

(2012) 09 KL CK 0042
In the High Court Of Kerala
Case No : Criminal R.P. No. 646 of 2004

Abdul Majeed

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 323

Citation : (2012) 4 KLJ 233

Hon'ble Judges : P.S. Gopinathan, J

Bench : Single Bench

Advocate : R. Krishna Raj and G. Prathishya, for the Appellant; Madhu Ben, for the Respondent

Final Decision : Allowed

Judgement

P.S. Gopinathan, J.—Revision petitioner is the 1st accused in C.C. 58/1993 on the file of the Judicial Magistrate of the First Class, Kayamkulam. He along with three others were prosecuted by the Station House Officer, Kayamkulam alleging offences under Sections 323, 324 and 326 read with 34 IPC. During the pendency of the case, the 3rd accused expired. Despite the coercive steps, the 2nd accused didn't turn out. So the case against him was split up and accused 1 and 4 were tried. After trial, they were found guilty for the above offences. The revision petitioner was sentenced to rigorous imprisonment for six months u/s 326 read with 34 IPC. The 4th accused was sentenced to rigorous imprisonment for three months. No separate sentence was awarded for offences under Sections 323 and 324 read with 34 IPC. Assailing the above conviction and sentence, they preferred Crl A. No. 247/1998 before the Additional Sessions Judge, Mavelikara. By the impugned judgment dated 10.11.2003, the Additional Sessions Judge arrived at a finding that the offences under Sections 324 and 326 read with 34 IPC are established against the revision petitioner. Consequently, the conviction and sentence impugned were confirmed. It was further found that the prosecution had not succeeded to establish any of the offences alleged against

the 4th accused. Therefore, he was acquitted. It was also found that no offence u/s 323 IPC is established against the revision petitioner and he was acquitted for offence u/s 323 IPC. Assailing the legality, correctness and propriety of the above conviction and sentence as confirmed in appeal, this Revision Petition is preferred. I have heard Adv. Sri. Krishna Raj, the learned counsel appearing for the petitioner and Ms. Madhu Ben, the learned Government Pleader. The learned counsel for the petitioner took me through the material evidence.

2. The main argument that was advanced is regarding the identity of the revision petitioner as the assailant. PW1 is the injured. In Ext. P1, the First Information Statement, given by PW1 and recorded by PW5, the Head Constable attached to the Kayamkulam Police Station, five persons were implicated. Ext. P1 was recorded while PW1 was undergoing treatment at Medical College Hospital, Alappuzha. Ext. P1 was produced before PW6, the Assistant Sub Inspector of Police. On the basis of Ext. P1, PW6 registered the case as Crime No. 580/92 for offences u/s 143, 147, 148, 149, 324 and 326 IPC against five persons. Ext. P3 is the First Information Report (FIR). PW6 took over the investigation. During investigation, it was revealed that the 4th accused named in the First Information Statement was not involved in the offence alleged. It was also revealed that offences under Sections 143, 147, 148 and 149 IPC were also not revealed. Consequently, Ext. P8 report was filed seeking to remove the 4th accused in FIR from the array of accused and deleting the offences under Sections 143, 147, 148 and 149 IPC as well as reporting the correct address of the other accused, who were re-arrayed as accused 1 to 4. In Exts. P3 and P1, the revision petitioner was referred as. No where any other particulars including the age, address and the name of the father of the person mentioned as the 1st accused, so as to identify him, is mentioned in Ext. P1 or in Ext. P3. It is not mentioned in Ex. P8 as to from where the address of the revision petitioner and the three other accused were collected. In cross examination, PW6 had admitted that he had not recorded any further statement of PW1. Though PW6 had arrested the revision petitioner, he was not got identified by PW1. In the final report, the address of the revision petitioner is described as son of Muhammed Kunju, Eringil Mootil, Peringala Muri, Kayamkulam. Entirely different address is furnished in the final report. Though it is seen that the revision petitioner was identified by PW1 in the box and his identity was not challenged while PW1 was cross examined, in the circumstance stated above, I find merit in the submission made by the learned counsel for the revision petitioner regarding the identity of the revision petitioner. Since the address and other particulars of the assailant was not given by PW1 while giving the First Information Statement and thereafter the assailant was not identified by PW1 during the course of investigation and a person with different set of address is arrayed as the 1st accused in the final report, the identification of the revision petitioner for the first time in the box is not reliable. Adding to that, PWs 2 and 3, the other two occurrence witnesses had turned hostile. The result is there is no admissible evidence to establish the identity of the revision petitioner as the assailant.

Courts below omitted to note the lack of evidence regarding the identity of the revision petitioner. In this way, the courts below had gone wrong and is liable to be rectified. Therefore, the conviction and sentence under challenge are liable to be set aside. In the result, this Revision Petition is allowed. While setting aside the conviction and sentence under challenge, the revision petitioner would stand acquitted and set at liberty. The bail bond, if any, executed by him shall stand cancelled.