
(2009) 09 KL CK 0004
In the High Court Of Kerala
Case No : Criminal A. No. 594 of 2003

Xavier

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 30-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 232, 313(1), 374, 382, 394(2)
Penal Code, 1860 (IPC) — Section 354, 452, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2009) 09 KL CK 0004

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : V.K. Sunil, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramkumar, J.—In this appeal, filed under Sections 374 and 382 of the Code of Criminal Procedure Code, the appellant who was the sole accused in S.C. No.104 of 2001 on the file of Sessions Court, Kottayam, challenges the conviction entered and the sentence passed against him for offences punishable under Sections 452, 354 and 506 Part (ii) of IPC.

2. The case of the prosecution can be summarised as follows:

PW1 Subhalekshmi and PW2 Smitha were friends and schoolmates. On 31.7.1998 after the studies in school they returned to the house of PW1 at about 1.30 p.m. and took their lunch from there. While they were having lunch, the accused Xavier came there and sat on the steps of the house. As soon as PW1 and PW2 completed their lunch, the accused entered the room and bolted the door. Thereafter he pulled PW2 Smitha aside and kissed her on her cheek and neck. When PW1 objected to it he did the same towards her also. Both the girls cried aloud and hearing their cries PW3 Biji and PW5 Jose, came running. On seeing them, the accused took to his heels. Before escaping from there, the

accused had threatened the two girls that they would be done away with in case they dared to reveal the incident to anybody outside. When the father of PW1 returned home after his job, PW1 revealed the incident to him and on the next day a complaint was launched before the police. Since PW2 is a member of the Scheduled Caste, apart from committing offences punishable under Sections 452, 354 and 506 part (ii) of IPC, the accused has also committed offence punishable u/s 3(i)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

3. On the accused pleading not guilty to the charge claimed against him for the above mentioned offences, the trial Court called upon the prosecution to prove its case. The prosecution altogether examined 15 witnesses as PW1 to 15 and got marked 10 documents as Exts. P1 to P10.

4. After the close of the prosecution evidence, the accused was questioned u/s 313(1) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence.

5. Since this was not a case of no evidence for the prosecution, the accused was not acquitted u/s 232 of the Cr.P.C. He did not adduce any defence evidence when called upon to do so.

6. The learned Sessions Judge, after trial, as per judgment dated 11th March 2003, acquitted the accused of the offence punishable u/s 3(1)(xi) of the Scheduled Castes and Scheduled Tribe (Prevention & Attrocities) Act 1989, but convicted the appellant of the offences punishable under Sections 452, 354 and 506(i) of the IPC. For the conviction u/s 452 IPC, he was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs. 5,000/- (Rupees five thousand only) and on default to pay the fine, to undergo simple imprisonment for a further period of 3(three) months and for the conviction u/s 354 of IPC, he was sentenced to undergo simple imprisonment for 3(three) months. For the offence punishable u/s 506(i) of IPC, he was sentenced to suffer simple imprisonment for a period of 3(three) months. The substantive sentences were directed to run concurrently. It is the said judgment which is assailed in this appeal.

7. When this appeal came up for hearing today, the learned Counsel appearing for the appellant submitted that the appellant is no more. Since the sentence imposed on the appellant includes fine, this appeal does not abate in view of Section 394(2) Cr.P.C. The near relatives of the appellant have not come forward to continue the appeal under the proviso to Section 394(2) Cr.P.C.

8. A consideration of the oral and documentary evidence of the case clearly shows that the accused with the intention of outraging the modesty of the two girls PWs. 1 and 2, criminally trespassed upon the house in their possession and outraged their modesty as alleged by the prosecution and had also before leaving the place threatened the two girls with dire consequence in case they divulged

the incident to anybody. No doubt, the offence punishable u/s 3(i)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 will be attracted only if at the time of commission of the offences, the offender knew the victim to be a member of the Scheduled caste/tribe. It is not enough that the victim happens to be a member of the Scheduled Caste/tribe but it should be proved that the offences were committed by the accused, a non member of Scheduled Caste or Scheduled Tribe, with the knowledge that the victim is a member of Scheduled Caste or Scheduled Tribe. Hence, the court below was fully justified in acquitting the appellant for the conviction under the Special Statute. The conviction entered against the appellant and the sentence passed for offences punishable under Sections 452, 354 and 506(i) IPC do not call for any interference at the hands of this Court. This appeal is accordingly dismissed.

Dated this the 30th day of September, 2009.