

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

CRL.A.No. 926 of 2004 ()

**AGAINST THE JUDGMENT IN CC. NO.1199/1998 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, CHERTHALA DATED 31/01/2004.**
.....

APPELLANT/COMPLAINANT:

**PRAMOD, S/O. JANARDHANAN NAIR,
KANNIKATTU MADOM, (WRONGLY TYPED AS
MANNIKATTU MADOM IN THE JUDGMENT),
KOKKOTHAMANGALAM VILLAGE, CHERTHALA.**

**BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY,
SMT.N.SANTHA.**

RESPONDENTS/ACCUSED 1 & 3/STATE:

- 1. NARAYANA PILLAI, S/O. NARAYANA PILLAI,
CHELANGATTU HOUSE, WARD NO.6,
KADAKKARAPPALLI PANCHAYAT.**
- 2. PRIJI, S/O. NARAYANA PILLAI,
CHELANGATTU HOUSE, WARD NO.6,
KADAKKARAPPALLI PANCHAYAT.**
- 3. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, KOCHI-31.**

**R1 & R2 BY ADV. SRI.C.K.SAJEEV.
R3 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN.**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 15-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

K.RAMAKRISHNAN, J.

=====

Crl. Appeal No.926 OF 2004

=====

Dated this the 15th day of September, 2015

JUDGMENT

Complainant in CC No.1199/98 on file the Judicial First Class Magistrate's Court-1 is the appellant herein. The case was originated on the basis of a private complaint filed by the appellant against three accused persons including respondents 1 and 2 alleging offences under Sections 341,323,379 read with Section 34 of Indian Penal Code (hereinafter referred to as the Code).

2. The case of the complainant in nutshell was that the accused was an autorikshaw driver, on 25.3.1998 he had a trip to Thaikal from Cherthala and after completing the trip while he was standing there, the accused persons came and asked for a trip to Cherthala and they boarded the vehicle. When the vehicle reached near Cherthala Devi Temple, he stopped the vehicle near the offering box and

the accused persons got down from the vehicle and proceeded without paying the amount. When he demanded the amount, they told that since he was coming back, they need not pay the amount and on hearing this some of the autorikshaw drivers in the auto stand teased the 1st accused. So they came back and 1st accused caught hold of the shirt and pulled him from the autorikshaw, due to that he fell down. At that time the 2nd accused came and when he was about to get up 1st accused caught hold of his hair and pulled him and due to that process his dhoti fell down and an amount of Rs.180/- was also fallen down from his waist and that was taken away by the 3rd accused. On seeing the incident when people gathered there, all the accused persons left the place. Though he filed a complaint about the incident before the Cherthala Police Station, no action was taken. So he filed a complaint before the Judicial First Class Magistrate Court-1, Cherthala alleging the above offences against the accused persons.

3. After conducting enquiry under Section 202 of the Code, the learned Magistrate took cognizance of the case as

CC No.1199/1998 against three accused persons including respondents 1 and 2 for the offences under Section 341, 323, 379 read with Section 34 of the Code. The process was issued to the accused persons and after examination of the complainant and his witnesses, charge was framed under Sections 341, 323, 379 read with Section 34 of the Code. This was read over to the appearing accused namely respondents 1 and 2 herein, who were accused Nos.1 and 2 in the lower court. They denied the charge, thereafter the witnesses were again recalled and cross examined. After closure of the complainants evidence, accused were questioned under Section 313 of the Code (accused Nos. 1 and 2 only faced trial as accused No.3 absconded during the course of trial), they denied all the incriminating circumstances brought against them in the prosecution evidence. They further stated that they were falsely implicated in the case. After considering the evidence on record, the court below found that the complainant had failed to prove the case against the accused Nos.1 and 2 and acquitted them of the charges levelled against them

giving them the benefit out of it under Section 248(1) of the Code. Aggrieved by the same, the present appeal has been filed by the appellant/complainant in the lower court with leave petition as Crl.LP No.340/2004 which was allowed and leave granted and the appeal was also admitted.

