

Mohanan Vs. State of Kerala

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Court : Kerala

Decided On : Feb-20-2015

Judge : Honourable Mr. Justice K.Abraham Mathew

Appellant : Mohanan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW FRIDAY, THE 20TH DAY OF FEBRUARY 2015 1ST PHALGUNA, 1936 CrI.Rev.Pet.No. 1544 of 2013 ----- CRA2482011 OF ADDITIONAL DISTRICT COURT (ADHOC-I), PALAKKAD DATED 24-05-2013 CC4162006 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, ALATHUR DATED 21-01-2011 REVISION PETITIONER(S)/APPELLANT/ACCUSED:

----- MOHANAN, AGED 44 YEARS, S/O. VELLA, BRAHMANYA PURAM, PALAMUKKU, AYILUR, PALAKKAD. BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL) RESPONDENT(S)/RESPONDENT/COMPLAINANT:

----- STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI.GITHESH R. THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: msv/ K.ABRAHAM

MATHEW, J.

----- Crl. R.P. No. 1544 of 2013
----- Dated this the 20th day of February, 2015

ORDER

This Criminal Revision Petition has been filed by the sole accused in C.C.416/2006 on the file of the Judicial First Class Magistrate, Alalthur. He was tried for the offence under S.354 I.P.C. The accusation was that he outraged the modesty of P.W.2, who was a passenger in his autorickshaw at about 6.15 p.m. on 8.10.2006. The learned Magistrate relied on her testimony and convicted him of the offence and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.5000/- with a default clause. In the appeal, the learned Sessions Judge confirmed the conviction, but modified the sentence. The sentence was reduced to rigorous imprisonment for nine Crl. R.P. No. 1544 of 2013 2 months. The direction to pay fine was dropped; instead, the learned Sessions Judge directed the revision petitioner to pay compensation of Rs.10,000/- with a default clause.

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

3. It is not in dispute that P.W.2, a woman aged 29 years at the relevant time, was a passenger in the autorickshaw driven by the revision petitioner. According to P.W.2, when she was returning home from a temple, the autorickshaw driven by the petitioner came along the road and he offered to drop her at house in his autorickshaw; though she refused, he insisted on her being taken to her house; so she boarded the autorickshaw. The case of P.W.2 is that in the course of the journey, the appellant caught hold of her shawl and Crl. R.P. No. 1544 of 2013 3 pressed her breasts which compelled her to jump out of the autorickshaw; she sustained injuries.

4. P.W.2 was allegedly taken to the Government Hospital, Nenmara, where she was given first aid. Thereafter, she was admitted to Cresent Hospital, Alathur. Ext.P8 is the certificate issued from the Hospital. The doctor who prepared the

wound certificate was not available for examination. So it was marked through another doctor. The certificate shows that she sustained lacerated injuries on the left side of the forehead and on the chin. She had multiple abrasions over the hands and other parts of the body. She lost the upper central incisor on the right upper jaw.

5. Learned counsel for the revision petitioner submits that the trial court and the appellate court did not even consider the CrI. R.P. No. 1544 of 2013 4 contradictions in the evidence of the witnesses and improbabilities in the case.

6. The incident allegedly happened on 8.10.2006. P.W.2 was admitted to Crescent Hospital on the very same day. Her evidence shows that she was discharged on 10.10.2006. She gave Ext.P1 statement to the police on 14.10.2006. Thus there is a delay of five days in informing the police after the incident. The explanation given by P.W.2 in the witness box is that the Doctor had advised her not to speak and that she had pain in the mouth. But what she told the police was that she believed that the hospital authorities had informed the police about the incident. Neither the trial court nor the appellate court considered this inconsistent versions of the victim. Moreover, the evidence of P.W.1, who claims to have reached the place of occurrence CrI. R.P. No. 1544 of 2013 5 immediately after the incident and taken the victim to the hospital shows that she was able to speak. Moreover, she herself has deposed that she told the doctor about the incident and mentioned the injuries to him. So the explanation that she could not inform the police about the incident because she was not able to speak appears to be false.

7. The definite case of the prosecution is that the incident happened at 6.15 p.m. But the evidence of P.W.1 who allegedly reached the place of occurrence and took the victim to the hospital is that the incident was between 2 and 3 p.m. Neither the trial court nor the appellate court took this contradiction seriously. Though it is a material contradiction, the observation of the appellate court is this "if the incident was between 2-3 p.m., it is contradicted by other CrI. R.P. No. 1544 of 2013 6 proved facts and circumstances". This does not make any sense.

8. Apart from the above facts, there is one more reason to disbelieve P.W.1. His first statement was that what he saw first was the victim lying on the road injured.

But his later version is that he saw her falling out of the autorickshaw.

9. Another material contradiction is with regard to the place where the victim fell down out of the autorickshaw. According to her, she fell on the left side of the road. But the version of P.W.1 is that she fell on the right side of the road. This was not noticed by the learned Magistrate or the Sessions Judge.

10. It is stated that immediately after the incident the victim was taken to a nearby Government Hospital. The investigating officer did not think it proper to question the doctor CrI. R.P. No. 1544 of 2013 7 who treated the victim (P.W.2) at the Government Hospital. There is no doubt that she had been treated elsewhere before she was taken to Crescent Hospital. The wound on the left side of the forehead had been stitched when she was admitted to the Crescent Hospital. The doctor at the Crescent Hospital was told that P.W.2 sustained injuries when she fell down from the autorickshaw. It appears that there was no complaint that she jumped out of the auto-rickshaw when the appellant attempted to outrage her modesty.

11. It is true that in the cross- examination of P.W.1, there was a suggestion that P.W.2 sustained injuries when she jumped out of the autorickshaw. But the revision petitioner cannot be pinned down to the suggestion made by the counsel in the cross- examination. The fact that the revision CrI. R.P. No. 1544 of 2013 8 petitioner could not prove that there was a motive for the victim to raise a false allegation against him also is not a ground to hold him guilty.

12. As the trial court and the appellate court failed to take notice of the contradictions on material points, I have no doubt that the conviction is vitiated. The accused is entitled to benefit of doubt. In the result this revision is allowed. Conviction of the accused under Section 354 of Indian Penal Code and the sentence imposed on him are set aside. He is acquitted of the said offence. Sd/-
K.ABRAHAM MATHEW JUDGE rka /true copy/ CrI. R.P. No. 1544 of 2013 9