

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

CRL.A.No.8 of 2009 (A)

AGAINST THE JUDGMENT IN SC 59/2007 of ADDL.SESIONS COURT FAST
TRACK - III (ADHOC), MANJERI DATED 31-12-2008

APPELLANT/ACCUSED 1:

MUHAMMED RAFI, 34 YEARS, (A1)
S/O.MOIDEEN, MANDAYAPPURAM (H), PUTHOOR (P.O),
KOTTACKAL, MALAPPURAM DISTRICT.

BY ADV. SRI.TOMY JOHN VETTATH

RESPONDENT:

STATE OF KERALA, REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY SMT. LILLY LESLIE, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
11-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.8 OF 2009

Dated this the 11th day of November, 2015.

J U D G M E N T

Indeed shocking is the judgment under appeal. The learned Sessions Judge thought it fit and proper to treat recovery under Section 27 of Indian Evidence Act as substantive evidence and convicted accused on that basis alone. There is no other evidence against the accused.

2. The accused, six in number, faced prosecution for the offences under Sections 451, 395, 363, 364, 348 and 120B of Indian Penal Code. Among them, accused Nos.2 to 6 were found not guilty of any of the offences and were acquitted. The 1st accused was found guilty of the offence under Section 392 IPC and was sentenced to suffer rigorous imprisonment for four years and to pay a fine of Rs.10,000/- with default clause of rigorous imprisonment for six months. He was also found guilty of the offence under Section 363 IPC for which he was sentenced to suffer rigorous imprisonment for two years and to pay a fine of

Rs.2,000/- with default clause of rigorous imprisonment for two months. He was also sentenced to suffer simple imprisonment for six months and to pay a fine of Rs.1,000/- each with default clause of simple imprisonment for two weeks each for the offences under Sections 451 and 348 IPC and rigorous imprisonment for two years and to pay a fine of Rs.2,000/- with default clause of rigorous imprisonment for three months for the offence under Section 120B IPC. The sentences were directed to run concurrently. Set off as per law was allowed.

3. The prosecution case is that with the intention of extracting money, accused persons planned a criminal conspiracy. In pursuance to the conspiracy, accused Nos.1 and 3 to 7 kidnapped CWs 2 to 5 on 13.12.2005 after trespassing into the house. They are also alleged to have taken their gold ornaments. Further, kidnapped persons are said to have taken from place to place and the accused are said to have bargained for money. PW10 lodged Ext.P15 First Information Statement based on which crime was registered under Ext.P25 First Information Report.

4. Investigation was taken over by the then Circle Inspector of Police who recorded the statement of witnesses and recovered M.O.s 1 and 2 to 16 at the behest of the statement said to have been given by the 1st accused. After completing investigation, he laid charge before court.

5. The court before which final report was laid took cognizance of the offence and on finding that the offences are exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Manjeri. The said court made over the case to Additional Sessions Court Fast Track-III (Adhoc), Manjeri for trial and disposal. The latter court, on receipt of records and on appearance of the accused, framed charge for the offence under Sections 451, 395, 363, 364, 348 and 120B IPC. The accused pleaded not guilty to the charge and claimed to be tried.

6. The prosecution therefore had PWs 1 to 20 examined and Exts.P1 to 32 marked. M.O.s 1 to 20 were got identified and marked.

7. After the close of the prosecution evidence, accused

were questioned under Section 313 Cr.P.C. They denied their involvement in the incident and maintained that they were innocent.

8. Finding that the accused could not be acquitted under Section 232 Cr.P.C, they were asked to enter on their defence. They chose to adduce no evidence.

9. The court below, solely based on the evidence furnished by PW19, one of the investigating officer who claimed that the material objects were recovered on the basis of the confession statement made by the 1st accused, acquitted the other accused except the 1st accused and found the 1st accused guilty. Conviction and sentence followed.

10. It is indeed sad that a judgment has been passed against the fundamental principles of law. In the case on hand, it is significant to notice that the witnesses namely, PWs 3 to 6, 9, 10, 13 and 17 who had real grievance in the case were against the prosecution and deposed that no incident as alleged by the prosecution has ever taken place. Then comes the evidence of PW19, one of the investigating officers. He deposed that on the

basis of the confession statement said to have been given by 1st accused, the material objects were recovered. The court below readily accepted that evidence and without any other basis found the 1st accused guilty of the offences punishable under Sections, 392, 363, 451, 348 and 120B IPC. It is extremely difficult to understand as to how Section 120B IPC could be attracted. Altogether there were six accused and the prosecution has no case that any other accused were involved in the incident. After acquitting five accused persons, one fails to understand, how Section 120B can be attracted. Section 120B deals with conspiracy and there should be at least two persons to constitute conspiracy. That is not available in the case on hand. Therefore, that section cannot be attracted to the present case.

11. Coming to other offences, only item of evidence is recovery alleged to have been made based on the confession statement. Assuming it to be true, it is only a corroborative piece of evidence and has never been taken as substantive evidence by which culpability can be fastened on the accused. Except the recovery made by PW19, there is no other evidence

available in the case on hand and that is too insufficient in law to convict the accused.

For the above reasons, this appeal is allowed. The conviction and sentence passed by the court below against the 1st accused are set aside and it is held the 1st accused is not guilty of the offences. He is acquitted of the charges levelled against him. His bail bond shall stand cancelled and he is set at liberty.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A to Judge.