

Indira N Vs. Shyju

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Court : Kerala

Decided On : Feb-20-2015

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Indira N

Respondent : Shyju

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 20TH DAY OF FEBRUARY 2015 1ST PHALGUNA, 1936 CrI.Rev.Pet.No. 639 of 2004 (B) ----- AGAINST THE

JUDGMENT

IN CC9182000 of J.M.F.C., VADAKARA, DATED 12-05-2003 REVISION PETITIONER(S)/DEFACTO COMPLAINANT:

----- INDIRA N., D/O. KANARAN, AGED 48 YEARS, VADAKARA VILLAGE, VADAKARA TALUK. BY ADV. SRI. SUNNY MATHEW RESPONDENT(S)/ACCUSED AND STATE: ----- 1. SHYJU, S/O. BHASKARAN, AGED 28 YEARS, CHALLAYIL HOUSE, VADAKARA AMSOM DESOM.

2. JUGNU, S/O. DAMODARAN, AGED 25 YEARS, NADOL HOUSE, VADAKARA AMSOM DESOM.

3. BIJU, S/O. SREEDHARAN, AGED27YEARS, NADEMMMA HOUSE, VADAKARA AMSOM DESOM.

4. DINESHAN, S/O. BALAKRISHNAN, AGED26 CHALLAYIL HOUSE, VADAKARA.

5. BIJU, S/O. VISHWANATHAN, AGED35YEARS, POKKIREENDAVIDA HOUSE, VADAKARA.

6. VIJESH, S/O. BALAN, AGED29YEARS, CHALLAYIL HOUSE, VADAKARA AMSOM DESOM.

7. DINI, S/O. SREEDHARAN, AGED31YEARS, THEKKEKORAPPANDAVIDA, VADAKARA AMSOM DESOM.

8. SUNIL KUMAR, S/O. KUMARAN, AGED30YEARS, KALLILPEEDIKAYIL, VADAKARA.

9. SUNIL KUMAR, S/O. KUMARAN, AGED30YEARS, NADOL HOUSE, VADAKARA AMSOM DESOM.

10. PAVITHRAN, S/O. KUMARAN, AGED37YEARS, KAYYILPEEDIKAYIL, VADAKARA. :2: Crl.Rev.Pet.No. 639 of 2004 11. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R1 TO R10 BY ADVS. SRI.GHOSH YOHANNAN SMT.THUSHARA.V R11 BY PUBLIC PROSECUTOR SMT. V.H. JASMINE. THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON2002-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ss K. RAMAKRISHNAN, J.

----- Crl.R.P. No. 639 of 2004
----- Dated this the 20th day of
February, 2015

ORDER

Defacto-complainant in C.C.918/2000 on the file of the Judicial First Class Magistrate Court, Vadakara, is the revision petitioner herein.

2. Respondents 1 to 10 were charge-sheeted by the Sub Inspector of Police, Vadakara police station in Crime No.200/2000 of that police station alleging offences under Section 143, 147, 452, 354, 427, 294(b) read with Section 149 of the Indian Penal Code.

3. The case of the prosecution in nut shell was that, on 02.09.2000 at about 09.00 p.m., accused persons formed themselves into an unlawful assembly at Pakkayil in Vadakara Amsom Desom, in furtherance of their common object committed rioting armed with deadly weapons with an intention to commit offence, criminally trespassed into Crl.M.C. No. 639 of 2004 2 the house of PW1 and tore off her blouse with an intention to outrage her modesty and caused damage to the articles, dismantled their aquarium and caused a loss of 1,000/- and thereby all of them had committed the above said offence.

4. After investigation, final report was filed and the case was taken on file as C.C.No.918/2000 on the file of the Judicial First Class Magistrate Court, Vadakara. When the accused appeared before the court below, except the 5th accused (he was absconding), after hearing both sides charge under Section 143, 147, 452, 354, 427, 294(b) read with Section 149 of the Indian Penal 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 and MOs 1 to 3 were marked on the side of the prosecution. After closure of the prosecution evidence, the accused were questioned under Section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution Crl.M.C. No. 639 of 2004 3 evidence. No defence evidence was adduced on their side. After considering the evidence on record, the court below found respondents 1 to 4 and 6 to 10, who are accused Nos. 1 to 4 and 6 to 10 were not guilty and acquitted them of the charge under Section 248(1) of the Code of Criminal Procedure. The case against the 5th accused was split up and refiled as C.C.No341/2000. Aggrieved by the order of acquittal, the above revision has been filed by the revision petitioner/ defacto-

complainant before the court below.

5. Heard both sides.

6. The counsel for the revision petitioner submitted that, the appreciation of evidence by the court below is perverse and the evidence of PWs 1 to 3 and 5 clearly established the offence alleged against the accused persons and their identity has been properly proved. Further, the reasons stated by the court below for disbelieving their evidence is not proper. The case of the prosecution was that, the accused had only tore off the blouse and there was no possibility of any injury being Crl.M.C. No. 639 of 2004 4 caused. Further the delay has been explained by PW1 before court and those aspects were not properly appreciated and the appreciation is perverse and liable to be interfered with.

