
(2015) 10 KL CK 0051
In the High Court Of Kerala
Case No : Criminal R.P. No. 1520 of 2010

Scaria

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 386, 387, 421, 421(3), 422
Penal Code, 1860 (IPC) — Section 319, 324, 334, 447
Probation of Offenders Act, 1958 — Section 16, 3, 4, 5

Citation : (2016) CriLJ 530 : (2015) 5 KHC 638 : (2015) 4 KLJ 728 : (2015) 4 KLT 695

Hon'ble Judges : Bhaskaran Pillai Sudheendra Kumar, J.

Bench : Single Bench

Advocate : V. Rajendran, for the Appellant; V.S. Sreejith, Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

Bhaskaran Pillai Sudheendra Kumar, J.—The revision petitioner is the accused in CC No. 397 of 2006 on the files of the Court of the Judicial Magistrate of First Class, Nilambur. The Trial Court convicted the revision petitioner under Sections 447 and 324 of IPC and released him under Section 4 of the Probation of Offenders Act, 1958, on his executing a bond for Rs. 10,000/- with two solvent sureties, each for the like sum undertaking to keep peace and maintain good behaviour for one year and to appear and receive the sentence as and when called for within the said period of one year. The revision petitioner was also directed to pay a sum of Rs. 2,000/- to PW 3 as compensation under Section 5 of the Probation of Offenders Act with a default clause for simple imprisonment for one month. The appeal filed against the said conviction and order of probation was dismissed.

2. The prosecution allegation is that on 27/10/2006 at about 6.30 p.m., the revision petitioner trespassed into the court yard of the house of PW 3 and

caused hurt on him by hitting him with a torch.

3. Before the Trial Court, PW 1 to PW 6 were examined and Exts. P1 to P4 were marked for the prosecution, besides identifying MO 1 torch. Exts. D1 to D3 were marked for the defence.

4. PW 3 is the injured, who stated about the incident in tune with the prosecution case. According to PW 3, on 27/10/2006 at about 6.30 p.m., the revision petitioner uttered abusive words against PW 2, who was the Vicar of the church, when PW 2 reached the court yard of the house of PW 3. On seeing this, PW 3 intervened. Then, the revision petitioner hit PW 3 with MO 1 torch, causing injuries on him.

5. PW 2 is the occurrence witness, who supported the evidence of PW 3 in all material aspects.

6. It has been argued by the learned counsel for the revision petitioner that eventhough there was no medical evidence before the Court to prove the injuries sustained by PW 3, the Courts below convicted the revision petitioner under Section 324 IPC and consequently, the conviction and sentence under Section 324 IPC cannot be sustained.

7. Per contra, the learned Public Prosecutor has argued that since there was evidence of PW 2 and PW 3 with regard to the injuries sustained by PW 3, the Courts below rightly convicted the revision petitioner under Section 324 IPC, particularly when the weapon with which the infliction was made by the revision petitioner was also recovered and identified.

8. In this context, it will be profitable to extract Section 324 IPC, which reads thus:

"324. Voluntarily causing hurt by dangerous weapons or means.--Whoever, except in the case provided for by Section 334 , voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

It is clear from Section 324 IPC that in order to attract the offence under Section 324 IPC, hurt should be caused by means of any weapon as described under Section 324 IPC.

9. Hurt is defined in Section 319 IPC, which reads as follows:

"319. Hurt.--Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt."

10. It is clear from Section 319 IPC that in order to constitute hurt, even bodily pain is sufficient. The evidence of PW 3 would show that PW 3 was admitted in the hospital after the incident in this case, as he sustained injury in the incident. PW 3 stated that he fell down and became unconscious when the revision petitioner hit with MO 1 torch on his face. PW 2 also supported the evidence of PW 3 in all material aspects. Ext. P2 FI Statement would also show that PW 3 sustained hurt in the incident. Thus, the evidence of PW 2 and PW 3 coupled with Ext. P2 FI Statement would prove that PW 3 sustained hurt in the incident. The wound certificate was, in fact, produced before the Trial Court. It is borne out from the records that the doctor, who examined PW 3 and issued the wound certificate, went abroad after closing the hospital. Therefore, the wound certificate was not proved before the Trial Court. However, since there is reliable evidence of PW 2 and PW 3, the absence of medical evidence would not affect the prosecution case, particularly when PW 3 sustained only hurt in the incident. The evidence of PW 2 and PW 3 would show that MO1 was used by the revision petitioner to inflict injury on PW 3. MO 1 is a torch having a length of 18 cm. as per Ext. P3 seizure mahazar. Therefore, MO 1 is, no doubt, an instrument which if used as a weapon of offence, is likely to cause death. The evidence discussed above would show that the revision petitioner voluntarily caused hurt on PW 3 with a dangerous weapon, namely, MO 1 torch. Therefore, the Courts below rightly convicted the revision petitioner under Section 324 IPC. In view of the above reasons, the argument in this regard advanced by the learned counsel for the revision petitioner cannot be accepted.

