

Sasi Vs. State of Kerala

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Court : Kerala

Decided On : May-24-2010

Judge : R. Basant, J.

Acts : Code of Criminal Procedure (CrPC) - Section 357(3); ;Indian Penal Code (IPC) - Sections 34, 324, 326 and 341

Appeal No. : Crl. Rev. Pet. No. 1448 of 2001

Appellant : Sasi

Respondent : State of Kerala

Advocate for Def. : No Appearance

Advocate for Pet/Ap. : P.V. Kunhikrishnan, Adv.

Judgement :

ORDER

R. Basant, J.

1. This revision petition is directed against a concurrent verdict of guilty, conviction and sentence in a prosecution for offences punishable under Sections 341, 324 and 326 read with Section 34 of the IPC. The revision petitioners/accused face a sentence of simple imprisonment for a period of one month under Section 341 IPC. and rigorous imprisonment for a period of three years under Section 326 IPC.

No separate sentence is imposed under Section 324 IPC.

2. The crux of the allegations against the petitioners/accused is that they - four in number, allegedly attacked the de facto complainant - P.W.1, when he was proceeding towards his house on the night of 8/1/96 at 11 p.m. On hearing the cries of P.W.1, P.W.2 - his father, rushed to the scene. He was also attacked. Both suffered grievous injuries. The accused made use of dangerous weapons including iron rods, wooden reapers and a chopper. Accused 1 to 3 are brothers. A4 is the friend of A1 to A3. P.W.2 is the brother of the father of A1 to A3. P.W.1 is the son of P.W.2.

3. The prosecution examined P.Ws.1 to 10 and proved Exts.P1 to P6. The accused took up a defence of total denial. No defence evidence was adduced.

4. P.Ws.1 and 2, as stated earlier, are the victims. P.Ws.3 to 5 are the eye witnesses. They had allegedly reached the scene on hearing the cries of P.Ws.1 and 2. They allegedly found the accused persons running away. P.Ws.3 to 5 turned hostile to the prosecution completely. P.Ws.1 and 2 supported the prosecution. Ext.P1 is the First Information Statement lodged before the police at 7.30 p.m. on 9/1/96. The victims were taken to the hospital on the same night after the incident. They had reached the Doctor at 2.30 a.m. on the same night. They were examined by the Doctor at 2.30 a.m. and 3 a.m. respectively. Exts.P3 and P4 are the wound certificates issued by P.W.8 after examining P.Ws.1 and 2. Exts.P2 is the scene mahazar and P.Ws.6 and 9 are the attestors to Ext.P2. P.W.7 had recorded Ext.P1 First Information Statement at the police station. Ext.P4 - F.I.R. was registered on the basis of Ext.P1. P.W.1 had completed the investigation and filed the final report. Ext.P6 is the report submitted by the Investigating Officer to include the allegations under Section 326 IPC.

5. The courts below concurrently found that notwithstanding the hostility of P.Ws.3, 4 and 5, the oral evidence of P.Ws.1 and 2 - the injured/victims can safely be accepted. The courts below drew inspiration for the testimony from the injuries found on the person of P.Ws.1 and 2 as also the prompt Ext.P1 - First Information Statement lodged by P.W.1. The courts below also drew inspiration from the scene mahazar Ext.P2 which supported the oral evidence of P.Ws.1 and 2.

6. The accused took up a defence of total denial. According to them, P.Ws.1 and 2 must have suffered injuries at the scene of the crime at the hands of somebody else. They were being unnecessarily and falsely implicated.

7. Before me, the learned Counsel for the petitioners has advanced his arguments. The learned Counsel assails the concurrent verdict of guilty, conviction and sentence on various grounds.

8. First of all, it is contended that to the Doctor in Exts.P3 and P4 the accused were not named. The victims stated that they had so named the assailants before the Doctor. But P.W.8 spoke otherwise. In Exts.P3 and P4 the names of the assailants were not recorded. The fact that the names of the assailants were not revealed to the Doctor in Exts.P3 and P4 do not at all impress me as a valid reason to generate any reservation in the mind of the court against the oral evidence of P.Ws.1 and 2.

