

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 19TH DAY OF JUNE 2015 / 29TH JYAISHTA, 1937

CRL.A.No. 491 of 2015

AGAINST THE JUDGMENT IN C.C.No.1049/2009 of THE COURT OF
JUDICIAL FIRST CLASS MAGISTRATE-IV, KOZHIKODE DATED 17.9.2012

APPELLANT/COMPLAINANT

A. GURUVAYURAPPAN, AGED 66,
S/O. N.S. ADINARAYANAN, 5/2790, KRISHNA KRIPA,
THIRUTHIYAD P.O, PUTHIYARA, KOZHIKODE.

BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENTS/ACCUSED 1 TO 3 AND STATE:

1. V.B. SADASIVAN, AGED 64, NO. 15,
KAMACHI AMMAN NAGAR, UNITED NAGAR,
VEERKERA, COIMBATORE - 641 007.
2. S. MAHESWARI, AGED 54, W/O. V.B. SADASIVAN,
NO. 15, KAMACHI AMMAN NAGAR,
UNITED NAGAR, VEERKERA, COIMBATORE - 641 007.
3. KOUSALYA, C/O. 442, GOKULAM LADIES TAILORS,
NAGAS COMPLEX, VYSIAL STREET,
COIMBATORE - 641 007.
4. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI -682 031.

R1 -R 3 BY ADV. SRI.T.G.RAJENDRAN
R4 BY PUBLIC PROSECUTOR SMT.LALIZA.T.Y.

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 19-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.A.No.491 of 2015

Dated 19th June, 2015

JUDGMENT

This appeal is directed against the judgment dated 17.9.2012 in C.C.No.1049 of 2009 passed by the Court of Judicial First Class Magistrate-IV, Kozhikode. The appellant was the complainant therein. He filed a private complaint against respondents 1 to 3 herein alleging commission of offences punishable under Sections 447, 456, 458, 506(i), 294(b), 326 and 380 read with Sections 34, 109, 120B and 149 of the Indian Penal Code. The learned Magistrate took cognizance of the offences under Sections 447 and 506(i) read with Section 34 of the Indian Penal Code. On due process the accused appeared before the court and particulars of the offences were read over and explained to them. They pleaded not guilty. To prove the charge against the accused/respondents 1 to 3 herein the complainant/the appellant herein got himself examined as PW1. Besides getting examined PW2 and PW3 no documentary evidence was adduced on his side. After the closure of the evidence of the complainant the accused filed a statement under Section 313(5) of the Code of Criminal Procedure denying the averments in the complaint. It is further stated therein that the daughter of accused Nos.1 and 2

filed a complaint under Section 498-A, IPC before a competent court in Coimbatore and the case on hand was filed as a counter blast. Subsequently, PW3 was summoned and thereafter the accused had filed another defence statement to the effect that PW3 is the wife of the complainant and she had given evidence only to help PW1. Apart from the statement no defence evidence was adduced. After considering the evidence on record the learned Magistrate found that the complainant had failed to prove the commission of offences against the accused conclusively. It was held that the complainant had failed to adduce evidence to establish that the accused had criminally trespassed into his house and threatened him and his family in furtherance of a common intention beyond reasonable doubt. In such circumstances, the accused were found not guilty of the offences as aforesaid and they were acquitted under Section 255(1), Cr.P.C. This appeal was filed after obtaining leave.

2. I have heard the learned counsel for the appellant, the learned counsel appearing for respondents 1 to 3/accused 1 to 3 and also the learned Public Prosecutor.

3. As noticed hereinbefore, to bring home the charge against respondents 1 to 3 the appellant got himself examined as PW1 and his wife was examined as PW3. One Sasidharan was examined as PW2.

