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Majeed Vs. State

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Court : Kerala

Decided On : Nov-27-2014

Judge : Honourable Mr.Justice K.Harilal

Appellant : Majeed

Respondent : State

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL THURSDAY, THE27H DAY OF NOVEMBER20146TH AGRAHAYANA, 1936 Crl.Rev.Pet.No. 1265 of 2002 (A) --------------------------------- AGAINST THE

JUDGMENT
IN CRL.A.NO. 441/2001 of THE III ADDITIONAL DISTRICT COURT (ADHOC), THRISSUR DATED1109-2002. AGAINST THE

JUDGMENT
IN CC11751998 of J.M.F.C., CHAVAKKAD DATED2008-2001. REVISION PETITIONER(S)/APPELLANTS/ACCUSED: --- 1. MAJEED, S/O. CHEMBAN KUNHAMU, NEAR LIGHT HOUSE, THOTTAPPU, KADAPPURAM VILLAGE.

2. SHAHU, S/O. PALLATH ALI, KADAPPURAM VILLAGE, DESOM.

3. ALIYAMUNNI, S/O.PALLATH SHAHU, DO. DO.

4. MUHAMMED, S/O.PALLATH MUHAMMEDALY, THOTTAPPU, DO. DO.

5. KADERMON, S/O.PONNOKKARAN MODIU, MUNAKKAKKADAVU, DO. DO. BY ADVS.SRI.P.VIJAYA BHANU (SR.) SMT.M.MANJU SRI.K.R.RANJITH SRI.R.SUDHISH RESPONDENT(S)/COMPLAINANT: -------------------------- STATE BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKUALAM. (CRL.NO.200/1998) CHAVAKKAD POLICE STATION. BY PUBLIC PROSECUTOR SRI. ABHIJETT LESSLI. THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON2711-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. HARILAL, J.

-- Crl. R.P. No.1265 of 2002-A -- Dated this the 27th day of November, 2014

ORDER
The revision petitioners are the accused in C.C.No.1175/2001 on the files of the Judicial First Class Magistrate's Court, Chavakkad, as well as the appellants in Crl. Appeal No.441/2001 on the files of the III Additional Sessions Judge (Ad-hoc), Fast Track Court No.I, Thrissur. The revision petitioners 1 to 5 are prosecuted for the offences punishable under Secs.143, 147, 148, 447, 323, 324, 326 and 506(i) read with Sec.149 of the Indian Penal Code.

2. It is the case of the prosecution that on account of previous enmity towards C.W.1., on 17/7/1998 at 8 O'clock in the night, the accused Crl. R.P. No.1265 of 2002 -:

2. :- formed themselves into an unlawful assembly armed with deadly weapons and in prosecution of their common object, committed rioting and criminally trespassed into the courtyard of the dwelling house of C.W.1. The 1st accused gave a blow on his face and lips with a dangerous iron rod causing injuries, including uprooting of three teeth. When C.Ws.2 and 3 intervened, the 5th accused gave a blow on the leg of C.W.2 with a dangerous stick causing injuries

and all the accused gave blows, fists and kicks on different parts on the body of C.W.3 causing pain and also criminally intimidated them and that thereby all the accused committed the offences punishable under the above sections. The revision petitioners were charge sheeted for all the said offences and on the said charge, the prosecution examined P.Ws.1 to 9 and marked Exts.P1 to P7 and M.Os.1 and 2. No defence evidence had been adduced by the revision petitioners.

3. When the revision petitioners were questioned under Sec.313 of the Cr.P.C., they denied all the Crl. R.P. No.1265 of 2002 -:

3. :- incriminating circumstances against them. After considering the evidence on record, the learned Magistrate found the accused guilty of all the said offences, except the offence under Sec.506(i) of the IPC and conviction entered thereunder.

4. They were sentenced to undergo rigorous imprisonment for three months each for the offence under Sec.143 of the IPC, rigorous imprisonment for six months each for the offence under Sec.148 of the IPC, rigorous imprisonment for one month each for the offence under Sec.447 of the IPC, and rigorous imprisonment for six months each and to pay a fine of Rs.1,000/- each and in default of payment of fine, to undergo rigorous imprisonment for one month each for the offence under Sec.326 of the IPC with the aid of Sec.149 of the IPC. No separate sentence was awarded for the offences under Secs.147, 323 and 324 of the IPC and acquitted of the offence under Sec. 506 (i) of the IPC.

