

Abdul Khader Vs. The State of Kerala

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Court : Kerala

Decided On : Mar-09-2015

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Abdul Khader

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID MONDAY, THE 9TH DAY OF MARCH 2015 18TH PHALGUNA, 1936 CrI.MC.No. 952 of 2015 () ----- AGAINST SC3562012 of ADDL.SESIONS COURT (ADHOC)III, MANJERI CRIME NO. 308/2001 OF TANUR POLICE STATION , MALAPPURAM PETITIONER(S)/ACCUSED NO. 13: ----- ABDUL KHADER S/O.MUHAMMED, KAKKANTEPURAKKAL VEEDU UNNIYAL BEACH ROAD, MALAPPURAM DISTRICT. BY ADVS.SRI.BABU S. NAIR SRI.K.RAKESH RESPONDENT(S)/STATE: ----- THE STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 031. BY PUBLIC PROSECUTOR SMT.S.HYMA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 0903-2015 ALONG WITH CRL.M.C.953/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 952 of 2015 () ----- APPENDIX PETITIONER(S)' EXHIBITS

----- ANNEXURE A: TRUE COPY OF THE FINAL
REPORT/CHARGE IN CRIME NO. 308/2001 OF THE TANNUR POLICE
STATION. ANNEXURE B: TRUE COPY OF THE