11. The Courts below, after evaluating the oral and documentary evidence adduced by the prosecution, concurrently found that the revision petitioner committed the offence under Sections 447 and 324 IPC. Since there is concurrent finding on facts, this Court will not be justified in interfering with the same unless the finding is perverse or incorrect. No circumstance has been brought to my notice to indicate that the concurrent finding by the Courts below was perverse or incorrect. For the said reason, the concurrent finding by the Courts below that the revision petitioner committed the offence under Sections 447 and 324 IPC does not warrant any interference by this Court.

12. The learned counsel for the revision petitioner has argued that the Courts below went wrong in awarding imprisonment for non-payment of compensation under Section 5 of the Probation of Offenders Act and in the said circumstances, the said part of the order cannot be sustained.

13. The learned Public Prosecutor has also fairly conceded that the Courts below ought not have awarded default sentence for non-payment of compensation under Section 5 of the Probation of Offenders Act.

14. The preamble to the Probation of Offenders Act reads thus:

"An Act to provide for the release of offenders on probation or after due admonition and for matters connected therewith."

The object of the Probation of Offenders Act is the reformation and rehabilitation of the offender as a useful and self-reliant member of the society without subjecting him to the deleterious effects of jail life.

15. Section 5 of the Act empowers the Court to direct payment of compensation and costs in the event of invoking Section 3 or Section 4 of the Act. Therefore, while releasing the offender after admonition under Section 3 of the Act and awarding deferred sentence under Section 4 of the Act, the Court has the power to take steps to compensate the victim of the crime under Section 5 of the Act.

16. Section 5 of the Probation of Offenders Act is extracted hereunder:

"5. Power of Court to require released offenders to pay compensation and costs.--

(1) The Court directing the release of an offender under Section 3 or Section 4 , may, if it thinks fit, make at the same time a further order directing him to pay-

(a) such compensation as the Court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the Court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of Sections 386 and 387 of the Code.

(3) A Civil Court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages."

17. It is clear from sub-section (2) of 5 of the Act that the amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of Sections 386 and 387 of the Code. Sections 386 and 387 of the old Code correspond to Sections 421 and 422 of the new Code. Therefore, the compensation ordered under Section 5 of the Act can be realised by resorting to the procedure under Section 421 of the Code. Proviso to Section 421(3) of the Code provides that no warrant as provided under Section 421 of the Code shall be executed by the arrest or detention in prison of the offender. Therefore. for the recovery of the fine, there is inhibition in arresting and detaining the offender in custody.

18. The Apex Court in *Ishar Das Vs. The State of Punjab*, referring to the Prevention of Food Adulteration Act and the Probation of Offenders Act held thus:

"Mr. Mahajan has argued that if the Trial Magistrate took the view that the accused-appellant in view of his age, should not be sentenced to undergo imprisonment, the learned magistrate should still have imposed the sentence of fine as prescribed by sub-section (1) of Section 16 of the Act. In this respect, we are of the opinion that a sentence of fine also carries with it the consequence of imprisonment in case the accused fails to pay the fine. As the object of Probation of Offenders Act is to avoid imprisonment of the person covered by the provisions of that Act, the said object cannot be set at naught by imposing a

sentence of fine which would necessarily entail imprisonment in case there is a default in payment of fine."

An injunction is enacted by the Act against passing of the sentence of imprisonment, which the Court under the normal circumstances and law is empowered to pass. The imposition of default sentence on a person being dealt with under Sections 3 and 4 of the Act is against the policy of the Act as contained in the Preamble and the Object of the Act. The Apex Court in *Isher Das* (supra) held that the object of Probation of Offenders Act is to avoid imprisonment of the person covered by the provisions of that Act. Once the Court is satisfied that there exists ground for releasing the offender after admonition under Section 3 of the Act or awarding deferred sentence under Section 4 of the Act, it will be against the object, purpose and spirit of the said provisions to direct the indicted person to go to jail to serve out the sentence in lieu of payment of compensation. In such a situation, the purpose of the provisions of Section 3 or Section 4 of the Act is likely to be frustrated. As the object of Probation of Offenders Act is to avoid imprisonment of the person covered by the provisions of the Act, the said object cannot be set at naught by imposing default sentence. Since the object of the Act is to reform and rehabilitate the offender as a useful and self-reliant member of the society without subjecting him to deleterious effects of jail life. I am of the view that imposing default sentence for non-payment of compensation under Section 5 of the Act is not legal and correct. For the said reasons, the Courts below went wrong in awarding the default sentence for non-payment of compensation under Section 5 of the Act.

In the result, this revision petition stands allowed in part confirming the conviction, the order of probation under Section 4 of the Act and the order of compensation under Section 5 of the Act, passed by the Trial Court as confirmed by the Appellate Court. However, the default sentence awarded by the Courts below under Section 5 of the Act stands set aside.