

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA,
1937

CRL.A.No. 28 of 2006 (C)

AGAINST THE JUDGMENT IN CC 754/1999 of J.M.F.C.-III, THRISSUR.

APPELLANT(S)/COMPLAINANT:

SARADHA,
W/O. KUNNAMBATH GOPALAKRISHNAN,
ERAVIMANGALAM DESOM,
NADATHARA VILLAGE, THRISSUR TALUK.

BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENT(S)/ACCUSED AND STATE:

1. NARAYANAN NAIR @ ANIYAN NAIR,
S/O. JANAKI AMMA, THENANCHERY,
ERAVIMANGALAM DESOM,
NADATHARA VILLAGE, THRISSUR.
2. DEVAKI AMMA, W/O. NARAYANAN NAIR,
THENANCHERY, ERAVIMANGALAM DESOM,
NADATHARA VILLAGE, THRISSUR.
3. UNNIKRISHNAN, S/O. NARAYANAN NAIR,
THENANCHERY, ERAVIMANGALAM DESOM,
NADATHARA VILLAGE, THRISSUR.
4. JANAKI, D/O. NARAYANAN NAIR,
THENANCHERY, ERAVIMANGALAM DESOM,
NADATHARA VILLAGE, THRISSUR.

5. SABJARABARAYANAN,
S/O. NARAYANAN NAIR,
THENANCHERY, ERAVIMANGALAM DESOM,
NADATHARA VILLAGE, THRISSUR.

6. MOHANDAS, S/O. NARAYANAN NAIR,
THENANCHERY, ERAVIMANGALAM DESOM,
NADATHARA VILLAGE, THRISSUR.

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

R1-R6 BY ADV. SRI.M.K.DAMODARAN (SR.)
BY ADV. SRI.ALAN PAPALI
BY ADV. SRI.SOJAN MICHEAL
BY ADV. SRI.GILBERT GEORGE CORREYA.

R7 BY PUBLIC PROSECUTOR SMT. LILLY LESLIE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 28 of 2006

Dated this the 1st day of December, 2015.

JUDGMENT

Aggrieved by the acquittal of the accused in C.C. 754 of 1999 by judgment dated 30.4.2005, the complainant before the court below has come up in appeal after obtaining leave of this Court.

2. The incident has been narrated in detail by the court below. The essential facts are that in an incident which took place on 11.6.1995 at about 8 a.m., P.W.1, the victim, who was returning after School, is alleged to have been attacked by the accused and she suffered several injuries. She was hospitalized. According to the victim, a police officer had come to the hospital and taken her statement and she bonafide believed that appropriate steps will be taken by the police officer. Later on she came to know that nothing has been done in respect to her statement and no case has been

registered on the basis of the same. Therefore, she filed a private complaint as C.M.P. 1755 of 1997 before the JFCM court concerned. That was forwarded to the police for investigation under Section 156(3) of Cr.P.C. Even after a long time, nothing was heard about the same and therefore the complainant filed C.M.P.6925 of 1998 enquiring about the fate of her earlier complaints. It turned out that on the enquiry made by the JFCM Court concerned, it is reported that the papers were missing. That made the complainant to file a fresh complaint.

3. On the fresh complaint, after following the necessary procedures under Section 200 to 204 of Cr.P.C, summons was issued to the accused. On appearance of the accused in pursuance to the summons issued, proceedings under Section 244 Cr.P.C. was followed. Thereafter charge was framed for the offence punishable under Sections 143, 147, 148, 341, 323 324 and 326 read with Section 149 of the

Indian Penal Code. To the charge the accused pleaded not guilty and claimed to be tried. The complainant therefore adduced evidence. The evidence consists of the testimony of P.Ws.1 to 4 and documents marked as Exts.P1 to P3. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C.. They denied all the incriminating circumstances brought out in evidence against them and maintained that they were innocent. On finding that the accused could not be acquitted under Section 232 Cr.P.C. they were asked to enter on their defence. They examined D.Ws. 1 and 2 and had Exts.D1 to D2(a) marked. The court below, on an analysis of the evidence, found it difficult to accept the evidence furnished by P.W.1, the victim in the case, which according to the court below is highly exaggerated. The evidence of the two supporting witnesses, namely, P.Ws. 2 and 3, were also found to be not creditworthy and ultimately the accused were acquitted.

4. Assailing the acquittal, learned counsel for the appellant contended that the court below has not adverted to the relevant facts and had simply been carried away by certain inconsistencies and contradictions in the evidence of P.W.1. The court below, according to the learned counsel, ought to have noted the nature of the injury suffered by the victim and also the fact that she had undergone treatment for sometime and these facts would have given a reflection of what happened to her on the date of the incident. Her version of the incident gets support from the evidence of P.Ws. 2 and 3 and there is no reason why the court should have rejected her evidence. The wound certificate is also produced which shows the nature of injury suffered by the victim. Learned counsel vehemently argued that the fact that even though the statement of P.W.1 was taken from the hospital by one of the police officers, no action was taken and another complaint was filed, and on enquiry it was reported that the records were

missing and finally the complainant had to file another complaint to set the law in motion show the the influence of the accused persons and the lethargy on the part of the police officers. These aspects have not been considered by the court below and the court below was not justified in acquitting the accused.

