

Aji Vs. State of Kerala

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Court : Kerala

Decided On : May-24-2010

Judge : R. Basant, J.

Acts : Indian Penal Code (IPC) - Sections 143, 147, 148, 149, 307, 324, 326, 341 and 506; ; Evidence Act - Section 27; ; Code of Criminal Procedure (CrPC) - Sections 320, 357(1), 428, 446 and 482

Appeal No. : Crl. Rev. Pet. No. 878 of 2001

Appellant : Aji

Respondent : State of Kerala

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Nireesh Mathew, Adv.

Judgement :

ORDER

R. Basant, J.

1. This revision petition is directed against the concurrent verdict of guilty, conviction and sentence imposed on the petitioners under Sections 307 and 506(ii) I.P.C.

2. 5 accused persons faced indictment for offences punishable under Sections 143, 147, 148, 341, 506(ii) and 307 r/w 149 I.P.C. The trial court found all of them guilty and sentenced them to undergo imprisonment for various terms. The lower appellate court set aside the conviction and sentence of the 5th accused. The conviction and sentence of the others under Sections 143, 147 and 148 I.P.C were also set aside. 4 accused persons, ie. accused 1 to 4 were found guilty, convicted and sentenced under Sections 341 and 506(ii) I.P.C. The sentences imposed under Sections 307 and 506(ii) I.P.C were confirmed. The appellants now face a sentence of R.I for a period of 3 years under Section 307 I.P.C and 2 years under Section 506(ii) I.P.C. Even though they have been found guilty and convicted under Section 341 I.P.C, no separate sentence is seen imposed under Section 341 I.P.C.

3. This revision petition is preferred by accused 2 and 4. Accused 1 and 3, it is submitted at the Bar, preferred a revision petition and another Judge of this Court, by judgment dated 18.03.2009 in CrI. R.P. No. 701 of 2001, had dismissed the revision petition filed by them upholding the verdict of guilty, conviction and sentence under Sections 307 and 506(ii) I.P.C. It surprises me to note that along with the said revision petition, this revision petition was not taken up for consideration. The Registry or the counsel for the revision petitioners do not appear to have brought to the notice of the learned Judge the fact of pendency of this revision petition. It would also appear, from a reading of the judgment, that the learned Judge was under the impression that that revision petition was preferred by all the 4 convicts/accused together.

4. Be that as it may, I agree with the learned Counsel for the petitioner that the said impression entertained by the learned Judge as revealed from the order dated 18.03.2009 in CrI. R.P. No. 701 of 2001 cannot certainly affect the right of the petitioners to prosecute this revision petition.

5. But I must say that I am disturbed that such mistakes/errors are recurring. The Registry must ensure that all challenges against the same order are grouped together and are brought before the same Judge, who takes up the matter. The concerned Court Officers as also of course the Judges will have to ensure that the

challenges against the same order, though preferred by different accused in different revision petitions, are all taken up together and disposed of. That would avoid unnecessary conflict of decisions and consequent embarrassment.

6. The crux of the allegations against the 5 accused persons, who originally stood trial, was that they were members of an unlawful assembly of persons, who armed themselves with dangerous weapons and unleashed an attack on PW2 on account of prior animosity. PW2 had allegedly lodged Ext.P6(a) complaint/mass petition before the police and this allegedly was the motive for unleashing such an attack on PW2. PW2 had suffered very serious injuries. The injuries were inflicted with dangerous weapons like M.Os 1 to 3. He was rushed to the doctor PW13. The F.I statement was lodged by PW1 and Ext.P1 (a) F.I.R was registered on the basis of Ext.P1. PW14 completed the investigation and filed the final report arraying all the 5 accused persons.

7. The case was duly committed to the Court of Session. The matter was taken up before the Assistant Sessions Judge. The accused denied the offences alleged against them and thereupon PWs 1 to 14 were examined and Exts.P1 to P12 were marked. M.Os 1 to 9 were also marked.

