

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

CRL.A.No. 1369 of 2004 ()

AGAINST THE ORDER IN CrI.L.P. 509/2004 of HIGH COURT OF KERALA DATED
16-08-2004

AGAINST THE JUDGMENT IN ST 776/2003 of J.M.F.C., ERATTUPETTA
DATED 31-05-2004

APPELLANT/COMPLAINANT:

P.T.CHACKO, S/O. THOMAS,
PULICKAL, ERATTUPETTA -1.

BY ADV. SRI.MATHEW JOHN (K)

RESPONDENTS/ACCUSED:

1. SABU, P.C. 4726,
ERATTUPETTA POLICE STATION.
(NOW WORKING AT PONKUNNAM POLICE STATION)

2. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.A.No.1369 of 2004
.....

Dated this the 21st day of December, 2015

JUDGMENT

The complainant in S.T.No.776/2003 on the file of the Judicial First Class Magistrate Court, Erattupetta is the appellant herein. The case was taken on file on the basis of a private complaint filed by the complainant against the first respondent alleging offence under section 323 of the Indian Penal Code.

2.The case of the complainant in the complaint was that on 11.1.2002, the complainant had gone to Valiyamangalam near Kalathukadavu in order to see one of his friends. While he was standing on the side of the road, the accused who was standing near a police jeep asked him where he was going and directed him to get into the jeep and he was taken to Erattupetta police station by the accused at about 2 p.m on the same day and he was wrongly restrained in the varanda of the police station and hit on his shoulder with lathi and when the complainant requested not to assault him, he abused him with obscene language and fisted on his back with hand. Thereafter he was falsely implicated in the case and sent to Sub Jail, Pala. On 15.1.2002 the complainant and others were released on bail

from court and thereafter he went to Cherupuzhpam hospital and when it was revealed that no case was registered against the respondent, the complainant preferred a private complaint alleging offence under section 294(b), 342 and 323 of the Indian Penal Code.

3. After taking evidence and conducting enquiry under section 202 of the Code of Criminal Procedure, the learned Magistrate took cognizance of the case as S.T.No.776/2003 only for the offence under section 323 of the Indian Penal Code.

4. When the accused appeared before the court below, particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, Pws 1 to 3 were examined and Exts.P1 and P2 were marked on his side. After closure of the complainant's evidence, the accused was questioned under section 313 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that, on 11.1.2002, he was on special duty at Kalathukadavu as per the direction of the Deputy Superintendent of Police, Pala and at 2 p.m on 11.1.2002, he was not present in

the police station and he did not assault the complainant as alleged. Dws 1 and 2 were examined on the side of the accused and Exts.D1, D2 and D3 were marked on his side in defence. After considering the evidence on record, the court below disbelieved the case of the complainant and acquitted the accused giving him the benefit of doubt under section 255 (1) of the Code. Aggrieved by the same, the present appeal has been preferred by the appellant with leave petition as Crl.L.P.No.509/2004 and leave was granted and appeal was admitted to file.

5. Heard Public Prosecutor and perused the records.

6. The case of the complainant in the complaint was that on 11.1.2002, at about 1.30 p.m, while he was standing on the side of the road near Kalathukadvu, he saw the accused standing near the jeep and asked him to get into the jeep and he was taken to Erattupetta police station at 2 p.m, from there he was assaulted. In order to prove his case, the complainant himself was examined as PW1 and one witness was examined as PW2 and the doctor was examined as PW3.