4. Heard both sides and the Public Prosecutor.

5. The counsel for the appellant Mrs.Annapoorna, representing the counsel for the appellant S.P. Aravindakshan Pillai argued that court below had disbelieved the case of the appellant on the ground that there was delay in filing the complaint and he did not go to the hospital for treatment and only autorikshaw drivers were examined, though other witnesses were available. On that ground the case of the complainant cannot be disbelieved and acquitted the accused. The reasons stated by the court below for acquitting the accused are unsustainable in law. PWs2 and 3 are autorikshwa drivers available in the same places. So they are probable witnesses to the incident. He had explained as to why the delay occurred and also not gone to the hospital. According to him, he had made

complaint to the Police and since they did not take any action, immediately on coming to know about that, he filed the private complaint. Since his mother was alone in the house, he did not go to the hospital. These explanations were not properly appreciated by the court below. Further there is nothing brought out to disbelieve the evidence of witnesses recorded on the side of the complaint. The court below ought to have accepted the evidence and convicted the accused persons.

6. On the other hand the counsel for the respondents 1 and 2 submitted that there was delay in filing the complaint and inspite of the fact, he has alleged to have sustained injury, he did not go to the hospital for treatment for his swelling and the witness shown in the complaint earlier was not examined. Subsequently another person was sited as as witness. The court below had appreciated the evidence properly and rightly acquitted them. He has also submitted that even if another view is possible on the basis of evidence than the view taken by the court below, if the view taken by the court below is also probably, then

appellate court is not expected to reverse the findings on that basis. They prayed for dismissal of the appeal.

7. Heard learned Public Prosecutor Sri. Jibu P. Thomas as well.

8. The case of the complainant in the complaint was that on 25.3.1998 at about 8 pm, when PW1 went to Thaikkal from Cherthala by carrying a passenger and while he was reached Alunkal, after alighting the passengers at their destination, the accused persons came and asked for a trip to Cherthala and boarded the vehicle and when they reached near Cherthala Devi Temple, he stopped the vehicle near the offering box and the accused persons got down from the vehicle and proceeded without paying the amount. When he demanded the amount, they told that, since he was coming back, they need not pay any amount and on hearing this, some of the autorikshaw drivers in the auto stand teased the 1st accused. So they came back and 1st accused caught over the shirt and pulled him from the autorikshaw, due to that he fell down. At that time the 2nd accused came and when he was about to get up, 1st accused

again caught hold of his hair and pushed him and due to that process his dhothi fell down along with an amount of Rs.180/- which was fallen down from his waist and that was taken away by the 3rd accused. On seeing the incident, when people gathered there, all the accused persons left the place. Though he filed a complaint about the incident to the Cherthala Police Station, no action was taken. So he filed the private complaint before the court below.

9. In order to prove the case of the complainant, complainant himself was examined as PW1 and two witnesses were examined as PWs2 and 3. PW1 had more or less deposed in tune with the allegations in the complaint. According to him, on the same day itself he went to the Police Station after getting some medicine from the medical shop and a complaint was given which was written by the police officer, but thereafter no action was taken. So he filed a private complaint. According to him, since his mother was alone in the house, though he had a swelling of his leg, he did not go to the hospital. It may be mentioned here that according to PW1, apart from PWs 2 and 3 there

were other persons present in the place and it was also admitted that there were shops near the place of occurrence and he had pretended ignorance as to whether the shop holders have seen the incident or not. According to him, he had collected the name and addresses of PWs 2 and 3 after enquiring about them and he had no prior acquaintance with them, when the incident occurred. But if that is possible, he could have collected the names of persons who came there and witnessed the incident as claimed by him.

10. It was admitted by PWs2 and 3 that all the witnesses were the autorikshaw drivers in the stand. Though he claimed that he is not a member of the union, it was admitted by him that on the basis of the complaint given by the 2nd accused a case was taken on file of the same court against himself and his lawyer Narayanan Nair, who was the president of the same autorikshaw drivers union and a revision is pending before the High Court against taking cognizance of the case by the Magistrate as directed by the revisional court. It is also brought out in evidence that it

was after filing of that complaint by 2nd accused that the present complaint was filed by the complainant through the same lawyer against whom a complaint was filed and the case was taken on file by the same court.

