

Gigi Vs. State of Kerala, Represented by Public Prosecutor

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Court : Kerala

Decided On : Oct-03-2012

Judge : P.S. Gopinathan

Appeal No. : Crl.Rev.Pet. No. 778 of 2002

Appellant : Gigi

Respondent : State of Kerala, Represented by Public Prosecutor

Judgement :

P.S. Gopinathan, J.

1. The Sub Inspector of Police, Ramankary Police Station, in Crime No.76 of 1996, prosecuted the revision petitioner before the Judicial Magistrate of the 1st Class, Ramankary, accusing offences under Sections 341, 323, and 354 IPC with an allegation that at 11 a.m., on 15.9.1996, the revision petitioner wrongfully restrained the defacto complainant at Cherikalakam padasekharam. She was caught at her hands, slapped at face, fisted on back and kicked on the stomach. When the defacto complainant attempted to run away she was caught at her blouse and the blouse was torn.

2. The revision petitioner pleaded not guilty. Therefore, he was sent for trial. On the side of the prosecution, PWs 1 to 6 were examined. Exts.P1 to P5 were marked. When questioned under Section 313 of the Code of Criminal Procedure, he denied the incriminating evidence and further stated that the vegetation of the

revision petitioner was destroyed by the goats of the defacto complainant, who was examined as PW1. When he drove away the goats, PW1 and another assaulted him and that the case was falsely foisted against him. However, no defence evidence was let in. The learned Magistrate, on appraisal of the evidence, arrived at a finding that the prosecution had succeeded to establish offences under Sections 323 and 354 IPC and no offence under Section 341 IPC was established. Consequently, the revision petitioner was convicted and sentenced to rigorous imprisonment for one year under Section 354 IPC and a fine of Rs.1,000/- under Section 323 IPC with a default sentence of simple imprisonment for three months. Out of the fine amount, if collected, Rs.500/- was ordered to be paid to PW1 as compensation. For offence under Section 341 IPC, the revision petitioner was acquitted.

3. Aggrieved by the above conviction and sentence, he preferred CrI.A.No.190 of 1998 before the Sessions Judge, Alappuzha. The Additional Sessions Judge (Adhoc -1), Alappuzha, to whom the appeal was made over, by judgment dated 26.3.2002, while confirming the conviction and sentence, dismissed the appeal. Assailing the legality, correctness and propriety of the above conviction and sentence as confirmed in appeal, this Revision Petition is preferred.

4. I have heard Smt. Indu, the learned counsel appearing for the revision petitioner and Ms.Madhu Ben, the learned Government Pleader. Perused the judgment impugned and the evidence on record.

5. PWs 1 and 2 would harmoniously depose that the revision petitioner assaulted PW1 by slapping at her cheeks, fisting at back and kicking at her abdomen. While PW1 attempted to run away, she was caught at her blouse and torn the blouse. Their evidence would corroborate with the averments in Ext.P1 First Information Statement. PW3, the Medical Officer, would depose that PW1 had tenderness on her parietal region, back of right side of chest, right chest and left side of the lower part of the abdomen. The evidence of PWs 1 and 2 regarding the assault is corroborated by the medical evidence. Carefully going through the evidence of PWs 1 to 3, I find that there is nothing to disbelieve the evidence of PWs 1 and 2 regarding assault. There is sufficient evidence on record to come to a conclusion

that the revision petitioner had voluntarily caused simple hurt to PW1. Their evidence is also consistent that while the defacto complainant attempted to run away, she was caught at her blouse and that blouse was torn. The courts below had correctly appreciated the evidence on that aspect.

6. The next question that arises for consideration is whether the revision petitioner had got any intention to outrage the modesty of PW1. According to the learned counsel for the revision petitioner, no intention on the side of the revision petitioner to outrage the modesty of the defacto complainant is established. At the most there only assault is established. Therefore, no offence under Section 354 IPC is established. In support of the argument advanced, the learned counsel would rely upon two decisions of this Court in *Vasudevan v. State of Kerala* [2006(2) KLT 1019] and *Sasidharan v. State of Kerala* [2005(3) KLT 185]. In *Vasudevan's* case (*supra*), after reading Section 354 IPC, at paragraph 2 it is held:

"[E]ven though it is true that assault or criminal force to woman is one of the essential pre-conditions for applicability of S.354 IPC, but the same has to be with an intend to outrage her modesty or knowing it to be likely that he will thereby outrage her modesty."

In *Sasidharan's* case (*supra*) at paragraph 9 it is held:

"[N]either the use of criminal force alone nor act of outraging the modesty alone is not sufficient to attract an offence under S.354 IPC."

Critically going through the evidence of PWs 1 and 2, bearing in mind of the ratio of the above decisions, I find that in addition to assault by slapping, fisting and kicking, she was caught by the revision petitioner and her blouse was torn. There is nothing on record to come to a conclusion that by doing so, the revision petitioner had no intention to outrage the modesty of PW1. There can't be any evidence regarding the intention of the assailant. Intention of the assailant is to be inferred from the facts and circumstances of the case. Tearing of the blouse speaks volumes. According to the learned counsel, blouse was accidentally torn. To assume so, I have to read between lines. I don't think that it is appropriate to guess so because the trial court, which had occasion to watch the demeanour of

PWs 1 and 2, was persuaded to conclude otherwise. The evidence on record would show that the cultivation of the revision petitioner was destroyed by the goats of PW1 and that the incident occurred when PW1 went to the property of the revision petitioner to fetch her goats. The above circumstance would show that the revision petitioner was provoked by the destruction of the vegetation. Probably, that may be the reason to assault PW1. But when she attempted to run away, the revision petitioner had no business to catch at her blouse and tear it. In the peculiar facts and circumstances of the case, I find no reason to diverge with the conclusions arrived by the courts below, which had meticulously analysed the evidence on record. It cannot be said that the revision petitioner had no intention to outrage the modesty of PW1. If the revision petitioner had no intention to outrage the modesty, when PW1 attempted to run away, she would have been allowed to go. This peculiar circumstance distinguishes the case from the reported cases. Therefore, the ratio of the decisions referred above has no application to the case on hand. I find that the conviction is based upon cogent evidence. No error, illegality or impropriety is committed by the courts below warranting interference in revision.

7. As regards the sentence, admittedly the revision petitioner had no bad antecedent. It is also revealed that the revision petitioner and the victim are rural folks. There is provocation because of the destruction of the cultivation of the revision petitioner. In the above circumstance, I find that the sentence awarded by the trial court and confirmed in appeal is a little bit harsh and that the revision petitioner is entitled to leniency in sentence and that simple imprisonment for two weeks and a fine of Rs.5,000/- under Section 354 IPC and the fine as imposed by the trial court under Section 323 IPC would meet the ends of justice.

8. In the result, the Revision Petition is allowed in part. While confirming the conviction, the substantive sentence for offence under Section 354 IPC is reduced to simple imprisonment for two weeks and a fine of Rs.5,000/- (rupees five thousand only). In default of non-payment of fine, the revision petitioner shall undergo simple imprisonment for a further period of three months. The fine imposed by the courts below for offence under Section 323 IPC with the default sentence thereon and the order to pay compensation to the defacto complainant

out of the fine amount are sustained. The revision petitioner is directed to surrender before the trial court which shall see the execution of sentence and report compliance.

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