

Umeshan vs Sho

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Court : Kerala

Decided On : Oct-31-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Crl.Rev.Pet/224/2011

Appellant : Umeshan

Respondent : SHO

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA, 1945 CRL.REV.PET NO. 224 OF 2011 AGAINST THE JUDGMENT DATED 15.12.2010 IN CRA NO.253/2007 OF ADDITIONAL DISTRICT COURT (ADHOC)-I, KASARAGOD IN CC NO.158/2004 OF CHIEF JUDICIAL MAGISTRATE, KASARAGOD REVISION PETITIONER/APPELLANT/ACCUSED: UMESHAN, AGED 41 YEARS, S/O. MALINKA ACHARY, RESIDING AT CHEVAR, KUDALMERKALA VILLAGE, KASARAGODE TALUK. BY ADV SRI.T.G.RAJENDRAN RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE: 1 STATION HOUSE OFFICER, KUMBLA POLICE STATION, KASARAGOD DT PIN 671128. 2 STATE OF KERALA REP. BY PUBLIC

PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

OTHER PRESENT: PP SMT NIMA JACOB THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 31.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:- Dated this the 31st day of October, 2023

ORDER

The revision petition is filed challenging the

judgment in Crl.A. No.253/2007 of the Court of the

Additional Sessions Judge, (Adhoc-I), Kasaragod (Appellate Court), confirming the conviction and sentence of the revision petitioner in C.C.No.158/2004 of the Court of the Chief Judicial Magistrate, Kasaragod (Trial Court), holding the revision petitioner guilty for the offences under Sections 323 & 326 of the Indian Penal Code, 1860(in short, IPC) and convicting and sentencing him for the above offences.

2. The prosecution case is that: on 14.01.2004, the accused voluntarily caused simple hurt to PW1 by kicking and hitting him with wild stone. Thus, he committed the offences. -:3:-

3. The accused pleaded not guilty to the substance of accusation read over to him.

4. In the trial, the prosecution examined PWs 1 to 8 and marked Exts P1 to P6 and MOs 1& 2 in evidence. The accused denied the incriminating circumstances appearing against him in the examination under Section 313 of the Code of Criminal Procedure,1973(in short, 'Code').

5. The Trial Court, after analysing the materials

placed on record, found the accused guilty for the offences under Sections 323 & 326 of the IPC and convicted and sentenced him to undergo rigorous imprisonment for a period of three years and pay a fine of Rs.10,000/- for the

offence under Section 326 of the IPC and in default of payment of fine to undergo rigorous imprisonment for a further period of six

months and sentenced him to undergo simple imprisonment for a period of three months and pay a -:4:- fine of Rs.1,000/- for the offence under Section 323 of the IPC and in default of payment of fine to undergo further imprisonment for a further period of three months. The substantive sentences were ordered to run concurrently. It was further ordered that, if the fine amount was realised, Rs.10,000/- has to be paid as compensation to PW1 under Section 357(1)(b) of the Code.

6. Aggrieved by the said judgment, the revision petitioner filed Criminal Appeal No.253/2007 before the Appellate Court.

7. The Appellate Court, after re-appreciating the materials placed on record, by the impugned judgment, dismissed the appeal and confirmed the conviction and sentence passed by the Trial Court.

8. It is assailing the concurrent findings in the judgments passed by the courts below; the revision petition is filed. -:5:-

9. Heard; Sri. T.G.Rajendran, the learned counsel appearing for the revision petitioner and Smt. Nima Jacob, the learned Public Prosecutor appearing for the respondents.

10. When the revision petition came up for

consideration on 12.10.2023, the learned counsel appearing for the revision petitioner submitted that the revision petitioner is more. In the light of the above submission, this Court directed the learned Public Prosecutor, through the Jurisdictional Police, to enquire and ascertain as to whether the revision petitioner is dead.

11. Today, when the revision petition was taken up for consideration, the learned Public Prosecutor handed over the statement of the Station House Officer(SHO), Kumbala Police Station dated 15.10.2023, wherein it is stated that the revision

petitioner died on 17.06.2023 due to prolonged illness. -:6:-

12. In Pazhani v. State of Kerala [2017(1) KLT

341(FB)], a Full Bench of this Court has categorically declared the law that, pending an appeal/revision petition, if the appellant/revision petitioner/accused dies and there is a sentence of fine imposed on the accused, then near relatives of the deceased accused/ appellant/revision petitioner have a right to come on record and prosecute the appeal/revision petition. If no such application is filed, then the appeal/revision petition will have to be confined to the record room.

13. In the instant case, although the revision petitioner died on 17.06.2023, his near relatives have not come on record to prosecute the revision petition.

However, there is sentence of fine imposed on the revision petitioner. Therefore, I am of the definite view that revision petition is to be confined to the record room.

14. Following the ratio decidendi in Pazhani -:7:- (supra), and taking into account the fact that there is a sentence of fine imposed on the revision petitioner, I

order the revision petition to be confined to the record

room. Resultantly, the revision petition is confined to the record room. Sd/-
C.S.DIAS, JUDGE DST/31.10.23 //True copy// P.A.To Judge

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