11. Further, though it was stated by PW1 that the statement given by him was taken down by a Police Officer in Cherthala Police Station, he had not taken any steps to call for the documents from Police Station, at least to prove that a complaint was filed by him, but no action was taken by the police. PWs 2 and 3 though corroborated the evidence about the incident as stated by PW1, in the cross examination, PW2 had admitted that he came there on hearing the sound, at that time he saw Mr. Unnikrishnan was standing there who was shown as witness No.1 in the complaint when it was filed in court. But he had also stated that when he came there he saw PW1 lying on the ground. So it is clear from this that he could not have seen the entire incidents as claimed by him. Further he had also admitted that if any autorikshaw driver was unnecessarily beaten by anyone, normally other autorikshaw drivers will interfere

and there will be a protest by them. In this case no such thing happened. According to him, since PW1 was not a member of the Union, the other drivers did not take it as a serious matter and that was the reason why no protest was done is the explanation given by them.

12. PW3 was also an autorikshaw driver at the same place. According to him he was sitting at a distance and watching the entire incident and he did not even come to the place of the occurrence. He had also stated that he heard the sound, at that time he saw PW1 was lying on the ground. He also stated that he did not interfere and he did not even tell PW1 that the money had fallen down. Though both PWs 2 and 3 have admitted that there were nearly 10 autorikshaws parked there, none of the autorikshaw drivers interfered in the matter. All these things goes against the normal conduct of persons. If really such an incident happened in which an autorikshaw driver was attacked, normally the autoriskaw drivers present thereby will interfere in the matter. But such things had not happened in the case. Further in a complaint one Mr. Unnikrishnan

Nair was shown as 1st witness and he was according to PWs1 to 3 was present there from the beginning of the incident. So he must be the best witness to speak about the incident but the reason best known to PW1, he was not examined and subsequently PW2 was substituted in his place later and he was examined in the case.

13. Though PW1 had a case that he had swelling on his leg due to kicking by the 2nd accused, he did not go to the hospital. The reasons stated by him was that since his mother was alone in the house, he did not go to the hospital. If really he was having pain and swelling as claimed by him, either himself or persons standing there close him would have taken him to the hospital first. Only after considering the gravity of the injury the question as to whether he will have to be admitted or can be treated as out patient would have been decided by the doctor. That also caused some suspicion about the genuineness of the complainants case. Coupled with these things the delay in filing the complaint and the complaint itself was filed after the 2nd accused had filed a complaint against PW1 and his

lawyer for assaulting him and another also throws some suspicion about the genuineness of the allegations made in the complaint and as suggested by the accused, this could have been later filed as a counter blast and defence to the complaint filed by the 2nd accused against the complainant and his counsel. So under the circumstances, non examination of those witnesses who were really present shown as the witness in the witness list earlier filed by the complainant along with the complaint is fatal and in such circumstances, selecting the autorikshaw drivers as witnesses by PW1 and examining them as probable witnesses was rightly rejected by the court below and rightly held that it is not sufficient to believe the case of the complainant without corroboration from independent available witnesses at the locality and rightly held that the complainant has failed to prove his case against the accused beyond reasonable doubt and rightly acquitted them.

14. It is settled law that if two views are possible on the basis of the evidence adduced on the side of the complainant and one view taken by the trial court is also

possible, then merely because another view is also possible on re-appreciation, the appellate court should not substitute its view so as to reverse the order of acquittal passed by the court below. The Appellate court can interfere with the order of acquittal passed by the court below only if the appreciation of evidence is perverse and no such finding could be arrived at by the court below on the basis of evidence available. In this case on going through the evidence and also the appreciation made by the court below, it cannot be said that the appreciation made by the court below is perverse and that the view taken by the court below is not possible or probable at all on the basis of evidence, so as to interfere with the order of acquittal passed by the court below and convict the accused as claimed by the counsel for the appellant. So there is no merit in the appeal and there is no reason to interfere with the order of acquittal passed by the court below and the appeal is liable to be dismissed.

In the result the appeal falls and the same is being dismissed. The order of acquittal passed by the court below

against respondents 1 and 2 is hereby confirmed. Office is directed to communicate this order to the court below at the earliest.

Sd/ –

K.RAMAKRISHNAN, JUDGE

SKV