5. Aggrieved by the conviction entered and the sentence imposed by the learned Magistrate, Crl. R.P. No.1265 of 2002 -:

4. :- though the revision petitioners had preferred the above Criminal Appeal, the appellate court also, after re-appreciating the entire evidence on record, concurred with the findings of the learned Magistrate and dismissed the appeal. Thus, this revision petition is filed challenging the concurrent findings of conviction entered and the sentence imposed on the revision petitioners by the learned Magistrate.

6. The learned counsel for the revision petitioners advanced arguments challenging the concurrent findings of the courts below. Firstly, the learned

counsel pointed out that though the accused are five, in number, and the offence was allegedly occurred at 8 O'clock in the night, no attempt was made to identify the accused. Secondly, the conviction is based on the evidence of P.Ws.1 to 4. But, according to these witnesses, the place of occurrence is inconsistent and different. Thus, the prosecution has failed to prove the charge as alleged against them. Thirdly, the investigation of the crime is vitiated by material irregularity and omissions. The Crl. R.P. No.1265 of 2002 -:

5. :- actual genesis of the incident was not brought to light during the course of investigation. In fact, the first accused was also injured in the alleged incident and though a crime was also registered on his First Information Statement, no further investigation had been conducted on that angle. Fourthly, the medical evidence is not reliable to enter a conviction under Sec.326 of the IPC when there is no evidence to show that the teeth were uprooted during the course of attack meted out to the injured by the accused. Fifthly, the motive alleged by the prosecution is flimsy and unbelievable.

7. Per contra, the learned Public Prosecutor advanced arguments to justify the concurrent findings of conviction entered and the sentence imposed on the revision petitioners by the courts below. According to the learned Public Prosecutor, there is no reason to disbelieve the evidence of P.Ws.1 to 4 which is fully corroborated by the medical evidence given by P.W.5 Doctor, who examined the injured and issued Exts.P2 to P4. Test Identification Parade is not Crl. R.P. No.1265 of 2002 -:

6. :- necessary, particularly when the accused are neighbours and well known to P.Ws.1 to 4. Moreover, they were identified at the court by the said witnesses. The place of occurrence is not different and distinct. P.Ws.1 to 4 have spoken to the effect that the place of occurrence is the courtyard of P.W.1's house. Thus, the place of occurrence is consistent and definite. The investigation is just and proper and the same is not vitiated by any kind of material irregularity or omissions. Though another F.I.R. was registered on the basis of the First Information Statement given by the 1st accused, after the incident, on investigation, it was revealed that the allegations in the said First Information Statement is absolutely

false and incorrect and on that basis a refer report was filed. But the revision petitioners have not proceeded against the refer report so far. Moreover, the alleged incident narrated in the First Information Statement was entirely different one and not connected with the prosecution case in the instant case. There is no evidence to show that the 1st Crl. R.P. No.1265 of 2002 -:

7. :- accused also sustained injuries during the course of attack alleged against him. Lastly, it is contended that no evidence was brought out to create suspicious circumstance as to the cause of the uprooting of tooth. When P.W.5, the Doctor who treated the injured, was cross-examined, he was not confronted with any suggestion indicating any other cause as regards the uprooting of teeth.

8. In view of the rival submissions at the Bar, the question to be considered in this revision petition is whether there is any illegality or impropriety in any of the findings whereby the courts below entered conviction and imposed sentence on the revision petitioners or whether there is any perversity in the appreciation of evidence from which those findings have arrived at.

9. First of all, this court remember the scope and extent of jurisdiction under Sec.397 read with Sec.401 of the Code of Criminal Procedure. This Court is not expected to re-appreciate the entire evidence of all the witnesses once again and sit in judgment over the Crl. R.P. No.1265 of 2002 -:

8. :- reasonableness or reliability of their findings. Of course, if there is any perversity in the appreciation of evidence, this Court can interfere with such findings; but even if another view is also possible, this Court cannot substitute that view in the place of concurrent views expressed by the court below. In short, the legality of the findings and perversity of the appreciation of evidence alone are liable to be considered under the revisional jurisdiction.

