

Lissy Mathew vs State of Kerala

Lissy Mathew vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1400903

Court : Kerala

Decided On : Nov-01-2023

Judge : Honourable Mr.Justice K. Babu

Appeal No. : CRA(V)/34/2022

Appellant : Lissy Mathew

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU WEDNESDAY,
THE 1ST DAY OF NOVEMBER 2023 / 10TH KARTHIKA, 1945 CRA(V)
NO. 34 OF 2022 CRIME NO.359/2014 OF Kelakom Police Station,
Kannur AGAINST THE JUDGMENT DTD. 17.5.2022 IN SC 899/2014 OF
SPECIAL COURT FOR TRIAL OF OFFENCES AGAINST WOMEN AND
CHILDREN, THALASSERY CP 72/2014 OF JUDICIAL MAGISTRATE
OF FIRST CLASS II, KOOTHUPARAMBU APPELLANT/DE FACTO
COMPLAINANT: XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX BY
ADVS. B.PRAMOD BIJU VIGNESWAR ASWATHI SURESH
AYYAPPADAS V RESPONDENTSCOMPLAINANT & ACCUSED: 1
STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT

OF KERALA, ERNAKULAM, PIN - 682031. 2 VIPIN PAULSON, AGED 32 YEARS S/O. PAULSON, VALIYAMATTOM HOUSE, VENGALOD, KOTTIYOOR AMSAM, KANNUR DISTRICT, PIN - 670674. R1 BY SPL.P.P. (ATROCITIES AGAINST WOMEN AND CHILDREN AND WELFARE OF WOMEN AND CHILDREN)SRI.MATHEW k URIAKOSE R2 BY ADV.SRI.J.KRISHNAKUMAR (ADOOR)(K/731/2011) SMT.AMBIKA DEVI S, (GP-38) THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING BEEN FINALLY HEARD ON 01.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The challenge in this appeal is to the judgment dated 17.05.2022 passed by the Additional Sessions Judge-I, Thalassery, in S.C.No.899 of 2014.

2. By the impugned judgment, the sole accused (respondent No.2) was acquitted by the Court below of the offences punishable under Sections 450, 511 of 376 and 427 of the Indian Penal Code. This appeal has been preferred at the instance of the defacto complainant (hereinafter referred to as the complainant). The prosecution case:

3. On 25.6.2012 at 11.30 a.m, the accused had trespassed

into the central hall of the house bearing No.V/31A in Kottiyoor Grama Panchayat with the intention to commit rape on the complainant and forcefully pulled her to the bedroom situated on the north-eastern side, and pushed her on to the cot, and tore the nighty worn by her and attempted to commit rape on her. The accused had also committed mischief to the tune of Rs.2,000/- to her by destroying the fibre door of the bedroom.

4. Based on the complaint filed by the appellant/

complainant, the Sub Inspector of Police, Kelakam Police Station, registered FIR No.359/2014. After completion of the investigation, the final report was submitted against the accused for the offences punishable under Sections 450, 511 of 376

and 427 of the IPC before the jurisdictional Magistrate. The case was committed to the Sessions Court, Thalassery, from where it was made over to the trial Court. On the appearance of the accused, charges were framed under Sections

450, 511 of 376 and 427 of the IPC. He pleaded not guilty, and therefore, he came to be tried by the trial Court for the aforesaid offences.

5. The prosecution examined PWs 1 to 10 and proved Exts.P1 to P11 and MO1. After the closure of the evidence on behalf of the prosecution, the statement of the accused under Section 313 Cr.P.C. was recorded.

6. The accused pleaded the following:- The complainant and her husband were rubber tappers in the

rubber plantation owned by his family. While so, the complainant and her husband committed theft of rubber latex and the news of the same spread in the locality. In order to prevent the possibility of the offence being reported to the Police, the complainant and her husband falsely framed the accused with the help of a retired Police Officer named Chacko.

7. The trial Court heard the matter under Section 232 Cr.P.C. and found that there was no evidence against the accused and acquitted him of the offences alleged.

8. Heard Sri.B.Pramod, the learned counsel for the appellant/complainant, Sri.Mathew Kuriakose, the learned counsel appearing for the accused/respondent No.2 and the learned Public Prosecutor.

9. The finding of the trial Court is based on the following conclusions:-

(1) The complainant (PW1) is not wholly reliable.

(2) PW2, a witness examined to prove the occurrence was not credible.

(3) The prosecution failed to explain satisfactorily the delay in lodging the complaint.

(4) The oral evidence of PW2 is contradictory to the oral evidence of the complainant on the aspect of delay.

(5) Non-examination of the Priest with whom the complainant initially lodged a complaint is fatal to the prosecution.

(6) The delay in questioning PW2 has not been satisfactorily explained by the prosecution.

10. The learned counsel for the appellant/complainant made the following submissions:-

(1) The finding of the trial Court that the evidence of PW2 is contradictory to the oral evidence of PW1 is against the materials placed before the Court.

(2) The finding of the Court below, that the only evidence to

corroborate the oral evidence of PW1 is PW2, is against the evidence available as the oral evidence of PWs 3 and 4, being *res gestae* evidence, supports the prosecution case.

(3) The prosecution could satisfactorily explain the delay in lodging the complaint.

(4) Non-examination of the Priest with whom the complainant initially lodged a complaint will not affect the prosecution.