9. The learned Counsel contends that the availability of light has not been specifically spoken to by P.Ws.1 and 2. According to P.W.1, sand was thrown into his eyes. In these circumstances, at the scene of the crime it should have been virtually impossible for P.Ws.1 and 2 to identify the accused, it is contended. The learned Counsel further contends that though the weapons allegedly used included M.O.1 weapon (chopper), no incised injuries are described in Exts.P3 and P4 to correspond to the version that M.O.1 was used for the infliction of the injuries. The learned Counsel further argues that no sufficient motive has been alleged and the sweeping and vague allegations that there was animosity towards the mother of P.W.1 is unacceptable. The learned Counsel, in these circumstances, argues that the defence version that unidentified assailants who had animosity and motive against P.W.1 must have attacked him must have been preferred by the courts below.

10. I have considered all the relevant circumstances. Primarily we have the oral evidence of P.Ws.1 and 2 about the manner in which they have suffered injuries. The injuries suffered by them are fairly serious injuries and include grievous injuries/fractures. The oral evidence of P.Ws.1 and 2 who had suffered serious injuries themselves broadly inspires confidence. It will be absolutely reasonable to

assume that the persons who had suffered such grievous injuries are unlikely to exonerate the real guilty persons and make false allegations against other innocent persons. The version of P.Ws.1 and 2 get satisfactory assurance from Ext.P1 First Information Statement which was lodged at 7.30 p.m. on 9/1/96 i.e., the next date after the incident. The evidence clearly shows that P.Ws.1 and 2 suffered injuries and were in the hospital from 2.30/3 a.m. In these circumstances, the fact that they did not go to the Police Station and lodged an earlier First Information Statement cannot in any way generate any reservation in the mind of the court. Police had contacted them and the first version reduced to writing by the police in Ext.P1 clearly indicates the complicity of accused 1 and 2.

11. About the manner in which identification was done, the victims and the petitioners are not strangers. Even admittedly one of the assailants had a torch with him. We find evidence that sufficient moon light was there. P.W.1 had reached the scene later and had seen all the four assailants. There is no merit in the contention that P.W.2's house is not shown in the scene mahazar and hence he could not have reached the scene. The injuries found on his person do in a tell tale manner convey that he had suffered injuries and was present at the scene. Ext.P2 scene mahazar also indicates that an incident had taken place at the scene of the crime. The fact that specific injuries corresponding to the use of M.O.1 - a chopper, are not available in Exts.P3 and P4 is also not of any crucial significance as it would be idle to expect every weapon used in the incident to result in an injury exactly corresponding. The mere fact that use of M.O.1 is spoken to by witnesses is not specifically corroborated by the injuries described in Exts.P3 and P4 cannot, in the facts and circumstances of this case, militate against the acceptability of the evidence of P.Ws.1 and 2. The mere fact that the incised injury has not resulted cannot persuade the court to discard the evidence of P.Ws.1 and 2.

12. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this Court sitting as a court of revision at this third tier of criminal litigation. The findings of the court below do appear to me to be absolutely fair, reasonable and cogent. No interference is, at any rate, warranted invoking the jurisdiction in revision. The challenge against the verdict of guilty and conviction

therefore fails.

13. Coming to the question of sentence, the learned Counsel prays that leniency may be shown to the petitioners. Documents have been produced to show that the wife of the third accused suffers from cancer. It is submitted that his daughter suffers from mental illness. On the latter aspect, no materials are produced. Be that as it may, even if these statements are accepted, it is noted that the notice that the offences alleged include the offence punishable under Section 326 IPC. An appropriate sentence of imprisonment will have to be imposed.

14. The sentence imposed now is rigorous imprisonment for three years under Section 326 IPC. I am satisfied that leniency can be shown on the question of sentence. Considering the nature of the injuries suffered, I am satisfied that appropriate direction for payment of compensation must also be issued.

15. In the result:

(a) This revision petition is allowed in part.

(b) The verdict of guilty and conviction under Sections 341, 324 and 326 read with Section 34 IPC are upheld.

(c) But the sentence imposed under Section 326 IPC is modified and reduced to rigorous imprisonment for a period of six months each. The sentence imposed under Section 341 IPC is upheld. It is directed that the sentence shall run concurrently.

16. All the four accused are directed under Section 357(3) Cr.P.C. to pay an amount of Rs. 25,000/- each and in default to undergo rigorous imprisonment for a further period of one year each. If the compensation amount is paid/realised, 75% of the compensation amount shall be paid to P.W.1 and the balance shall be paid to P.W.2.

17. The revision petitioners shall surrender before the learned Magistrate on 26/7/2010 to suffer the modified sentence hereby imposed. Till then, the modified sentence shall not be executed.