10. It is the case of the prosecution that the alleged incident was occurred on 17/7/1998 at 8 O'clock in the night in the courtyard of P.Ws.1's house. P.W.1 is the injured, who suffered grievous injury. P.W.3 is the daughter of P.W.1, who has not suffered any injury in the incident; but witnessed the incident. P.Ws.3 and 4 are the brothers-in-law of the son of P.W.1 and they also sustained injuries in the

same incident. According to P.W.1, on the said day, he along with his wife and daughter took the child of her daughter to the hospital. They returned from the hospital in an autorikshaw. His wife and daughter Crl. R.P. No.1265 of 2002 -:

9. :- alighted from the autorikshaw first. When he alighted from the autorikshaw and came into the eastern courtyard of the dwelling house, the 1st accused gave a blow on his face with M.O.1 dangerous iron road causing injuries, including uprooting of three teeth. Consequently, he fell down. At that time, the 2nd and 3rd accused put blows on his body. On seeing such incident, P.Ws.3 and 4, who were sitting in his house, rushed to the spot and intervened. At that time, the accused attacked them also with dangerous sticks causing injuries. When people assembled, the accused run away from there by leaving the iron rod and sticks in the courtyard. The above version given by P.W.1 is seen corroborated by the evidence of P.Ws.2, 3 and 4. The evidence of P.Ws.1 to 4 was re- appreciated by the learned Sessions Judge in appeal and concurred with the findings of the learned Magistrate for placing reliance on their evidence for entering conviction. In the absence of any kind of perversity in the appreciation of evidence of P.Ws.1 to 4, I do not find any reason to interfere with the said Crl. R.P. No.1265 of 2002 -:

10. :- finding. In my view also, the presence of these witnesses appears to be quite natural and believable in the place of occurrence at that time. In cross-examination, the defence miserably failed to shatter the evidence adduced by P.Ws.1 to 4.

11. Coming to the first point, going by the evidence of P.Ws.1 to 4, it could be seen that the accused are neighbours, well known to P.Ws.1 to 4 and they clearly identified the accused and have given the clear identity of all the accused in their statements to the police at the first instance itself. Immediately, after the attack, P.W.1 was taken to the hospital and at the first instance itself, he has given the name of all the accused to the Doctor who examined him and those names find a place in Ext.P3 wound certificate produced and marked in evidence. Moreover, all the accused were identified in the court during the course of trial also. Considering all these facts, I am of the opinion that the Test Identification Parade was not necessary. The absence of identification parade is not fatal to the prosecution

case. Crl. R.P. No.1265 of 2002 -:

11. :- 12. Though the learned counsel for the revision petitioners contended that the place of occurrence is inconsistent and different, according to P.Ws.1 to 4. Going by the evidence of P.Ws.1 to 4 which is reiterated in the judgment, it could be seen that all of them unequivocally deposed that the place of occurrence is the courtyard of the dwelling house of P.W.1. But it is true that P.W.1 has deposed that the 1st accused inflicted injury on him when he was about to enter into the house from the Verandha. Though the place of occurrence, as a whole, may be the courtyard, the injured might have stood in different corners of the courtyard and consequently they might have spoken the place of occurrence accordingly. As regards the place of occurrence deposed by all the witnesses, the place of occurrence is nothing other than the courtyard of the dwelling house. It is to be remembered that there may be some minor immaterial contradictions in the evidence of the witnesses before court which are quite natural and humane, when an incident is narrated by human Crl. R.P. No.1265 of 2002 -:

12. :- beings after a long time. But such immaterial discrepancies cannot be taken as a ground to disbelieve the prosecution case or to throw over board the prosecution case as a whole. In this connection it is advantageous to refer to the decision of the Supreme Court in Inder Singh and another v. State [1978 Criminal Law Journal 766 = AIR1978S.C. 1091]. The Apex Court held as follows: "Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary, that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction." Crl. R.P. No.1265 of 2002 -:

13. :- 13. Coming to the next point, it is the case of the defence that the actual genesis of the incident was suppressed and the investigation is defective. The learned counsel vehemently contended that the accused was also injured in the

same incident. But no evidence had been brought out to show that he was injured in the incident and when he was questioned under Sec.313 of the Cr.P.C. he has no case that he suffered any kind of injury caused by P.Ws.1 to 4 during the alleged course of attack. Though another crime was also registered on the basis of the statement alleging injury and accusation against P.Ws.1 to 4, after investigation, the police filed a refer report against which the revision petitioners have not filed an objection or a protest complaint. Going by the photocopy of the F.I.R. registered on the complaint of the 1st accused which is produced before the court during the course of argument, it could be seen that the incident alleged in the said F.I.R. is a different one and unconnected with the prosecution case in the instant case. Therefore, I am of the view Crl. R.P. No.1265 of 2002 -:

14. :- that there is no suppression of genesis of the incident so also the investigation cannot be held defective.

14. Lastly, the learned counsel contended that the uprooting of teeth of P.W.1 during the course of attack is not proved beyond doubt and the same could have been caused by a different reason on a different date, earlier to the alleged incident. There is no medical evidence to show that it was so happened in this incident itself. But I am unable to countenance the said argument in view of the medical evidence adduced by the prosecution. Ext.P2 wound certificate specifically show the uprooting of the teeth as injury No.3. Thus, it is clear that uprooting of the tooth caused an injury on the jaw and the Doctor noted it as an injury caused by the alleged incident. When the Doctor was examined as P.W.5, no question was put to him suggesting any other circumstances by which the uprooting of teeth was occurred. In short, while the Doctor was confronted with the wound certificate, the revision petitioners have no case that it was caused by any reason other than the reason spoken to by the Crl. R.P. No.1265 of 2002 -:

15. :- Doctor and evidenced by Ext.P2.

15. In the light of the above discussions, I find that the prosecution has successfully proved the charge against the accused and the courts below appreciated the evidence in its correct perspective. There is no illegality or impropriety or incorrectness in any of the findings whereby the courts below found

the accused guilty of the offences charged against them and convicted. I do not find any kind of perversity in the appreciation of evidence from which those findings arrived at.

16. Consequently, I confirm the conviction entered concurrently by the courts below against the accused.

17. Coming to the question of sentence, the learned counsel contended that the sentence imposed on the revision petitioners is excessive, harsh and disproportionate with the nature and gravity of the offence. The learned counsel for the revision petitioners pointed out that the revision petitioners are not habitual offenders and they are not involved in Crl. R.P. No.1265 of 2002 -:

16. :- any other offence so far. It is true that more than 15 years have already been elapsed, after the alleged incident. Both the injured and the accused are neighbours.

18. Having regard to the facts and circumstances, I find that though the prison terms is indispensable to secure the interest of deterrence, a long prison term is not necessary in the instant case to secure the same.

19. Consequently, the substantive sentence of imprisonment imposed for the offences under Secs.143, 148 and 326 will stand reduced and a compensation is awarded to the injured in lieu of the said reduction of prison term. Hence all the revision petitioners will stand sentenced as given below in modification of the sentence imposed by the trial court and confirmed by the lower appellate court: (i) The revision petitioners are sentenced to undergo simple imprisonment for one month each for the offence under Sec.143 of the IPC. Crl. R.P. No.1265 of 2002 -:

17. :- (ii) They are further sentenced to undergo three months each for the offences under Secs.148 and 326 of the IPC. (iii) They shall also deposit an amount of `25,000/- (Rupees twenty five thousand only) each as compensation to the injured under Sec.357(3) of the Cr.P.C. for the offence under Sec.326 of the IPC and in default, to undergo simple imprisonment for 45 days more. Out of the total compensation, 70% shall be given to P.W.1 and the balance shall be given to

P.Ws.3 and 4 equally. (iv) The sentences shall run concurrently and rest of the sentence portion will stand, as such, without any alteration. This revision petition is allowed in part. Sd/- (K. HARILAL, JUDGE) Nan/ //true copy// P.S. to Judge Crl. R.P. No.1265 of 2002 -:

18. :- K. HARILAL, J.

-- Crl.R.P. No.1265 of 2002-A -- Dated this the 27th day of November, 2014

ORDER
(K. HARILAL, JUDGE) Nan/

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