(5) The delay in questioning PW2 is not fatal to the prosecution.

11. The learned counsel for the accused made the following submissions:-

(1) The versions of the complainant and the occurrence witness (PW2) are contradictory to each other.

(2) The prosecution failed to explain the delay in lodging the complaint.

(3) The evidence available would show that PW2 had no opportunity to witness the incident.

(4) The presence of the husband of the complainant at the time of occurrence could not be ruled out, and therefore, the prosecution suppressed the genesis of the prosecution case.

(5) The delay in examination of PW2 by the Investigating Officer, though she was present at the scene of occurrence while questioning the other witnesses, is crucial.

12. The incident allegedly occurred at 11.30 a.m. at the

residence of the complainant on 25.6.2014. The complainant, while giving evidence, had stated that she had initially preferred a complaint before the Priest, where a compromise was entered into between the parties. In the FIS lodged before the Police, PW1 had not narrated the fact that she had earlier filed a complaint before the Priest and that an agreement was arrived at between the parties.

13. The complainant was not expected to narrate the entire

events after the incident in the FIS. The First Information Report is not supposed to contain all details of the incident. It must only contain the necessary ingredients of the offence alleged. An FIR is not intended to be a very detailed document and is meant to give only the substance of the allegations.

14. However, the fact that the prosecution suppressed the

filing of the complaint before the Priest and settlement of the matter before the spiritual head of the parties casts some doubt on the genesis of the prosecution case.

15. The complainant preferred the complaint only on 28.6.2014. She gave evidence that she was ashamed of giving a

complaint to the Police, and therefore, the delay occurred. Her husband (PW5) gave evidence that the matter had been discussed and settled before the Priest at the Church, which led to the delay in

preferring the complaint. The versions of the complainant and her husband are contradictory to each other, which affects the credibility of the complainant and her husband. The only witness who supported the version of the complainant regarding the incident is PW2. Her evidence lacks credibility in two aspects; (1) When all other witnesses were questioned by the Investigating officer on 28.6.2014, PW2 was questioned only on 5.7.2014, though she was present at the scene of

occurrence when the Investigating Officer examined the other witnesses. (2) The version of PW2 that she witnessed the incident from inside her house is not probable.

16. The delay in recording the statement of PW2, although she could be available for examination when the Investigating Officer questioned the other witnesses, is very crucial. The Apex Court in Harbeer Singh v. Sheeshpal and Others [(2016) 16 SCC 418],

held that the delay in examination of a witness by the Investigating

Officer, although such a witness was available for examination when the Investigating Officer visited the scene of occurrence or soon thereafter might cast a doubt on the prosecution case.

17. PW2 stated that she witnessed the accused entering the

veranda on the eastern side of the victims residence. The house of PW2 is on the north-western side of the victims house. As per Ext.P5 site plan, the veranda of the complainants house is on the eastern side, which is not visible from the house of PW2. Therefore, the possibility of PW2 witnessing the incident, as stated by her, is doubtful.

18. The oral evidence of PW5, the husband of the

complainant, is that he had reached the house by 10.30 a.m. on the date of occurrence. The incident allegedly happened at 11.30 a.m. Therefore, the

presence of PW5 at the scene of occurrence cannot be ruled out. This also casts some doubt on the prosecution case. I have gone through the oral evidence of the witnesses who supported the case of the complainant. Their evidence is not found to be credible.

19. On a careful analysis of the evidence of PW1, it is

revealed that she is not wholly reliable. When her evidence is not wholly reliable, as held in *Vadivelu Thevar v. State of Madras* (AIR 1957 SC 614), corroboration is the rule which is lacking in this case. The sole testimony of the complainant, who is the interested witness, cannot be relied upon without having corroboration with the independent evidence (vide: *Panna Damodar Rathi v. State of Maharashtra* [(1979) 4 SCC 526] and *Ayyasami v. State of Tamil Nadu* [(1992) 1 SCC 304]).

20. The learned counsel for the accused contended that the

accused, having been acquitted by the trial Court, is entitled to the presumption of innocence and further that the accused, having secured his acquittal, the presumption of his innocence is further re-affirmed and strengthened by the trial court. The learned counsel for the accused further submitted that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial court.

21. The apex court in *Chandrappa and others vs. State*

of Karnataka [(2007) 4 SCC 415], following various authorities on the subject, deduced the general principles, regarding the powers of appellate court while dealing with an appeal against an order of acquittal, as follows:-

(1) An appellate court has full power to review, re- appreciate and reconsider the evidence upon which the

order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no

limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, substantial and compelling

reasons, good and sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes, etc, are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of flourishes of language to emphasis the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in

case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

22. In my view, if, in the light of the above circumstances,

the trial Court felt that the accused could get the benefit of doubt, the said view cannot be held to be illegal, improper or contrary to law. Hence, I am of the considered opinion that the view taken by the trial court for acquitting the accused was possible and plausible. On the above-mentioned reasons, the appeal lacks merits. In the result, the appeal is dismissed. Sd/- K.BABU Judge TKS APPENDIX

OF CRA(V) 34/2022 RESPONDENTS ANNEXURES Annexure A1 TRUE COPY
OF THE PRINT OUT TAKEN FROM THE WEB SITE OF GOVERNMENT OF
CANADA, WWW.CANADA.CA REGARDING THE REQUIREMENTS TO OBTAIN
WORK PERMIT IN CANADA. TKS

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com