

Biju @ Biju Kumar Vs. State of Kerala

Biju @ Biju Kumar Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/42119

Court : Kerala

Decided On : Jan-30-2015

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Biju @ Biju Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 30^H DAY OF JANUARY 2015 10TH MAGHA, 1936 CrI.Rev.Pet.No. 1901 of 2003 ()
----- AGAINST THE

JUDGMENT

IN CRL.A3421998 of ADDITIONAL SESSIONS COURT, FAST TRACK(ADHOC)NO.II, THIRUVANANTHAPURUM DATED 0807-2003 AGAINST THE

JUDGMENT

IN CC5011995 of J.M.F.C.-II, NEYYATTINKARA DATED 2008-1998 REVISION PETITIONERS/APPELLANTS/ACCUSED: ----- 1. BIJU @ BIJU KUMAR, S/O. BHASKARAN, PARAVILA VARUVILAKATHU VEEDU, PACHALLOOR, THIRUVALLAM VILLAGE.

2. MAHA @ MAHENDRAN, S/O. ARJUNAN, NADAPPARA VEEDU, PARAVILA, PACHALLOOR, THIRUVALLAM VILLAGE. BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR

RESPONDENT/RESPONDENT/COMPLAINANT:

----- STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY P.P.SMT.V.H. JASMINE. THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30.01.2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. RAMAKRISHNAN, J.

..... Crl.R.P.No. 1901 of 2003
..... Dated this the 30th day of January, 2015.

ORDER

The accused Nos. 1 and 2 in C.C.No.501/1995 on the file of the Judicial First Class Magistrate Court-II, Neyyattinkara are the revision petitioners herein.

2. The case of the prosecution in nutshell was that on 9.2.1995 at about 4 p.m the accused in furtherance of common intention of causing grievous hurt to PW3 on account of their previous enmity, the first accused inflicted bleeding injuries on the outer side of the right palm and the inner side of the left palm with a dangerous weapon causing cutting of bone and muscle of the right little finger and second accused fisted him when he tried to go away from that place and thereby all of them have committed the offences punishable under sections 323, 324 and 326 read with section 34 of the Indian Penal Code (hereinafter referred to as 'the Code').

3. After investigation, final report was filed and the case was taken on file as C.C.No.501/1995 on the file of the Judicial First Class Magistrate Court, II, Neyyattinkara. When the Crl.R.P.No. 1901 of 2003 2 revision petitioners appeared before the court below, after hearing both sides charge under sections 323 and 326 of the Code was framed and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, Pws 1 to 8 were examined and Exts.P1 to P6 were marked on their side. After closure of the prosecution evidence, the revision petitioners were questioned under section

313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution evidence. Further they have stated that, in fact PW2 had attempted to attack the second accused with a sword and when first accused and PW3 intervened, a cut intended by PW2 on the second accused had fall on PW3 and he sustained injuries and they have not committed any offence. No defence evidence was adduced on their side.

4. After considering the evidence on record, the court below found the revision petitioners guilty under sections 326 and 323 read with section 34 of the Code and convicted them thereunder and sentenced them to undergo rigorous imprisonment for one year each and also to pay a fine of `2000/- each, in default to undergo simple imprisonment for three months each under section 326 read with section 34 of CrI.R.P.No. 1901 of 2003 3 the Code and no separate sentence was awarded under section 323 of the Code. It is further ordered that, if fine amount is realized, the same be paid to PW3 as compensation under section 357(1)(b) of the Code of Criminal Procedure.

5. Aggrieved by the same, the revision petitioners filed CrI.A.No.342/1998 before the Sessions Court, Thiruvananthapuram, which was made over to Additional Sessions Court, Fast Track (Adhoc)-II, Thiruvananthapuram for disposal and the learned Additional Sessions Judge by the impugned judgment dismissed the appeal. Aggrieved by the same, the present revision has been filed by the revision petitioners/accused before the court below.

6. Heard the counsel for the revision petitioners and the learned Public prosecutor.

7. The counsel for the revision petitioners submitted that the independent witnesses, Pws 1 and 6, did not support the case of the prosecution and the evidence of PW2 should not have been relied on by the courts below as he is an interested witness and his presence at the place of occurrence is doubtful. Further, the courts below have not considered the defence taken by the accused persons. Further, no offence under section 326 of the Code was attracted. So he prayed for CrI.R.P.No. 1901 of 2003 4 acquittal of the accused persons. He further submitted that in case this Court found that the conviction entered is proper, he prayed for leniency.

8. On the other hand, the learned Public Prosecutor supported the concurrent findings of the courts below. Considering the nature of injury sustained, the courts below were perfectly justified in coming to the conclusion that the offence under section 326 of the Code has been committed.

9. The case of the prosecution as emerged from the prosecution witnesses was as follows: On 9.2.1995 at about 4 p.m while PW3 was going along the road along with PW2, the accused persons came there with a sword and first accused inflicted cut injuries on PW3 and when he tried to go away from there, the second accused abused him, fisted him and when PW2 and others came, they ran away from the place with the weapon. PW2 and others took PW3 to the General Hospital, Thiruvananthapuram from where he was seen by PW7, who issued Ext.P4 wound certificate. Since injuries were grave in nature, he was referred to the Medical College Hospital, Thiruvananthapuram. On getting intimation regarding the admission of PW3 in the hospital, PW5 went to the hospital Crl.R.P.No. 1901 of 2003 5 and recorded Ext.P1 statement of PW1 and came to the police station and registered Ext.P3 First Information Report as Crime No.95/95 of Thiruvallam police station originally for the offences under sections 324 and 323 read with section 34 of the Code against the accused persons. Investigation in this case was conducted by PW8, who went to the place of occurrence and prepared Ext.P2 scene mahazer in the presence of PW5 and another. He questioned the witnesses and recorded their statements. During investigation, it was revealed that offence under section 326 of the Code was also committed. So he filed Ext.P5 report to incorporate section 326 of the Code also in the offence column. He arrested the second accused and released him on bail as per Ext.P6 bail bond. The first accused had surrendered before the court and released on bail from court. PW8 completed the investigation and submitted final report.

