

State Vs. Suku

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Court : Kerala

Decided On : May-22-1989

Reported in : 1989CriLJ2401

Judge : K.G. Balakrishnan, J.

Appellant : State

Respondent : Suku

Judgement :

K.G. Balakrishnan, J.

1. The appellants in these three criminal appeals have been convicted by the Assistant Sessions Judge, Irinjakuda for the offence punishable under Sections 380,392, 451, 461 and 376(g) read with Section 34, I.P.C. Each of the accused has been sentenced to undergo rigorous imprisonment for a period of 10 years under Section 376(g), rigorous imprisonment for 3 years under Section 380, rigorous imprisonment for 4 years under Section 392, rigorous imprisonment for 2 years under Section 451 and rigorous imprisonment for one year under Section 461, I.P.C.

2. Crl. Appeals Nos. 69 and 70 of 1987 have been filed from jail. Shri A. T. James appeared as a State Brief counsel on behalf of these two accused. Crl. Appeal No. 81 of 1981 is filed by the 3rd accused. The conviction and sentence entered

against these accused is challenged.

3. P. W. 1 George had been residing along with his wife and two children in a house situated by the side of a paddy field. There are no immediate neighbours. The prosecution case is that on 8-4-1985 these accused trespassed into the house of P.W. 1 at about 1 O'clock in the night and in furtherance of their common intention committed theft of various articles kept in the house. All these accused were armed with daggers and knives. At first the first accused snatched the chain worn by P.W. 2. Then all of them threatened P.Ws. 1 and 2 with dire consequences and demanded that the almirah should be opened. The key of the almirah was kept in the kitchen in an earthen pot. P.W. 1 was taken to the kitchen at dagger point and the key was taken. The accused opened the almirah and removed various valuable items such as currency notes, watch, one polyester pant piece, double dothi and other materials. Thereafter the first accused took P.W. 2 to the eastern room. There she was made to lie on a cot and she was raped by the first accused. When the first accused was about to commit this heinous crime, P.W. 1 objected to this and he was beaten on his cheek by the first accused. He was also threatened by the first accused showing a knife. Then all the accused raped P.W. 2 successively and whenever an accused indulged in the crime the other two accused stood on either side of P.W. 1 and threatened him. All these accused were in the house for about one hour and after committing the crime they left the house. When the accused left the house of P.W. 1, P.Ws. 1 and 2 made a hue and cry and the neighbours came there. On the same day in the morning at 11 a.m. P.W. 1 went to the Chalakudy Police Station and gave information to P.W. 13. Few days thereafter these three accused were arrested from K.S.R.T.C. Bus stand, Muvattupuzha, by P.W. 11, the Circle Inspector of Police, Muvattupuzha. When these accused were questioned by P.W. 11, they unfolded the details of the crime committed by them. Thereafter these accused were shown to P.Ws. 1 and 2 and they identified them. When P.Ws. 1 and 2 were further questioned by the police, they gave information to the effect that P. W. 2 was raped by the accused. In the first information statement given to the police P. W. 1 had not given any indication regarding the rape committed by the accused. P.Ws. 1 and 13 conducted further investigation in the case. The various items alleged to have been stolen from the house of P.W. 1 were recovered pursuant to the information

furnished by the accused.

3. On the side of the prosecution P.Ws. 1 to 14 were examined. The various incriminating articles recovered at the time of investigation were produced and identified by P.Ws. 1 to 14. The accused when questioned under Section 313, Cr. P.C. completely denied their involvement in the crime.

4. The main item of evidence is the oral testimony of P.Ws. 1 and 2. P.Ws. 1 and 2 appear to be members of a middle class family. P.W. 1 has got only 50 cents of land and he has been eking out his livelihood out of the income derived from the coconut trees standing in this property. He also goes for coolie work. P.W. 1 is suffering from some stomach ailment P.W. 1 deposed that he had been residing in an old house and in the night of 8-4-1985 the accused came in a group and committed theft of various articles kept in his house and that they committed rape on his wife, P.W. 2. The evidence of P.W. 2 also is to the same effect These two witnesses clearly identified MOs. 1 to 5 and 7 to 11. They are time piece, plastic bag, clothes, bangles and ear studs etc. These two witnesses had enough time to identify the accused. All the accused remained in the house of P.W. 1 for about one hour. The house of P.W. 1 is electrified and these two witnesses further deposed that in all the rooms there are electric lights and there was no difficulty in identifying any of these accused. P.W. 1 would say that each of the accused raped his wife twice. However, P.W. 2 would say that she knew that each of the accused came and raped her, but she was partially faint. Therefore she could not remember all the details. The learned Sessions Judge has chosen to accept the evidence of P.W. 2. The mere fact that these two witnesses did not mention the fact of raping to the police at first instance need not be a criterion to disbelieve their version. They have lost their valuable property and also they are humiliated at the hands of the accused. Initially they wanted not to divulge this fact to others. P.W. 2 even was reluctant to go to the doctor. The fact that they did not tell the police will not in any way improbabilise the prosecution version of the story.

5. Another point urged by the appellants' counsel is that P.W. 2 was not examined by a competent medical officer, especially when the prosecution alleges that she sustained an injury when the bangles were removed from her hands. It is true that

P.W. 13 should have got P.W. 2 examined by a medical officer. P.W. 13 deposed that P.W. 2 was reluctant to submit to medical examination. The absence of medical evidence is not sufficient to discard the prosecution case, especially when there is unshaken testimony of P.Ws. 1 and 2.

6. The other important item of evidence is the various recoveries effected by the police pursuant to the information furnished by the accused. MO. 1 was recovered from the first accused under Ext. P3 when he was examined by P.W. 11. P.W. 4 attested Ext. P3 mahazar. MO. 2 ring was recovered from the second accused under Ext P3 mahazar and Ext. P4(a) is the statement of the 2nd accused. MOs. 3 to 7 were recovered under Ext. P5 mahazar. Ext. P5(a) is the voluntary statement of the first accused. P.W. 5 is a neighbour who attested Ext. P5 mahazar. MO 8 dothi was recovered under Ext P6 mahazar and P.W. 6 is a neighbour of the 2nd accused and he attested this mahazar. MO11 was recovered under Ext P7 mahazar. P.W. 8 was examined to prove this recovery. However, he turned hostile. P.W. 8 is the father of the 3rd accused. He admitted his signature in the mahazar, but he denied having taken any articles from his house. MOs 9 and 10 are bangles recovered from the shop of P.W. 3 under Ext. P2 mahazar. Ext. P2(a) is the statement of the first accused. MOs. 12, 13 and 14 are the three weapons recovered from these accused. They were recovered under Ext. P10 mahazar and the same was attested by P.W. 14. MOs. 1 to 5 and 7 to 11 were identified by P.Ws. 1 and 2. MOs. 12, 13 and 14 were also shown to these witnesses and they deposed that these weapons were used by the accused. The recovery of the various articles in pursuance of the information given by the accused goes a long way in proving the complicity of these three accused. It is proved beyond reasonable doubt that the accused trespassed into the house of P.W. 1 and removed various articles.

7. It is proved that the accused trespassed into the house of P.W. 1 and committed the offence punishable under Section 392, I.P.C. The accused have been convicted for the offence under Section 380, I.P.C. Since the accused are convicted under Section 392, I.P.C. it is not necessary that they should be convicted for the offence under Section 380, I.P.C. Therefore, the conviction and sentence under Section 380, I.P.C. is set aside. The conviction and sentence

entered against the accused on other 4 counts, viz., under Sections 451, 461, 392 and 376(g), I.P.C. are confirmed.

The criminal appeals are dismissed.

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