

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 30TH MARCH 2005 / 9TH CHAITHRAM 1927

Crl.Rev.Pet.No. 855 of 1996(C)

CRA.373/1993 of SESSIONS COURT, KOZHIKOE
CC.140/1991 of JUDL.MAGISTRATE OF FIRST CLASS-I, THAMARASSERY
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REVN. PETITIONER:

MOIDEEN, S/O.AMMAD KOYA,
PARAYIL, RAROTH AMSOM DESOM,
PARAPPAN POYIL.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.THAVAMONY

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 30/03/2005, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. HEMA, J.

CRI.R.P.No.855 OF 1996

Dated this the 30th day of March, 2005

O R D E R

The petitioner herein was convicted and sentenced under Sections 294(b) and 332 IPC as per judgment dated 22.9.1993 in C.C.No.140 of 1991 by the Judicial Magistrate of First Class-I, Thamarassery. The sentence passed was to pay a fine of Rs.500/-, in default simple imprisonment for 15 days under Section 294(b) IPC and to undergo rigorous imprisonment for one year under Section 332 IPC. The conviction and sentence were challenged in appeal before the Sessions Court, Kozhikode in CrI.A.No.373 of 1993. As per judgment dated 22.1.1996, the conviction and sentence passed against petitioner under Section 294(b) IPC were set aside. However, the conviction under Section 332 IPC was confirmed. But the sentence was modified as rigorous imprisonment for two months instead of one year. The said conviction and sentence are challenged in this revision.

2. According to the prosecution, on 16.5.1991 at about 3 p.m. PW6 Sub Inspector of Police, Kaduvally Police Station along with the police party went to a place called Vavad in a taxi jeep where a meeting, in which Shihab Thangal was to address, was proposed to be held. The jeep was stopped near a waiting shed. While petitioner was standing nearby the jeep, police felt that he was listening to the conversation and hence the Sub Inspector of Police PW6 asked the accused to move. The accused then asserted

his right and said that the property was Government land and he had the right to stand there. PW6 came out of the jeep and asked petitioner to move. The petitioner then caught hold of PW6 on his neck, abused him, using obscene words and also assaulted him. PW6 sustained injuries. He went to the doctor PW5 and thereafter gave first information statement, Exhibit P3, based on which, crime was registered. The FIR is Exhibit P4. Investigation was conducted and charge was laid before the Judicial First Class Magistrate's Court, Thamarassery.

3. Evidence in this case consists of oral testimony of PWs 1 to 7 and Exhibits P1 to P4 were marked on the side of the prosecution. Exhibit D1, a portion of the case diary was marked on the defence side. The learned counsel for the petitioner vehemently contended that the conviction under Section 332 IPC cannot be sustained. The prosecution relies upon the oral testimony of PW1, PW2, PW3 and PW6 mainly. PW1 is the driver of the taxi jeep in which the police party came to the place of occurrence. PW2 is the Head Constable and PW3 is the cleaner of the jeep. PW6 is the Sub Inspector of Police who is the injured. PW4 is an eye witness who turned hostile to the prosecution. PW5 is the doctor.

4. The courts below found that the prosecution proved the case by the oral testimony of PWs 1, 2, 3 and 6. They asserted the prosecution case, without much inconsistencies, except a case diary contradiction, Exhibit D1 which is a portion of the statement under Section 161 Cr.P.C. It is well settled that the courts cannot be carried away by the parrot like version given by the witnesses in the court. The criminal courts have to scan the

evidence, and to find out the truth. The court has to test the version on the touchstone of other materials and the circumstances emerging in the case.

5. Before going into the details in respect of the incident, in the peculiar facts and circumstances of this case the defence version is to be stated. According to the learned counsel for petitioner, the incident did not occur, as alleged by the prosecution. The petitioner was a mentally deranged person (defence under Section 84 IPC is not taken up) and Sub Inspector of Police, PW6 was infuriated by his conduct. Therefore, PW6 went towards petitioner in an aggressive mood and he was assaulted and people of the locality intervened, stating not to trouble petitioner.

