

Pathrose Vs. State of Kerala

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Court : Kerala

Decided On : Nov-24-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Pathrose

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE 24^H DAY OF NOVEMBER 2014 3RD AGRAHAYANA, 1936 CrI.Rev.Pet.No. 1799 of 2014 ()
----- AGAINST THE

JUDGMENT

IN CRA6512011 of ADDL. D.C. & SESSIONS COURT - II, NORTH PARAVUR DATED 2208-2014 AGAINST THE

JUDGMENT

IN CC3152005 of J.M.F.C.-II, ALUVA DATED 1509-2009 -----
REVISION PETITIONER/APPELLANT/ACCUSED: -----
PATHROSE, AGED 58 YEARS S/O. PAILY, KALLARACHULLIYIL HOUSE,
EDAKKUNNU KARUKUTTY, ERNAKULAM DISTRICT. BY
ADVS.SRI.C.A.CHACKO SMT.C.M.CHARISMA
RESPONDENT/RESPONDENT/COMPLAINANT: ----- STATE OF

KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM. R BY PUBLIC PROSECUTOR, SMT.SEENA RAMAKRISHNAN THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON2411-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K.RAMAKRISHNAN, J.

CrI.R.P.No.1799

OF2014----- Dated this the 24th day of November, 2014

ORDER

~~~~~ The accused in C.C.No.315/2005 on the file of the Judicial First Class Magistrate Court-II, Aluva is the revision petitioner herein. The revision petitioner was charge sheeted by the Sub Inspector of Police, Angamaly in Crime No.707/2004 of Angamaly Police Station alleging offences under Sections 447, 324 and 326 of Indian Penal Code 2. The case of the prosecution in nutshell was that on 28.11.2004 at about 9.45 p.m. on account of his enmity with CW1, he criminally trespassed into the courtyard of the house bearing No.VI/239 of Karukutty Panchayat and attacked the de facto complainant with a chopper and caused injury to her and thereby he had committed the offence punishable under Sections 447, 324 and 326 of Indian Penal Code. After investigation, final report was filed for the above said offences and it was taken on file as C.C.No.315/2005 by the Judicial First Class Magistrate Court-II, Aluva. When the revision petitioner appeared before the court below, after hearing both CrI.R.P.No.1799/2014 2 sides, charge under Sections 447 and 324 of Indian Penal Code alone were framed and the same were read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 5 were examined and Exts.P1 to P5 and MOs 1 were marked on their side. After closure of prosecution evidence, the revision petitioner was questioned under Section 313 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that there was an incident occurred on that day between the revision petitioner, the de facto complainant and her sons in which the de facto complainant and her sons had attacked him and in order to harass him a false

case has been foisted. In order to prove his case, DWs 1 to 3 were examined.

3. After considering the evidence on record, the learned Magistrate found the revision petitioner guilty under Sections 447 and 324 of Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for 15 days and also to pay a fine of Rs.500/-. In default to undergo simple Crl.R.P.No.1799/2014 3 imprisonment for 7 days for the offence punishable under Section 447 of Indian Penal Code and further sentenced to undergo simple imprisonment for three months and also to pay a fine of Rs. 5000/-. In default to undergo simple imprisonment for two months more for the offence punishable under Section 324 of Indian Penal Code and directed the sentences to run concurrently. Dissatisfied with the same, the revision petitioner filed Crl.A.No.651/2011 before the Sessions Court, Ernakulam which was made over to Additional Sessions Court-II, North Paravur for disposal. The learned Additional Sessions Judge by the impugned judgment dismissed the appeal confirming the order of sentence and conviction passed by the court below. Dissatisfied with the same, the present Revision Petition has been filed.

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

5. The counsel for the revision petitioner submitted that except the interested testimonies of PWs 1 to 3 there is no other evidence to prove the incident. Further, the doctor, who issued Ext.P5 wound certificate, was not examined and the investigation Crl.R.P.No.1799/2014 4 officer was also not examined in this case. Further, the evidence of DWs 1 to 3 was not properly appreciated by the court below which will go to show that the place of occurrence was not the courtyard of the house of the de facto complainant but the house of the accused. So, the courts below were not justified in convicting the revision petitioner for the offence alleged and also further submitted that the sentence imposed is harsh.

6. The learned Public Prosecutor supported the concurrent findings of the court below.

7. The case of the prosecution as emerging from the prosecution witnesses as follows: On 28.11.2004 at about 9.45 p.m. when the injured, PW1, came out of the

house to the back courtyard of the house, she found somebody standing there and when she asked who it was, at that time, that person had hit on her head with some object and caused injuries to her. When she made hue and cry, her children and PW2 came by putting the light and found the accused running away from that place. Thereafter, she was taken to hospital and seen by the doctor attached to the hospital and issued Ext.P5 wound certificate. On getting intimation from CrI.R.P.No.1799/2014 5 the hospital, PW4, the Head Constable, attached to the Police Station went to the hospital and recorded Ext.P1 statement of PW1 and registered Ext.P2 First Information Report as Crime No.707/2004 of Angamaly Police Station originally for the offences under Sections 447, 324 and 326 of Indian Penal Code. The investigation in this case was conducted by CW7. He questioned the witnesses and recorded their statements. He prepared Ext.P4 scene mahazar in the presence of the witnesses and he completed the investigation and submitted final report for the offence under Sections 447, 324 and 326 of Indian Penal Code. But later the court has framed charge only for the offence under Sections 324 and 447 of Indian Penal Code alone.

8. It is true that the doctor who issued Ext.P5 wound certificate was not examined as he was not available. But prosecution examined additional witness as PW5, who was conversant with the handwriting of the doctor and he proved Ext.P5 wound certificate as it was given by CW5 doctor who prepared the same. So, when the person who prepared the document is not available, only the method by which the same can be proved is by examining a person who is conversant with CrI.R.P.No.1799/2014 6 his handwriting. It will be seen from Ext.P5 that she sustained injuries by using a dangerous weapon as the cause of injuries given. It was mentioned that assault by known person. It is settled law that the doctor is not expected to probe into the question as to whether how the cause of injury has caused or the person responsible for inflicting the injury etc. So, merely because the name of the assailant is not mentioned in the wound certificate is not a ground for disbelieving the case of the prosecution. Further, the prosecution witnesses namely PWs 1 to 3 have categorically stated that it was the accused who had committed the crime and the defence had no case that they are not known each other as well. PW3 is the scene mahazar witness and he had not seen the incident. But he came to know about the incident only from his wife and son as he

