. PW2 is the only person who had spoken about the accused. His evidence do not indicate any specific identification of the accused in court, except for a bare statement in the chief examination that, the accused standing in the dock where part of the 14 persons who had

committed the offences. He also named some of the accused including the 2nd petitioner as known to him earlier. It is elementary that, identification of the accused in Court alone is the substantive evidence. The identification of the accused in Court must ensure, without any doubt, the identity of the accused. In the event of witnesses failing to identify the accused or the witnesses are doubtful about the nature of identity, the benefit of doubt regarding the prosecution case ought to be accorded to the accused.

6. On a reading of the deposition of PWs 1 to 6, this Court is

convinced that the witnesses had failed to identify the accused in Court thereby creating a dent in the prosecution case. In the absence of any substantive evidence regarding the identity of the accused, the benefit of doubt ought to be

accorded to the revision petitioners. In the decision in Vayalali Girishan and others Vs. State of Kerala [2016(2) KLT SN 2 (Case No.2)], Division Bench of this Court had noticed the importance of specific identification of the accused in Court.

7. In view of the above discussion, this Court is satisfied that the benefit of doubt ought to have been extended to the revision petitioners, since, the accused were not identified in Court.

8. Therefore, the sentence and conviction imposed upon the

revision petitioners as accused 3 and 6 in C.C.No.164/1998 on the files of the Judicial First Class Magistrate Court, Kothupramba, is hereby set aside and they are acquitted. This criminal revision petition is allowed as above. Sd/- BECHU KURIAN THOMAS JUDGE jka/31.05.2023.

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