7. On the other hand, the counsel for the respondent submitted that, the court below had properly appreciated the evidence and the order of acquittal is not liable to be set aside, as it cannot be said to be perverse.

8. The above case was initiated on the basis of Ext.P1 complaint given by PW1 on the next day of the alleged incident and Ext.P4 first information report was registered by PW9. Thereafter, part of the investigation was conducted by PW10 and Ext.P2 scene mahazar was prepared and MOs 2 and 3 were seized from the place of occurrence. MO1 was seized as per Ext.P3 mahazar, produced by PW1 after two days of the incident. PW11 produced Exts.P5 and P6 report showing the name and address of the accused and also adding Section 427 of the Indian Penal Code and he completed the investigation. PWs Crl.M.C. No. 639 of 2004 5 1 to 3 and 5 are the eye witnesses to the incident. PW1 is the victim. PW2 is her son and PWs 3 and 5 are the alleged neighbours. According to PW1, the accused persons came and knocked the door and when she opened the door, PW2 put on the light and at that time she saw more than twenty persons standing outside including the accused, at that time accused Nos 1 to 3 abused her and they tore off her blouse and PW2 came and pushed them out and they continued their hurling of abusing words from outside. Thereafter, then police came and removed them, but again they came back and hurled stones and then left the place. If really police had come to the place and removed the accused persons from that place and any

damage has caused to the blouse as spoken to by her and any damage has been caused to the house, then they would have informed the same to the police and immediately a crime would have been registered. But that was not done in this case. Further it was brought out in evidence of PWs 1 and 2 that there were civil dispute pending between the relatives of Crl.M.C. No. 639 of 2004 6 both parties and they are not on good terms. Further it was brought out in the evidence of PW2 that, he was accused in several cases as well. Though in the re-examination it was brought out that the cases between the accused and himself were registered after this incident and there were no cases between them earlier, but some of the suggestions given will go to show that apart from the cases between some of the accused and PW2, there were other cases as well against him pending at that time. Further the blouse was not produced at the time when PW10 came to the place for preparing Ext.P2 scene mahazar and it was produced later. There was no explanation forthcoming for not producing the blouse when MOs 2 and 3 were seized while preparing Ext.P2 scene mahazar.

9. Further the evidence of PWs 3 and 5 are contradictory to each other. PW3 had stated that, he did not see the accused persons assaulting or tearing off the blouse, but by the time he came, the accused persons left the place and thereafter they came again and hurled stones. Crl.M.C. No. 639 of 2004 7 It was brought out in evidence that, he was closely associated with PW2, as a political worker.

10. PW5 had a case that, he had even witnessed the entire incident as narrated by PW1, but according to him, he reached the place of occurrence after PW3 had reached the place and at that time, he saw PW3 at the place of occurrence. PW3 had no case that he had witnessed the entire incident as narrated by PW1. But on the other hand, PW5 had a case that he had witnessed the entire incident as spoken to by PWs 1 and 2. So the presence of PW5 at the place of occurrence is doubtful and the court below had rightly disbelieved his evidence on this aspect.

11. In Ext.P1, the reason for the delay has not been mentioned, but only at the time when he was examined before the court, she had a case that since she was afraid to going outside, she did not go to the police station and file the complaint. But in fact according to her, police had come to the place on the night of the

incident itself and they removed the accused persons. If really any CrI.M.C. No. 639 of 2004 8 incident had occurred as stated by her, they could have registered a case on the basis of the statement given by PW1, on the date of incident itself, that was not happened in this case. Further the evidence of PWs 1 and 2 will go to show that there are lot of improvements, embellishments and there were lot of omissions which were material in nature, which were not stated by them while they were questioned by the investigation officer.

12. So over all circumstances of the case and appreciation of evidence and also considering the fact that there was enmity between the accused persons and PWs 1 and 2 and the evidence of PWs 3 and 5 are contradictory to each other, the court below was perfectly justified in coming to the conclusion that the evidence adduced on the side of the prosecution without getting independent corroboration is not safe to rely on to convict the accused persons for the offence alleged. It is settled law that, if there are two views possible on the basis of evidence available and one such view taken by the court is also CrI.M.C. No. 639 of 2004 9 possible then the revisional court will be slow in interfering the order of acquittal passed by the court below, unless the appreciation of evidence is so perverse and no such finding could be possible on the basis of evidence available on record. (see Krishnankutty v. State of Kerala (2005(1) KLT813. But on going through the evidence, it cannot be said that the appreciation evidence made by the court below is perverse and such a finding could not be possible so as to interfere with the order of acquittal passed by the court below against accused Nos.1 to 4 and 6 to 10 and I do not find any merit in the revision and the same is liable to be dismissed. In the result, the revision is dismissed. Office is directed to communicate this order to the concerned court immediately. Sd/- K. RAMAKRISHNAN, JUDGE // True Copy// P.A. to Judge ss

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