was not in the house at that time. Further, PWs 1 and 2 have categorically stated that it was the accused who had caused injury to PW1 with a dangerous weapon. According to them, he had hit her with the chopper. Identified the same as MO1. Further, the evidence of PW5 would show that the injury can be possible by using MO1 weapon. It cannot be said that MO1 is not a dangerous weapon as well. Crl.R.P.No.1799/2014 7 Though PWs 1 and 2 were cross examined at length, nothing was brought out to discredit their evidence regarding this aspect. Further, the case of the accused that he was assaulted by these witnesses could not be substantiated even by examining DWs 1 to 3. The evidence of DW1 will only go to show that he had seen the de facto complainant with injuries on her head and she was brought by PW2 from the house compound of the accused. It was at 9.00 p.m. But according to DW2, another witness examined, he was coming in a bicycle at about 9.30 p.m and at that time there was no light in the house compound of the de facto complainant. But after some time, the light came and at that time he saw PW1 with bleeding injuries and PW2 standing near her. So, the evidence of DW1 is quite contrary to the evidence of PW2 regarding the time of occurrence and also the manner in which it was seen by them. Further, the evidence will go to show that only after hitting, the light has put and in the light PWs 1 and 2 happened to see the accused as the person who had committed the crime. DW3, who is the wife of the accused is not a witness to the incident. So, her evidence is not helpful to prove the case of the accused. Further, the accused Crl.R.P.No.1799/2014 8 did not file any complaint against the de facto complainant for assaulting him as well. Further, he had no case that PW1 did not sustain injury in the incident. So, under the circumstances courts below were perfectly justified in rejecting the evidence of DWs 1 to 3 and believing the evidence of PWs 1 and 2 to come to the conclusion that the prosecution has proved beyond reasonable doubt that the accused had trespassed into the courtyard of de facto complainant and inflicted injury with MO1 chopper, a dangerous weapon, and thereby he had committed the offence punishable under Sections 447 and 324 of Indian Penal Code.

9. It is settled law that merely because the witnesses were interested and related witnesses is not a ground for rejecting their evidence in toto, but, court must be careful and cautious in scrutinizing their evidence before relying on their evidence for basing conviction. This is so held in the decision reported in State of U.P. vs

Jagdeo [2003 Cri.L.J.

844 (SC)]. In this case, nothing was brought out to discredit their evidence and the fact that she sustained injury has not been disputed, which is clear from the evidence of DWs 1 and 2 as well. Further, Cri.R.P.No.1799/2014 9 non-examination of investigating officer is not always fatal. It is for the accused to establish that non-examination has caused prejudice to him. In this case, there is no material contradiction or omission has been brought out in the evidence of PWs 1 and 2 so as to prove the same through the investigating officer non-examination whom has caused prejudice to him. Further, it is not a case of investigating officer not being examined and given up by the prosecution voluntarily, but, he could not be examined because he was not available for examination as he was no more. Under the circumstances there is no merit in the revision regarding the nature of conviction entered by the court below as courts below have correctly appreciated the evidence and rightly came to the conclusion that the revision petitioner has committed the offence under Sections 324 and 447 of Indian Penal Code and correctly convicted him for the said offences.

10. As regards the sentence is concerned, the learned Magistrate has sentenced him to undergo simple imprisonment for 15 days and also to pay a fine of Rs.500/- and in default to undergo simple imprisonment for 7 days under Section 447 of Indian Penal Code and further sentenced to undergo simple Cri.R.P.No.1799/2014 10 imprisonment for three months and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for two months more under Section 324 of Indian Penal Code and directed the substantive sentences to run concurrently. Considering the nature of injuries sustained and the manner in which it was inflicted, court below was perfectly justified in not invoking the provisions of Probation of Offenders Act in this case. But, it is settled law that it is not always necessary that substantive imprisonment must be made as part of the sentence. If the court feels that, that can be converted to compensation and the victim can be compensated by payment of adequate compensation, then that will meet the ends of justice as well. So, considering the circumstances, this Court feels that sentence imposed by the court below is set aside and the same is modified as follows: The revision petitioner is sentenced to pay a fine of Rs.500/- and in default to under go

15 days under Section 447 of Indian Penal Code and further sentenced to undergo imprisonment till rising of court and also to pay a compensation of Rs.10,000/- in default to undergo simple imprisonment for two months under Section 324 Indian Penal Code and if compensation amount were CrI.R.P.No.1799/2014 11 recovered, then the same be paid to PW1 under Section 357 (3) of the Code of Criminal Procedure. With the above modification of the sentence alone, the Revision Petition is allowed in part and disposed of. One month time is granted to the revision petitioner to pay the fine and compensation imposed by this Court. Till then, the execution of sentence is directed to be kept in abeyance. The revision petitioner is directed to appear before the court below on 24.12.2015 to receive the sentence. The office is directed to communicate this order to the concerned court immediately. Sd/- K.RAMAKRISHANAN, JUDGE. ps/26/11/2014 //True copy// PA to Judge

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