8. The accused took up a defence of total denial. According to them, this was a totally false case. Ext.D1, a portion of the statement of PW4 in the case diary was the only document marked on the side of the accused. There was no oral evidence on the side of the accused.

9. PW2 as stated earlier is the victim. PWs 1 and 3 are alleged eye witnesses to the occurrence. Ext.P1 is the F.I statement lodged by PW1 in which the accused persons are not named. PWs 4 and 5 are not eye witnesses to the occurrence. PW4 had seen the injured with injuries at the scene of the crime and PW5 had allegedly seen accused 1 and 3 running away after the occurrence. PW6 is an attester to Ext.P2 scene mahazar. PWs 7, 8 and 12 are witnesses/attesters to Exts.P3, P4 and P7 recovery mahazars, under which M.Os 1 to 3 respectively were recovered on the basis of the statements given by accused 1, 2 and 3 under Section 27 of the Evidence Act. PW9 is the Village Officer, who prepared Ext.P5 plan. PW10 Police Constable is an attester to Ext.P6 mahazar, under which

Ext.P6(a) mass petition submitted by PW2 was seized. PW11 is the Head Constable, who registered Ext.P1(a) F.I.R. PW13 doctor had examined the victim/PW2 when he has rushed to the hospital after suffering the injuries. Ext.P8 is the wound certificate prepared by PW13. Accused 1 to 4 are named in the wound certificate itself as the assailants. PW14 completed the investigation and filed the charge sheet/final report before the court.

10. Before me, the learned Counsel for the revision petitioners and the learned Public Prosecutor have advanced their arguments. The learned Counsel for the revision petitioners assails the impugned concurrent verdict of guilty, conviction and sentence on the following grounds.

- i) The courts below ought to have disbelieved the evidence of PWs 1 to 3.
- ii) The courts below erred in coming to the conclusion, at any rate, that offences under Sections 307 and 506(ii) I.P.C are revealed.
- iii) The matter having been compounded by the defacto complainant/PW2, the sentence imposed deserves to be reduced.

11. Grounds (i) & (ii)

The learned Counsel for the petitioners first of all contends that the oral evidence of PWs 1 to 3 cannot be accepted. PW2 is a victim. PWs 1 and 3 are witnesses to the occurrence. Their evidence is supported by the injuries found on the victim PW2 as also the alleged cause narrated to PW13 by PW1 and recorded in Ext.P8 wound certificate. In that statement to the doctor, 4 accused persons (accused 1 to 4 including the petitioners herein) are specifically named. The motive was established satisfactorily by the production of Ext.P6(a) which was seized under Ext.P6. The oral evidence of PWs 1 to 3 further gets support from the recovery of M.Os 1, 2 and 3 under Exts.P3, P4 and P7 on the basis of Exts.P3(a), P4(a) and P7(a) statements given by the accused persons before the Investigating Officer.

12. I must alertly remind myself of the nature and quality of the jurisdiction that I am called upon to invoke and exercise. 2 courts have already come to the conclusion that the oral evidence of PWs 1 to 3, which is supported by Exts.P1,

P3, P4 and P7 can be safely accepted. Though that may not conclude the issue, I must also note that another Bench of this Court vide order dated 18.03.2009 in CrI. R.P. No. 701 of 2001 has also chosen to uphold the verdict of guilty and conviction. I am unable to find any reason which can persuade me to invoke the revisional jurisdiction of superintendence and correction to interfere with the concurrent conclusion of courts that the injuries found on PW2 were suffered by him at the hands of miscreants including the petitioners herein. The challenge on this ground must, in these circumstances fail.

13. The learned Counsel for the petitioners next contends that even if the entire evidence of PWs 1 to 3 were accepted, the offences alleged against the accused cannot fall within the sweep of Section 307 and 506(ii) I.P.C. The counsel argues that at worst only the offence under Section 324 I.P.C would be made out. The counsel, in these circumstances, prays that the conviction may be altered to Section 324 I.P.C and the composition of the offence may be accepted. For the offence under Section 506(ii) I.P.C, the counsel argues that the said offence is not made out and that, at any rate, the said offence being not compoundable and being one punishable with imprisonment or fine, the sentence may be altered to one of fine only. At any rate, it is contended that leniency may be shown on the question of sentence.

