

Joseph Vs. State of Kerala

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Court : Kerala

Decided On : Dec-15-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Joseph

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD MONDAY,THE15H DAY OF DECEMBER201424TH AGRAHAYANA, 1936 CRL.A.No. 433 of 2004 (B) ----- AGAINST THE

JUDGMENT

IN SC1502002 of SESSIONS COURT, ERNAKULAM DATED1702-2004. APPELLANT(S)/ACCUSED: ----- JOSEPH S/O. FRANCIS, PUTHENPURAYIL HOUSE, KUMARANASAN ROAD, ERNAKULAM. BY ADV. SRI.K.V.SABU. RESPONDENT(S)/RESPONDENT: ----- STATE OF KERALA, REPRESENTED BY ASSITANT COMMISSIONER OF POLICE, ERNAKULAM REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.MADHU BEN. THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON1512-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: amk A.HARIPRASAD, J.

JUDGMENT

Appeal against the judgment of the learned Sessions Judge, Ernakulam in S.C No.150/2002 wherein, the appellant was tried for offences punishable under Sections 294(b), 323, 324 and 506(i) I.P.C and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'SC/ST Act').

2. Prosecution case, in short, is that one Kuttan, a taxi driver, who is a relative of PW2 owed some money to the appellant. As promised, Kuttan did not return it. Furious about that the appellant blurted out to PW2 that people belonging to Pulaya community will never repay their debts. On hearing this comment, PW1 who was present nearby, intervened and questioned the appellant for talking ill about members of a community. The appellant then insulted PW1 by referring to his caste name and also showered abusive words against his mother. Crl.Appeal No.433 of 2004 2 PW1 is a member of Scheduled Caste community and the appellant is not. There was a push and pull between PW1 and the appellant. The incident happened on 23-04-2001 at noon. Thereafter, on the same day, while PW1 was sitting on a slab near the South Railway Station, Ernakulam and talking to other drivers, the appellant came from behind with an iron rod (MO1) and beat him on back. His attempt to inflict a second blow was prevented by CW4. The accused then abused PW1 in filthy language and went away.

3. Learned Sessions Judge examined eight witnesses and marked seven documents on the side of the prosecution.

4. Heard the learned counsel for the appellant and the learned Public Prosecutor.

5. Learned counsel for the appellant submitted that the trial court failed to correctly appreciate the evidence adduced in the case. That resulted in convicting the appellant wrongly under Crl.Appeal No.433 of 2004 3 Section 324 I.P.C. It is to be noted in this context that the appellant was convicted by the court below only

under Section 324 I.P.C and he was acquitted of other charges levelled against him. Learned counsel for the appellant further submitted that the ocular evidence cannot be believed and the conviction has to be set aside. Per contra, learned Public Prosecutor submitted that the court below correctly appreciated the evidence and an offence under Section 324 I.P.C is clearly spelt out from the evidence in this case.

6. Before considering the rival contentions, I shall go through the oral evidence. PW1 is the defacto complainant. He is a member of Pulaya community, a Scheduled Caste, coming within the purview of the SC/ST Act. There is no dispute that the appellant and PW1 were known to each other even prior to the incident. PW1 deposed that the incident happened on 23-04-2001 after 2.00 p.m. The place of occurrence is the Crl.Appeal No.433 of 2004 4 premises of South Railway Station, Ernakulam. It is the case spoken to by the witness that taxi drivers, who are plying their vehicles in the railway station, used to sit on a bench close to the place of occurrence. At that time, he heard the appellant abusing one Kuttan and made a nasty comment against the members of his community. On hearing this unwanted expression, PW1 questioned the appellant and it resulted in an altercation. Then, the people assembled there separated them. Thereafter, all went to take their lunch. After taking food, they came to the place where they used to sit. Then the appellant came from behind with an iron rod and beat PW1 on back of his neck. On receiving the blow, PW1 bent forward in pain. He identified MO1 iron rod allegedly used to beat him. The appellant again tried to beat PW1, which was prevented by CW4. Immediately, the appellant abandoned the iron rod and went away. PW1 further stated that after inflicting a blow, the appellant fisted and Crl.Appeal No.433 of 2004 5 stamped him. He was taken to General Hospital and admitted there. Ext.P1 is the First Information Statement recorded by the police from the hospital. This witness was cross examined by the learned defence counsel. It is brought out in evidence that there were members affiliated to two rival unions in the taxi stand. According to the suggestion put to this witness, this case was foisted against the appellant to wreck vengeance on political animosity. This suggestion was strongly denied by PW1. In spite of cross examination, PW1 adhered to his version that the appellant inflicted a blow from behind by using MO1 iron rod.