6. If the case is analysed in the right perspective, it can be seen that there is support to the defence version. Atleast, it can be found that prosecution has not put forward the whole truth in respect of the incident. In support of the defence case, learned counsel appearing for petitioner has drawn my attention to the version given by PW2, Head Constable. He admitted in cross-examination that people of the locality shouted that the accused is a mentally sick person and that he may not be troubled etc. That apart, in Exhibit D1, a portion of the statement given by PW3 under Section 161 Cr.P.C., it was stated that the Sub Inspector had approached petitioner by abusing him. From this it is clear that as per the version given to the police by PW3, PW6 made an offensive move towards petitioner, which triggered the whole incident. It was at this juncture that petitioner

allegedly assaulted PW6.

7. Therefore, regarding the circumstances under which assault was made, the whole version is not before the court. Evidence of PWs 1, 2, 3 and 6 disclose repeated assertions that PW6 was assaulted by petitioner. It was accepted by both courts below, without testing the worth of their evidence, as against medical evidence. PWs 1 to 3 and 6 can be stated to be interested witnesses. PW1 is a taxi jeep driver who has obliged the police and spoke in favour of police. PW3 is the cleaner working in the same taxi jeep. PW2 is the Head Constable and PW6 is the injured Sub Inspector of Police. All these witnesses can be treated as interested witnesses and the only evidence which is available as against them is the medical evidence which is independent in nature. The court ought to have tested the version given by all the eye witnesses as against medical evidence to sift the chaff from the grain and to find out whether version given by the prosecution is correct or not or whether prosecution was placing the true version before court.

8. A perusal of medical evidence given by PW5 can be examined. It is revealed from his evidence and wound certificate Exhibit P1 that PW6 sustained a bite mark on the head. He also sustained a swelling on the head. There was also bleeding from his nose. None of the prosecution witnesses had any explanation how those injuries were sustained on PW6. PW6 would make the court to believe that when the accused caught hold of his "neck", bleeding from the "nose" started. PW the injured only stated that he was hold of by his neck. No other overt act was allegedly committed

by the accused, which could have led to the infliction of other injuries noted by doctor. By mere catching hold of the neck, it is not understood how he sustained a bite mark on the forehead, swelling on the head and bleeding from nose.

9. It is not explained by medical evidence as to how the bleeding would occur when neck is caught. It will be clear even to a layman that the version by the even for a layman to device the evidence given by the prosecution witnesses that the injuries noted on PW6 could be caused by petitioner in the manner alleged by the prosecution, cannot be accepted. I am satisfied that if the prosecution case, as revealed from the eye witnesses is tested as against the medical evidence, no prudent man will accept the version to hold that the incident happened as alleged by prosecution.

10. There can be no doubt that prosecution was suppressing as to what actually transpired at the scene of occurrence. It has come out from the evidence of the Head Constable, PW2 himself that people of the locality had even cried and made attempt to intervene. In fact, PW3 also stated in the cross-examination that there was a push and pull between police and the gathering, in the locality. Thus, there is a deliberate attempt on the part of prosecution to suppress whole truth from the court. The result is that prosecution has failed to establish the case, as alleged by it. The case has not been established beyond reasonable doubt. Hence it was illegal to convict a person for having allegedly assaulted PW6.

11. I am satisfied that all canons of appreciation of witnesses

were thrown to wind to arrive at a wrong conclusion against petitioner. Hence, this is a fit case to exercise jurisdiction under Section 397 Cr.P.C. to set aside the concurrent findings against petitioner.

In the result, conviction and sentence passed against the petitioner under Section 332 IPC are set aside and petitioner is found not guilty of the said offence and he is acquitted of the offence. He is set at liberty forthwith.

This Revision Petition is allowed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

CRL.R.P.NO.855 OF 1996

O R D E R

30.3.2006