5. Shri. M.K.Damodaran, learned Senior Counsel appearing for the respondents, on the other hand submitted that the court below has considered the evidence in considerable detail and found that it was not possible to place implicit faith on the evidence of P.Ws. 1 to 3 for the reasons given by the court below. Learned Senior Counsel pointed out that it is very clear from the evidence that the incident had not originated, developed and culminated in the manner spoken to by P.W.1. If that be so, the acquittal is perfectly justified.

6. Learned Senior Counsel also pointed out that this Court is exercising appellate power against an order of

acquittal, in which case the accused is armed with two presumptions, that every accused is presumed to be innocent unless proved otherwise and the court, after trial has found the accused innocent. Learned counsel went on to point out that unless this Court is satisfied that the findings are perverse or is based on irrelevant factors, interference may not be justified.

7. As rightly pointed out by the learned counsel for the respondents, the scope of interference is limited. As rightly pointed out by the learned Senior Counsel for the respondents, this Court is exercising the appellate power against an order of acquittal. It is not as if this Court has no power to interfere with the finding, but that it shall be done only under compelling circumstances.

8. It is true that P.W.1 has given evidence in support of her case. Even though it is stated that there was a private complaint which is forwarded for investigation under

Section 156(3) of Cr.P.C. and records show that which were later reported to be missing and also there was a fresh complaint on the basis of which action was taken, the complainant felt shy to bring on record the evidence in that regard to show that there was deliberate attempt on the part of the police to play down the incident. Whatever that be, the evidence of P.W.1 is to the effect that while she was returning from school on 11.6.1995, the first accused along with others restrained her and mounted an attack on her. She narrated in detail what are the acts done by each of them and the injuries suffered by her. She attributes definite overt acts to each of the accused. P.W.2 is the brother of the victim. He also speaks about the incident. He says that he came out hearing the cries of P.W.1. He also says that the fifth accused had beaten the victim. P.W.3 is another witness who speaks about the incident. He was going along the road and he saw P.W.1 being restrained by the accused and she being beaten by

them.

9. Ext.P1 is the discharge certificate issued from the hospital. It shows the nature of injuries suffered by the victim. That does not show the injuries as spoken to by P.W.1.

10. It appears from a reading of the injury certificate that it is an unilateral attack from the accused persons. From Ext.P3 it is seen that there are two versions of the incident. In fact it would appear from the records that one of the accused in this case had lodged an FIS on the basis of which crime was registered against the complainant herein and others which is earlier in point of time. It is true that ultimately that ended in acquittal of the accused. But what is significant is that in that case, one of the accused herein was the injured victim.

11. Learned counsel appearing for the appellant pointed out that the injury suffered by the accused in the other case is negligible whereas the injury suffered by P.W.1

speaks for themselves. It is not the number of injuries that is the criterion, but the question here is what was the true incident. That there were two factions and there was a fight between them is quite evident from the records. That can be discerned from the evidence and also from the narration in Ext.P3 judgment. Reading together these records, there is considerable doubt created in the mind of the court regarding the origin, development and culmination of the incident. Merely because, P.W.1 might have suffered more injuries does not mean that the incident has occurred as spoken to by her. Unless the true version of the incident is before court, it may not be possible to fasten liability on accused person.

12. The court below also found that P.W.1 has given a highly exaggerated version of the incident and as rightly noticed by the court below, if what P.W.1 says is true, she would have suffered several injuries. But Ext.P1 shows otherwise. Her inclination to balloon up the issue created a

doubt in the mind of the court. The lower court has given reasons as to why the evidence of P.Ws. 2 and 3 cannot be accepted and that the finding cannot be based on their evidence.

13. The court below has noticed the falsity of the claim made by P.W.1 of all the accused having mounted the attack on her and also that she cared to implicate each and every one of them. In fact some of them might not have participated in the attack on her at all. It could not therefore be said that the court below was in error in arriving at its conclusion. The entire evidence has been appreciated by the court below and there is nothing to show that any relevant factors have been omitted to be noticed by the court below and any irrelevant aspects have been relied on by the court below. In fact the finding of the court below is that there is no true version of the origin, development and culmination of the incident.

14. The above finding is supported by the shyness on the part of the complainant to show that the earlier complaint was forwarded for investigation under Section 156 (3) Cr.P.C. and get such other relevant records. Whatever that be, independently considering the facts, this Court finds no grounds to interfere with the order of acquittal.

This appeal is without merits and it is accordingly dismissed.

P. BHAVADASAN,
JUDGE

sb.