14. Whether the offence alleged against the accused under Section 307 I.P.C has been made out will have to be decided on the basis of totality of circumstances. Whether there is an injury inflicted with an intention to cause death is the crucial question to be decided. This question has to be answered taking into account the entire background of the case, the manner in which the attack took place, the nature of weapons used, nature of injuries inflicted, words uttered before, during and after the incident and all other circumstances.

15. I must say that I have taken into consideration the nature of the motive, nature of the organised manner in which the occurrence took place, the prior preparation including the presence of the accused persons with dangerous weapons at the scene, the nature of commencement of the incident, the genesis of the incident, words uttered prior to, during and after the infliction of the injuries. Having

considered all the relevant inputs, I am not in any way persuaded to interfere with the conclusion of the courts below that the offence under Section 307 I.P.C has been established against the accused persons. Even assuming that the offence under Section 307 I.P.C has not been made out, even then, it is inevitable that a conviction under Section 326 I.P.C which in turn is not compoundable. The composition cannot hence be legally accepted.

16. PW2 has now entered appearance through a counsel. He has filed Crl. M. Appl. No. 1106 of 2010. I am satisfied that the parties have harmoniously settled their disputes. But I am unable to reckon the incident as one affecting the victim/PW2 alone. Interests of public justice are at stake and I have no hesitation to turn down the contention that in the interest of harmony in society, the composition of the offence by PW2 has to be accepted and the proceedings closed. The offences under Sections 307 and 506(ii) I.P.C are not compoundable under Section 320 Cr.P.C. I find no reason to invoke the powers under Section 482 Cr.P.C to quash the entire proceedings on the basis of the composition of the offence by the petitioners and PW2.

17. I am however satisfied that in view of the circumstance that there has been composition, leniency can be shown on the question of sentence. The petitioners now face a sentence of R.I for a period of 3 years under Section 307 I.P.C and R.I for a period of 2 years under Section 506(ii) I.P.C. No sentence of fine has been imposed. Taking all the relevant circumstances into account, I am satisfied that the substantive sentence of imprisonment can be reduced and appropriate sentence of fine can be imposed. I take note of the submission that the sentences imposed on the 1st and 3rd accused have not been executed. They also now want to challenge the sentences imposed and bring the fact of composition before the Supreme Court, submits the counsel.

18. In the result:

a) This Crl. R.P is allowed in part;

b) The verdict of guilty and conviction under Sections 307 and 506(ii) I.P.C are upheld;

c) I take note of the composition of the offence by PW2. I take note of the submission that PW2, the defacto complainant/injured has been adequately compensated. I take note that the interests of public justice alone remain to be served. In these circumstances, the substantive sentence of imprisonment imposed, both under Sections 307 and 506(ii) I.P.C are reduced to R.I for a period of 9 months and 3 months respectively. Under Section 307 I.P.C, the petitioners are further sentenced to pay a fine of Rs. 75,000/- (Rupees Seventy five thousand only) each and in default to undergo R.I for a further period of one year each. Sentence of imprisonment imposed under Sections 307 and 506(ii) I.P.C shall run concurrently.

d) Inasmuch as the complainant accepts that he has been adequately compensated, I am not choosing to issue any direction under Section 357(1) Cr.P.C.

19. The petitioners shall have time till 26.07.2010 to appear before the Trial Court to undergo the modified sentence hereby imposed. The modified sentence shall not be executed till that date. The petitioner shall appear before the trial court on 26.07.2010. Needless to say, appropriate action under Section 446 Cr.P.C can be taken against the petitioners and sureties by the trial court, if the petitioners do not appear as directed above. Needles to say, the petitioners shall be entitled to set off under Section 428 Cr.P.C.

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