7. PW2 is an eye witness to the incident. He stated the incident in tune with PW1. He also stated that the appellant abused one Kuttan for not repaying money borrowed from the former. This witness also testified about the altercation happened prior to the incident. In cross examination, PW2 specifically denied the suggestion that he was falsely CrI.Appeal No.433 of 2004 6 implicating the appellant due to political hostility. Testimony of PW2 renders support to that of PW1.

8. PW3 is yet another driver, who occasioned to see the incident. According to his chief examination, the initial fight between PW1 and the appellant happened on 23-04-2001 at about 9.00 a.m. But he affirmatively stated that the incident leading to this case happened after 2.00 p.m on the same day. Learned counsel for the appellant, on the basis of his evidence, contended that this witness states a different story. According to him, none of the witnesses has a case that any incident happened at about 9.00 a.m as stated by PW3. Even if one considers this as a mistake in PW3's evidence, I am of the view that he testified regarding the incident correctly and supporting PW's 1 and 2. In cross examination, he clearly stated that he saw MO1 iron rod at the time when the appellant used it for beating PW1.

9. PW4 is the doctor, who treated PW1 from the CrI.Appeal No.433 of 2004 7 General Hospital, Ernakulam. He proved Ext.P2 wound certificate. PW1 has given a statement to this witness first in point of time that somebody had beaten him with an iron rod. When examined, PW4 stated that the injury noted on Ext.P2 could be caused by MO1 iron rod. In spite of cross examination, I find no reason to discard his testimony.

10. PW5 prepared site plan, Ext.P4.

11. PW6 was a Head Constable, who conducted preliminary enquiry in this case. He prepared Ext.P3 scene mahazar. Ext.P3 shows that MO1 iron rod was recovered at the time of preparing the same. Learned counsel for the appellant contended that PW6 in cross examination had deposed that a driver by name Sivarajan produced MO1 iron rod to the Investigating Officer. It is the contention of the appellant that non examination of said Sivarajan affects the veracity of the

prosecution case, especially about the genuineness of MO1 iron Crl.Appeal No.433 of 2004 8 rod. Ext.P2 scene mahazar shows that it was recovered at the time of preparing the same. Merely on a slip of tongue of PW6, the genuineness of the seizure cannot be challenged.

12. PW7 is a Head Constable in Central Police Station. He recorded the statement of PW1 from the General Hospital, Ernakulam. Ext.P1(b) is the First Information Report was put in by this witness.

13. PW8 is the Assistant Commissioner of Police, who conducted investigation as the offence under Section 3(1)(x) of the 'SC/ST Act' was revealed. The case was investigated by an Officer in the rank of Deputy Superintendent of Police. On going through the evidence of Investigating officers, I do not find any infirmity affecting the substratum of the prosecution case.

14. On re-appraisal of the entire evidence, I am of the view that the court below correctly appreciated the evidence of Crl.Appeal No.433 of 2004 9 the injured witness, eye witnesses and the doctor to find that the appellant used MO1 iron rod to beat PW1 as alleged. Minor contradictions in the evidence cannot be a reason to discard the reliable and natural testimony of the prosecution witnesses. Therefore, I am of the view that conviction of the appellant under Section 324 I.P.C is proper and is to be confirmed. Hence I do so.

15. Learned counsel for the appellant contended that the sentence imposed on the appellant is harsh. There is no case for the prosecution that the appellant is involved in any other offence earlier. I do not find any reason to consider that this is a proper case in which the benevolent provisions on the Probation of Offenders Act can be involved. But he is entitled to some leniency in the matter of sentence. In the result, the appeal is partly allowed. Conviction of the appellant under Section 324 I.P.C is confirmed. Sentence Crl.Appeal No.433 of 2004 10 is reduced and he shall undergo simple imprisonment for a period of three months and pay a fine of Rs.3,000/- (Rupees three thousand only). In default of payment of fine, he shall undergo simple imprisonment for a period of two weeks. If fine is recovered, it shall be paid to PW1 as compensation under Section 357(1) Cr.P.C. All pending interlocutory applications will stand dismissed. Sd/- A.HARIPRASAD, JUDGE.

amk //True Copy// P.A to Judge

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