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State of Kerala vs Biju

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Court : Kerala

Decided On : Jun-28-2019

Judge : Honourable Mr. Justice Ashok Menon

Appeal No. : CRL.A/988/2003

Appellant : State of Kerala

Respondent : BIJU

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ASHOK MENON FRIDAY, THE 28TH DAY OF JUNE 2019 / 7TH ASHADHA, 1941 CRL.A.No.988 of 2003 AGAINST THE ORDER/JUDGMENT IN CC 155/1999 of JUDICIAL MAGISTRATE OF FIRST CLASS, WADAKKANCHERRY DATED 19-12-2002 APPELLANT/COMPLAINANT: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR. BY SMT.AMBIKADEVI, SPL.PUBLIC PROSECUTOR RESPONDENTS/ACCUSED: 1 BIJU, S/O UNNIKRISHAN, PATTIYOOR VEETIL, THEKUMKARA VILLAGE, THALAPPILLY TALUK. 2 PUSHAPAKARAN @ BIJU, PALLISSERY THAZHATHU VALAPPIL HOUSE, S/O SEDUMADHAVAN - DO - 3

SHAJU, S/O. ASSARY BHASKARAN, - DO - 4 REMESAN, S/O MURALIDHARAN, PALLISSERY VEETIL - DO - 5 PRAVEEN S/O. NARAYANKUTTY, VADAKATH HOUSE, - DO - BY ADVS. SRI.VIPIN NARAYAN SRI.T.R.HARIKUMAR SMT.P.V.VIJAYAMMA OTHER PRESENT: THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21.06.2019, THE COURT ON 28.06.2019 PASSED THE FOLLOWING:

JUDGMENT

The State is in appeal against the judgment of the Judicial First Class Magistrate, Wadakkanchery in C.C.155/99 acquitting the accused under Section 248(1), Cr.P.C. for offence punishable under Sections 342, 377 and 506(1) read with Section 34 of I.P.C.

2. The facts can be encapsulated as thus: PW1 was a boy child aged 12. In furtherance of common intention, the accused in this case, five in number, on or between 15.3.1998 and 25.3.1998 intimidated the child threatening to kill him and his brother and voluntarily had carnal intercourse against the order of nature with him after wrongfully confining him at various places, including the motor shed of the 1 st accused and the houses of the other accused.

3. The accused have all pleaded not guilty and the prosecution proceeded to examine PW1 to PW8, marked Exts.P1 to P14. Court exhibit was marked as Ext.C1. On closing the evidence the accused was quarried regarding the incriminating circumstances against them in the

evidence, which they denied. Written statements were filed by accused 1 and 2, while the other accused gave explanation regarding their being innocent. The main defence taken up by the accused is that the victim's family was at loggerheads with them concerning civil disputes and that in order to wreak vengeance, false case has been foisted. The accused also examined DW1 to DW2 as defence witnesses and marked Exts.D1 to D7.

4. On appreciation of the evidence, the learned

Magistrate found that the prosecution case regarding PW1 being wrongfully confined at different places and subjected to sexual assault against the order of nature at different places is not supported by any other evidence apart from the vacillating oral testimony of

PW1 which inspire little confidence. 18 days del

circumstances, the accused were all acquitted.

5. Heard the learned Public Prosecutor and the learned Counsel for the respondents. Records perused.

6. The primary infirmity of the prosecution case is that the alleged occurrence had taken place at different places like the motor shed of the 1 st accused

and the houses of other accused. There is also an allegation that accused 3 and 4 had detained the victim in the motor shed of the 1 st accused and subjected him to unnatural sexual assault. But the oral testimony of PW1 does not inspire confidence because there are lot of discrepancies and contradictions, as pointed out in the impugned judgment. He has no consistent version regarding how the alleged occurrence took place. Not a single witness from the neighbourhood testify about PW1 being taken to these places or his visiting those places. There is total absence of medical evidence, understandably because the FIR is lodged after 18 days. Even then, there may be some injuries on the body of PW1, who was alleged to have been repeatedly sexually abused by five men.

7. There is also contradiction regarding how he was intimidated with threat of death. His version to the police regarding the occurrence has been deviated at several places. He was allegedly threatened by 2nd accused holding a knife, but then he says that he was

only forced to sit. There is version that he had

the cross-examination, he had stated that there are doors on all sides of the room where the TV is plugged. Apart from that, there are other nearby residential homes. PW1 had also a T.V. at home. The possibility of his going to the house of

4th accused for watching T.V. is not believable. He has also contradicted his version regarding all the accused joining together to abuse him sexually at the motor shed of 1 st accused. The other witnesses examined, are not eye-witnesses and

have not helped the prosecution case in an

evidences and circumstances, I am of the opinion that there is nothing in evidence calling for interference with the findings in the impugned judgment. In the result, the Appeal is dismissed. Sd/- ASHOK MENON dkr JUDGE

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