

Krishnankutty vs State of Kerala

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Court : Kerala

Decided On : Oct-31-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Crl.Rev.Pet/1168/2011

Appellant : Krishnankutty

Respondent : State of Kerala

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. 1168 OF 2011 AGAINST THE JUDGMENT DATED
28.02.2011 IN CRA NO.640/2009 OF ADDITIONAL DISTRICT COURT
(ADHOC) III, PALAKKAD AGAINST THE JUDGMENT DATED
06.10.2009 IN SC NO.1255/2005 OF THE ASSISTANT SESSIONS
COURT(PRINCIPAL), PALAKKAD DIVISION REVISION
PETITIONER/APPELLANT/ACCUSED: KRISHNANKUTTY, S/O.
CHAMY, AGED 54 YEARS, THANIPADAM, THATHAMANGALAM,
CHITTUR TALUK, PALAKKAD DISTRICT. BY ADV
SRI.K.P.BALAGOPAL

RESPONDENT/RESPONDENT/COMPLAINANT: STATE OF KERALA REP. BY THE 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.640/2009 of the Court of the

Additional Sessions Judge, (Adhoc-III), Palakkad

(Appellate Court), confirming the conviction and sentence of the revision petitioner in S.C.No.1255/2005 of the Court of the Assistant Sessions Judge (Principal), Palakkad (Trial Court), holding the revision petitioner guilty for the offence under Section 326 of the Indian Penal Code, 1860(in short, IPC) and convicting and sentencing him for the above offence.

2. The prosecution case is that: on 02.05.2005, while PW1 was proceeding on a moped and he was talking to PW2, the accused caused grievous injuries to PW1 with a sword.

3. The Police after investigation, filed a charge-sheet before the Judicial First Class Magistrate, -:3:- Chittur, against the accused for the offence under Section 308 of the IPC. The learned Magistrate as per

order in C.P.No.99/2005 committed the case to the

Court of Session, Palakkad. The case was numbered as S.C.No.1255/2005 by the learned Sessions Judge and was made over to the Principal Assistant Sessions Judge, Palakkad, for trial.

4. The learned Assistant Sessions Judge, initially, framed a charge against the accused for the offence under Section 308 of the IPC, which was subsequently altered to Section 307 of the IPC.

5. The accused pleaded not guilty to the

substance of accusation read over to him. In the trial, the prosecution examined PWs 1 to 7 and marked Exts P1 to P12 and MO 1 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'). The defence -:4:- examined DW1 and marked Exts D1 to D3 in evidence.

6. The Trial Court, after analysing the materials

placed on record, found the accused not guilty for the offence under Section 307 of the IPC; but found him guilty for the offence under Section 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.2,000/- and in default to undergo simple imprisonment for a further period of three months.

7. Aggrieved by the said judgment, the revision petitioner filed Criminal Appeal No.640/2009 before the Appellate Court.

8. The Appellate Court, after re-appreciating the materials placed on record, by the impugned judgment,

confirmed the conviction; but modified the sentence by reducing it to undergo rigorous imprisonment for a period of one year and payment of fine of Rs.25,000/- and in default to undergo simple imprisonment for a -:5:- period of six months.

9. It is assailing the concurrent findings in the judgments passed by the courts below; the revision petition is filed.

10. Heard; Sri. K.P. Balagopal, the learned counsel appearing for the revision petitioner and Smt. Nima Jacob, the learned Public Prosecutor appearing for the respondents.

11. When the revision petition was taken up for

consideration on 13.10.2023, the learned counsel appearing for the revision petitioner submitted that the revision petitioner is no more. In the light of the above submission, this Court directed the learned Public Prosecutor to ascertain, through the Jurisdictional Police, as to whether the revision petitioner is no more.

12. Today, when the revision petition was taken up for consideration, the learned Public Prosecutor, on instructions, submitted that the revision petitioner died -:6:- on 16.09.2012. The said submission is recorded.

13. 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 his near relatives have a right to come on record and prosecute the appeal/revision petition. If no such application is filed, then the appeal/revision petition has to be confined to the record room.

14. In the case on hand, the Appellate Court has in addition to the substantive sentence of one year,

imposed a fine of Rs.25,000/- on the revision petitioner/accused and in default, sentenced him to undergo simple imprisonment for a period of six months. If the fine amount is realised, Rs.20,000/- to be paid as compensation to PW1 under Section 357(1)

(b) of the Code. -:7:-

15. Even though the revision petitioner died on 16.09.2012, i.e., more than a decade back, his near relatives have not come on record.

16. Following the ratio decidendi in Pazhani

(supra), and taking into account the fact that there is a sentence of fine imposed on the revision petitioner that is to pay Rs.25,000/-, I am of the definite view that

the revision petition is 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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