8. It is true that PW1 had deposed in tune with his allegation in the complaint. But he has admitted in evidence that

he was arrayed as accused in Ext.D3, Crime No.13/2002 of Erattupetta police station, along with PW2 and others. It was also admitted by him that he along with PW2 and others were produced before court and they were remanded to custody and he was released on bail on 15.1.2002 only. It will be seen from the evidence of Dws 1 and 2 and Exts D1 and D2 that the accused in Crime No.13/2002 of Erattupetta including the present appellant were produced by the Deputy Superintendent of Police in Erattupetta police station only at 4 p.m and he was put in the lock up only at 5 p.m. Further, it was admitted by PWs1 and 2 that Crime No.13/2002 was registered on the allegation that accused persons arrayed in that case had committed the offence punishable under sections 143, 147, 149, 332 and 353 read with section 149 of the Indian Penal Code and section 3 of the Prevention of Destruction of Public Property Act. It is also seen from Ext.D1 that the accused in that case including Pws 1 and 2 were arrested on 11.1.2002 at 1.30 p.m and as per the evidence of Dws 1 and 2, they were brought to the police station at 4 p.m and after conducting of the body search, they were put in the lock up at 5 p.m on 11.2.2002. It is also seen from the evidence of Pws 1 and 2

that, later the case was withdrawn by the Government. It may be mentioned here that the incident occurred in the case on 11.1.2002. But the complaint in this case was filed only on 10.1.2003 nearly after one year to the alleged incident.

9. Further, according to PW1, he knew the accused personally but he did not mention the name of the accused to the doctor. It will be seen from the evidence of PW3 coupled with Ext.P1 that he was treated as out patient on 15.1.2002 with the alleged assault for two bruise and soft tissue contusion back. He did not mention the name of the accused to the doctor. Further, it was not mentioned that he was assaulted from the police station also when he gave the cause of injury for preparing Ext.P1 treatment certificate. If really it is a case of police assault, he would have mentioned the same to the doctor. It is noted in Ext.P2 that he had two bruise between shoulder 15 cm long and 0.5 cm width and soft tissue contusion back. So this document coupled with the evidence of PW3 doctor is not sufficient that he was treated for the injuries caused due to any assault by a police officer from the police station. The date of assault was not also mentioned either in Ext.P2 discharge certificate or in Ext.P1, the medical certificate

issued by the doctor. So under the circumstances, the court below was perfectly justified in coming to the conclusion that the medical evidence is not helpful to prove that he was treated for any injury said to have been sustained by him from the police station due to any assault at the hands of the accused.

10. Further, the delay of nearly one year in filing the complaint also has not been explained by the complainant. The court below was perfectly justified in not relying on the evidence of PW2 in this regard as he was also a co-accused in the case and as per the official documents maintained in the police station, he was brought to the police station only at 4 p.m on 11.1.2002 and he was put in the lock up at 5 p.m on that day and produced before the Magistrate on the same day during evening and they were remanded to custody. So there is no possibility for him to be present in the police station at 2 p.m claimed by him to witness the incident as alleged by PW1. So the court below was perfectly justified in coming to the conclusion that the case itself was filed after long lapse of one year as a defence in the police case that has been registered and charge sheeted as evidenced by Ext.D3. and rightly come to the conclusion that the case of the prosecution is not

probable and does not possible and have not succeeded in proving the same against the accused and rightly acquitted the accused giving him the benefit of doubt.

11. If two views are possible on the basis of the evidence already on record and the one view taken by the court below is also probable and possible view, then the appellate court should be slow in reversing the order of acquittal passed by the court below. It is true that the appellate court can appreciate the evidence and came to a different conclusion but that can be possible only if appellate court is satisfied that the view taken by the court below is perverse and no such view is possible on the basis of the evidence available on record. Merely because an alternate view is also possible, is not a ground to upset the order of acquittal passed by the court below. In this case, on the basis of the evidence available on record, it cannot be said that the finding arrived at by the court below is perverse and no such view is possible on the basis of the evidence available on record and as such, the order of acquittal passed by the court below does not suffer any infirmity so as to interfere at the hands of this Court. So the appeal lacks merit and the same is liable to be dismissed.

In the result, the appeal fails and the same is hereby dismissed. The order of acquittal passed by the court below against the first respondent is hereby confirmed.

Office is directed to communicate a copy of this judgment to the concerned court at the earliest.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

