
(2009) 05 KL CK 0037

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 822 of 2001

K. Prasanthan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 21-05-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 341

Citation : (2009) 05 KL CK 0037

Hon'ble Judges : K. Hema, J

Bench : Single Bench

Advocate : P.K. Ravisankar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K. Hema, J.—Revision petitioner was convicted for offence u/s 324 of the Indian Penal Code and he was sentenced to undergo simple imprisonment for three months for the said offence by the Additional Chief Judicial Magistrate. The said conviction and sentence were confirmed by the Additional Sessions Judge in appeal. The concurrent conviction and sentence are challenged in this revision.

2. Facts briefly: Petitioner along with three others were charge sheeted and tried for offences under Sections 341, 323 and 324 read with 34 of the Indian Penal Code by the Magistrate Court. After trial, first accused alone was found guilty for offence u/s 324 IPC. He was found not guilty of other offences. Accused 2 to 4 were acquitted by the Magistrate Court. As per the prosecution case, on 14.1.1994 at about 7.45 PM, accused 1 to 4 in furtherance of common intention wrongfully restrained PW1 and voluntarily caused to assault him by beating with hands and with an iron rod on the head.

3. To prove the case, prosecution examined Pws 1 to 7 and marked Exhibits P1 to P4 and Mos 1 and 2. Accused did not adduce any evidence, but denied all allegations. To prove the occurrence, prosecution examined Pws 1, 2 and 5 as

the injured and eye-witnesses. The courts below entered a finding that as per the evidence, first accused had beaten PW1 on the head with an iron rod and he sustained injuries and that evidence of PW1 is corroborated by the evidence of other witnesses with respect to the overt act committed by first accused. The learned Magistrate held that Pws 1, 2 and 5 in unequivocal terms have spoken that first accused beat PW1 with iron rod on his head. The learned Sessions Judge also concurred with the above finding. The learned Sessions Judge also came to a finding in paragraph 7 of the judgment that Pws 2 and 5 gave evidence corroborating the evidence of PW1 and that they stated that first accused beaten PW1 with iron rod and that the other accused beat him with hands.

4. Learned Counsel for petitioner submitted that a serious mistake is committed by the courts below in convicting the accused, as the accused is not properly identified by the injured or other witnesses while they were examined in court. He argued that the depositions of the relevant witnesses do not include a specific endorsement by the learned Magistrate that the accused in the dock was identified by the witness or that the answer regarding identification was made pointing towards the accused in the dock. It is essential that in criminal trial the identity of the person who faces the trial should be established. For this to be achieved witnesses to the transaction in question should specifically certify the identity of the person in the dock as the person who committed the offence. He cited a decision reported in *Mohammed v. State of Kerala* 2002(3) KLT 41 in support of his argument.

5. It was pointed out that none of the depositions of Pws 1, 2 and 5 who are occurrence witnesses there is any indication that the witnesses identified the accused, who was standing in the dock by pointing out the accused as the person who committed the specific overt act. There is only a bare statement recorded in the depositions that "Prasanthan" beat on the head. But, there is nothing in the deposition to show that petitioner was pointed out as the said Prasanthan and he identified by the witnesses from the dock. Therefore, there is no evidence regarding the identity of the person who has committed the offence and hence, the petitioner is entitled for acquittal. It is not sufficient that a name is mentioned by witness but there must be evidence to show that the petitioner is identified by witness but that is lacking in this case.

6. Learned Public Prosecutor argued that it is enough if there is some indication in the evidence that the witnesses could not have committed a mistake in identifying the accused. He pointed out that PW1 stated that all the accused are his neighbours and therefore, he could not have committed a mistake in identifying the accused. It was also submitted that in the evidence of the doctor, it is stated in the allegation regarding the cause of injury that one Prasanth had beaten the injured with iron rod.

7. Learned Counsel for the accused submitted that mere fact that PW1 stated that all the accused are his neighbours and he knew them, will not help the

prosecution in proving the identity of the accused on the facts of this case. In the chief examination itself PW1 stated that he did not remember the name of one of the accused. Since PW1 claimed that he knew all the accused as neighbours and in spite of this fact, he could not state the name of one of the accused itself tells upon the veracity of his evidence, it is argued. At any rate, prosecution ought to have brought out in evidence that the witness was referring to the particular accused by name by identifying him in court by pointing out the person who had beaten him with iron rod. But, in the evidence of the witnesses Pws 1, 2 and 5 they only stated the name of the accused, but did not identify them by pointing out the particular accused who beat PW1 with iron rod.

8. This mistake was committed in the deposition of all the occurrence witnesses and this would certainly raise doubt regarding the identity of the accused, it is submitted. Learned defence counsel also added that the incident happened in the year 1994 and that he has no objection in affording an opportunity to the prosecution to cure the lacuna in the case by getting the accused identified in accordance with law as laid down in Mohammed's case (supra). He also submitted that if an opportunity is given to the accused, he would sufficiently compensate the injured and see that the case is compounded amicably.

9. On hearing both sides, I find that there is no identification of the accused as laid down in Mohammed's case as pointed out by the learned Counsel for the accused. The trial court has not recorded in the evidence anything to indicate that petitioner was identified as the assailant as required as per the dictum laid down in Mohammed's case (supra). In the peculiar facts and circumstances of the case, I find that an opportunity can be given to the prosecution to prove the identity of the accused through the witnesses for which the accused has no objection. He is also prepared to sufficiently compensate the injured and get the case compounded. Therefore, the case has to be remanded.

In the above facts and circumstances, conviction and sentence are set aside and the case is to be remanded and hence, the following order is passed:

(i) Conviction and sentence passed against the petitioner are set aside and the case is remanded to the trial court and the trial court is directed to give prosecution an opportunity to adduce fresh evidence of Pws 1, 2 and 5, in the light of the observations made in this order and dispose of the case in accordance with law.

(ii) If a petition for compounding is filed, the court may dispose of the same in accordance with law, in which event, it is needless to say that there may not be any necessity for adducing fresh evidence to prove the identity of the accused.

Criminal Revision Petition is allowed.