JUDGMENT

DATED 30.07.2009 IN S.C.NO. 245/2007 OF THE ADDITIONAL SESSIONS
JUDGE (FAST TRACK) NO. III. RESPONDENT(S)' EXHIBITS
----- /TRUE COPY/ P.S TO JUDGE P.UBAID, J.

~~~~~ Crl.M.C Nos.952, 953, 959, 962 and 967 of 2015 ~~~~~  
Dated this the 9th March 2015

## ORDER

The petitioners in Crl.M.C No.953 of 2015 are the original accused Nos.1, 3 and 4 in S.C No.245 of 2007 of the Court of Session, Manjeri. The petitioner in Crl.M.C No.952 of 2015 is the accused No.13, the petitioners in Crl.M.C No.959 of 2015 are the accused Nos.6 and 15, the petitioner in Crl.M.C No.962 of 2015 is the accused No.11 and the petitioners in Crl.M.C No.967 of 2015 are the accused Nos.7,8 and 9 in the said case. The offences involved in the case are under Sections 143, 147, 148, 324 and 326 read with 149 of Indian Penal Code. This is in fact a counter case to another case involving sessions offences. That is why the case was tried in the Court of Session. The original accused Nos.2, 10, 12 and 14 faced trial before the learned IIIrd additional Sessions Judge (Ad hoc), Manjeri) and obtained a judgment of acquittal on merits on 30.7.2009 when the prosecution failed to adduce any satisfactory and believable evidence proving the case. The Crl.M.C Nos.952, 953, 959, 962 and 967 of 2015 2 case against these petitioners was split up at different stages. The case against the accused No.13 is now pending as S.C No.356 of 2012. The case against the accused Nos.6 and 15 stands transferred to the register of long pending cases as L.P. 6 of 2012. The case against the accused Nos.7,8 and 9 stands transferred to the register of long pending cases as L.P. 34 of 2008, the case against accused No.11 in S.C428 of 2010 and the case against the accused No.1,3 and 4 stands transferred to the long pending register as L.P. No.19 of 2012 before the learned Additional Sessions Court, Manjeri. These petitioners now seek orders quashing the

prosecution as against them on the ground that the very substratum of the prosecution case stands totally lost by the acquittal of the others on merits, and the prosecution cannot in the given circumstance, in any manner, improve the case as against them, if it goes to trial. Annexure-B is copy of the judgment in S.C No.245 of 2007. The prosecution examined all the material witnesses in that case and also exhibited some documents. No material object was marked during trial. Crl.M.C Nos.952, 953, 959, 962 and 967 of 2015 3 2. In paragraph 16 of the Annexure-B judgment, as regards the evidence given by the de facto complainant (PW1), the trial court found thus: " PW1 has no case in P1 F.I statement that any of the accused persons were having any weapon like sword, dagger, axe etc, nor they used any such weapon at any time during the incident against PWs 1 and 3 herein or against any other victims. The version of this witness that Razik pointed out himself and his colleagues who are PWs 1 and CW2 and directed them to beat also would not find a place in Ext.P1 F.I. Statement. PW1 has also no case in Ext.P1 F.I statement that A1 beat CW5 with a stick and thereby caused fracture to his wrist. It is further to be pointed out that PW1 claims that he sustained injury on his head by putting a stone on his head during the incident. But PW1 has no such case either in Ext.P1 F.I Statement or the prosecution has no such allegation in police charge. The medical evidence available in this case also would not support the above version of PW1.

3. The trial court acquitted the accused on merits Crl.M.C Nos.952, 953, 959, 962 and 967 of 2015 4 mainly on three grounds. One is the inordinate delay in lodging the F.I.R. The other is the difference between medical evidence and ocular evidence regarding the nature and type of the injuries sustained, and the third is the material inconsistency between the evidence of material witnesses. In paragraph 18 of the judgment, the trial court held thus: "Though the prosecution attempted to establish that the victims herein have sustained grievous injuries, medical evidence available in this case would not support that claim. The injury sustained on the body of PW1 is only lacerated wound on the scalp which would not come within the ambit of any types of the hurt defined under Section 320 IPC. Though PW1 would claim that his skull was broken due to the beating and also due to the pelting of stones, the medical evidence available in this case would not support the claim. Further more, the loss of teeth and nail of PW1 is also not

stated in Ext.P1 F.I.Statement. If actually PW1 who is a young man has sustained any loss of teeth or breakage of teeth and the loss of nail definitely that fact might have been shown by the doctor who was treated him first. Without showing any such CrI.M.C Nos.952, 953, 959, 962 and 967 of 2015 5 injury to the doctor, now he sustained that injury is doubtful. This doubt is strengthened due to the fact that there is no mention of such injuries in his F.I. Statement. Even though the F.I Statement was lodged by him while he was under treatment at Medical College Hospital, Kozhikode. It is further to be pointed out that though PW3 also would claim, have sustained hurt, no medical evidence is available in this case to substantiate that aspect also. In these circumstances, the definite contention of the defence that Pws1 and 3 might have sustained injuries while they were attacking and assassinating the deceased Razik and other victims in Cr. No.308 of 2001 is probably possible especially when PW1 is definite that the assailant has beat him from behind." 4. On an evaluation of the entire evidence, the learned trial Judge conclude the findings thus in paragraph 19. In paragraph 19 of the Annexure-B judgment, the trial court held thus: "On evaluating the entire materials available on record, I am of the view that the CrI.M.C Nos.952, 953, 959, 962 and 967 of 2015 6 prosecution has failed to establish the case beyond any reasonable doubt. On the other hand the materials available in this case would probabalise the defence contention that this case has been foisted as a counter blast for the case of assassinating the deceased Razik and causing injury on other victims alleged in SC32404 by the PW1 to 3 herein and their colleagues who are the sympathizers of A.P. faction and also the workers of Marxist party." 5. On an examination of the Annexure-B judgment by which the others obtained a judgment of acquittal, I find that the very substratum of the prosecution case stands totally lost by the acquittal of the others and I am definite that in such a situation, the prosecution cannot in any manner improve the case against these petitioners. It is submitted that there is no appeal or revision against the acquittal of the others. Thus, the acquittal has become final. In the nature of the evidence given by the witnesses in the main case, I find that they cannot improve their versions against these petitioners, if their case goes to trial. I find that the prosecution case stand irreparably damaged by the inconsistent and contradictory evidence given by the witnesses at the first round. As rightly found by the learned CrI.M.C Nos.952, 953, 959, 962 and 967 of

2015 7 trial Judge, the inordinate delay in lodging the F.I.R stands not explained by the prosecution. I find that continuance of the prosecution against the petitioners will not yield any result, and it will be a sheer waste of time. In such a circumstance, the pending prosecution against these petitioners can be quashed. In the result, these petitions are allowed. The prosecution against the petitioners in these petitions in S.C No.356 of 2012, L.P. Nos.19 of 2012, 6 of 2012, S.C. 428 of 2010 and L.P. No.34 of 2008 (Crime No.308 of 2001 of Tanur Police Station) will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioners will stand released from prosecution. Sd/- P.UBAID JUDGE ma /True copy/ P.S to Judge

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