10. Pws 1 and 6 were eye witness to the incident. But they did not support the case of the prosecution. PW3 was the injured. He had categorically stated that he was attacked by the accused persons and the first accused had inflicted cut injuries with the sword and the second accused had fisted him with hand. Both of them were responsible for inflicting the Crl.R.P.No. 1901 of 2003 6 injury. PW2

had corroborated the evidence of PW3. He had further stated that when PW3 cried aloud due to the cut made by the first accused with the sword, he shouted at him and then fisted on PW3's back and when people gathered, they ran away from the place.

11. It is true that PW2 is a relative of PW3. That alone is not sufficient to disbelieve his evidence. Further, the case of the defence itself was that there was some altercation occurred between the second accused and PW2 and when PW2 attempted to cut him with the sword, it accidentally fell on PW3 who tried to intervene and he sustained injuries and so presence of PW2 at the place of occurrence has been admitted by the defence. So he is the probable and natural witness, who had witnessed the incident as well. There is nothing on record to show that any incident as suggested by the defence had taken place or any injury had been sustained by the second accused or any case had been registered in respect of the same as well. Further the combined acts committed by accused 1 and 2 show that both of them had shared the common intention of causing grievous hurt to PW3. The second accused was aware of the possession of the sword with the first accused as well. He did not prevent the first accused while inflicting CrI.R.P.No. 1901 of 2003 7 injury on PW3 with the sword and he had joined the first accused and inflicted injury by shouting at him as well. So all these things will go to show that the second accused also shared the common intention of causing grievous hurt to PW3 and both of them have gone there with that common intention. So under the circumstances, the courts below were perfectly justified in coming to the conclusion that both the revision petitioners have shared that common intention of causing grievous hurt to PW3 with the dangerous weapon.

12. The next question is as to whether the injury sustained by PW3 is grievous or not. Ext.P4 wound certificate coupled with the evidence of PW7 will go to show that PW3 sustained the following injuries: i. Incised wound left index finger involving the tendon and bone 2x1x1 cm.

2. Incised wound medial aspect of right hand bone of little finger is cut involving muscle and bone 3x1x1 cm. Further the doctor's evidence also corroborated the

nature of injury sustained. The doctor deposed that the injury would be caused by cutting with a sword.

13. Merely because weapon was not recovered is not a CrI.R.P.No. 1901 of 2003 8 ground to come to the conclusion that the prosecution case is false. If it is proved by ocular evidence and supported by the medical evidence that the injury could be possible by using a weapon like sword, that will be sufficient to come to the conclusion that weapon like sword had been used in the commission of the offence, which resulted in injury to PW3. Further, the evidence of PW3 would show that he admitted in Medical College Hospital for two days and thereafter the treatment as inpatient continued for 16 days in the General Hospital, Thiruvananthapuram and thereafter he was treated as out patient also. From the nature of injuries sustained, it could be seen that he would have suffered pain for more than 20 days and could not have pursued his ordinary work as defined under Eighthly of section 320 of the Code so as to bring the injury under the definition of grievous hurt, which is punishable under sections 326 of the Code. So under the circumstances, the courts below were perfectly justified in convicting the revision petitioners for the offences under sections 323 and 326 read with section 34 of the Code and the concurrent findings of the courts below do not call for any interference.

14. As regards the sentence is concerned, no separate CrI.R.P.No. 1901 of 2003 9 sentence was awarded for the offence under section 323 of the Code and the courts below had sentenced them to undergo rigorous imprisonment for one year each and also to pay a fine of `2,000/- each, in default to undergo simple imprisonment for three months each. It is further ordered that if fine amount is realized, the same be paid to PW3 as compensation under section 357(1)(b) of the Code of Criminal Procedure. Considering the manner in which the injury was inflicted and the weapon used, this Court feels that the revision petitioners do not deserve any sympathy as such, but only `2,000/- was imposed as fine. Considering the nature of injury, the compensation appears to be on the lower side. So this Court feels that reducing the substantial sentence to some extent not to a lower extent or a minimum extent and enhancing the fine to the maximum which could be imposed by the Magistrate and awarding compensation out of fine

amount will meet the ends of justice. So the substantive sentence is reduced to rigorous imprisonment for six months and fine is enhanced to `5,000/- each, in default to undergo simple imprisonment for three months each and if fine amount is realized, the same be paid to PW3 as compensation under section 357(1)(b) of the Code of Criminal Procedure and that Crl.R.P.No. 1901 of 2003 10 will meet the ends of justice. So the sentence imposed by the court below and confirmed by the appellate court is set aside and the same is modified as follows: The revision petitioners are sentenced to undergo rigorous imprisonment for six months each and also to pay a fine of 5,000/- each, in default to undergo simple imprisonment for three months each under section 326 of the Code and if fine amount is realized, the same be paid to PW3 as compensation under section 357(1)(b) of the Code of Criminal Procedure. With the above modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly. Sd/- K. RAMAKRISHNAN, JUDGE. cl /true copy/ P.S to Judge Crl.R.P.No. 1901 of 2003 11