

Moly Vs. State of Kerala

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Court : Kerala

Decided On : Aug-31-2006

Reported in : 2006(4)KLT123

Judge : K.S. Radhakrishnan and; V. Ramkumar, JJ.

Acts : Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(2); Indian Penal Code (IPC) - Sections 376 and 506; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 374(2), 394, 394(1), 394(2), 397 and 401

Appeal No. : Crl. A. No. 1075 of 2003

Appellant : Moly

Respondent : State of Kerala

Advocate for Def. : Sujith Mathew Jose, Public Prosecutor

Advocate for Pet/Ap. : P.K. Vijayan, Adv.

Disposition : Appeal dismissed

Judgement :

V. Ramkumar, J.

1. This is an appeal filed under Section 374(2) Cr.P.C. by one Chennapoyil Moly who claims herself to be the wife of the accused (Attupurath Benny) in S.C No. 199/2003 before the Special Judge at Thalassery for trial of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The aforementioned accused was convicted for offences punishable under Sections 376 and 506(ii) I.P.C. read with Section 3(2)(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to rigorous imprisonment for 7 years under Section 376 I.P.C., rigorous imprisonment for three years under Section 506(ii) I.P.C. and imprisonment for life and to pay a fine of Rs. 25,000/- and on default to pay the fine to undergo simple imprisonment for three years under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 with a direction to pay 2/3 of the fine amount to the victim. The substantive sentence of imprisonment was directed to run concurrently. It is the said judgment which is assailed in this appeal filed by a woman who claims herself to be the wife of the accused.

3. The accused had died after the judgment of the court below and before the filing of this appeal. Section 394 Cr.P.C. is attracted only in cases where the accused dies after the filing of the appeal. Sub-section (1) of Section 394 Cr.P.C. applies to an appeal filed against acquittal and the accused who is a respondent in such appeal dies during the pendency of such appeal. Sub-section (2) of Section 394 Cr.P.C. applies to an appeal filed by the accused against conviction and the accused dies pending such appeal. That situation is not available in this case. An appeal under Section 374(2) Cr.P.C. against a conviction can be filed only by the convicted person. Hence a person who claims to be the wife of the convicted person has no locus standi to file an appeal under Section 374(2) Cr.P.C. Hence this appeal is misconceived and incompetent. It, however, goes without saying that if the appeal is not maintainable the remedy of the appellant may be to file a revision by invoking Section 397 read with Section 401 Cr.P.C.

Hence, without prejudice to the remedy of filing a revision, this appeal is dismissed as not maintainable.