PW1 deposed that accused 1 and 2/respondents 1 and 2 are respectively the father-in-law and mother-in-law of his son and the 3rd accused/3rd respondent is their friend. He also deposed that accused Nos.4 and 5 are respectively the husband and son of the 3rd accused. He deposed that on 16.4.2008 at 1 a.m. somebody rang the calling bell. When he opened the door two or three persons stepped in. He got no previous acquaintance with those persons. On their entry they asked about his daughter-in-law. He would also depose that they were in an attacking mood and they asked him to give ₹5,00,000/- to the father of his daughter-in-law viz., the first accused. He would further depose that they entered there and asked him to give ₹5,00,000/- in furtherance of a common intention. He deposed that according to them, the said amount is the liability incurred by the first accused in connection with the marriage of his daughter. When he refused to part with the said amount they threatened to kill him and uttered obscene words in Tamil as also in Malayalam. He would further depose that though his daughter-in-law was there at the relevant point of time she had not interfered. PW1 had also deposed to the effect that his daughter-in-law was in Abudabi along with his son and he brought her to the native place as she became pregnant. He deposed further that after half an hour of the incident the first and second accused came there and they too, uttered some obscene

words. The 4th accused pulled him towards the sofa. Hearing the sound of the said commotion the neighbours including Sasidharan Nair and one Bevin David came there. Accused Nos.1 and 2 took their daughter that is, daughter-in-law of PW1 and left the place. He would further depose that on 16.4.2008 in between 9 a.m. and 9.30 a.m. a similar incident had occurred. In other words, according to him, the said persons again came there and they demanded the money. According to PW1, they came there with an intention to attack him. They asked his daughter-in-law to take all her belongings from there and she took 75 sovereigns of gold ornaments of his wife which was kept in the shelf and went along with accused Nos.1 and 2. According to PW1, he did not lodge any complaint against his daughter-in-law as she was pregnant. He would also depose that the accused had instituted cases against them. PW1 further deposed that the delay in filing the complaint occurred as they did not want to harass the pregnant daughter-in-law. While being cross examined PW1 deposed that he sent a lawyer notice to his daughter-in-law and her father and the said notice was sent on 15.4.2008 in the address of Vishnupriya, his daughter-in-law in Coimbatore. He also deposed during cross examination that his son filed a case for restitution of conjugal rights and during re-examination PW1 would admit that he sent a notice showing an anterior date.

4. PW2 is the neighbour of PW1. He deposed that from his house one could see the house of PW1. On 15.4.2008 at midnight he heard a commotion and seeing the lights in PW1's house at the late hours and hearing loud noise he entered the compound of PW1. One Joseph also came there, according to him. He would further depose that he heard somebody demanding ₹5,00,000/- and he also heard the voice of father of Vishnupriya. He further deposed that later, 4-5 persons came outside with Vishnupriya along with her luggage. He would also depose that on the next day morning father and mother of Vishnupriya/accused Nos.1 and 2 came there along with another woman and they had also made commotion and then left the place. During cross examination he would admit the fact that he was a friend as well as a neighbour of PW1. PW3 is the wife of PW1. As noticed hereinbefore, she was re-called at a later stage. She would depose that on 16.4.2008 at 1 a.m. somebody rang the calling bell. By that time, herself, PW1 and their daughter-in-law Vishnupriya were there. On opening the door the said persons who rang the bell entered the house. Virtually, she deposed on the same lines as that of PW1. To support his version she would also admit that on 15.4.2008 a notice was sent to Vishnupriya in her address in Coimbatore. The evidence thus adduced by PWs 1 to 3 were scanned by the learned Magistrate and the appellant did not have a

case that the evidence tendered by himself and his witnesses were incorrectly adverted to by the learned Magistrate in the judgment though the appellant got grievance regarding the manner of its appreciation. The evidence of PWs 1 and 3 would reveal that they deposed that there were several matrimonial disputes in between his son and daughter in law. Going by the version of PWs 1 to 3 an incident occurred on 16.4.2008 at 1 a.m. and thereafter on the same day in between 9 a.m. and 9.30 a.m. However, the complaint was lodged only on 12.6.2008. The evidence of PWs 1 and 3 is to the effect that they do not lodge a complaint readily after the incident as the daughter-in-law was carrying. Taking note of the delay in the lodging of the complaint the courts below scanned the evidence carefully. Considering the delay and also the admission from the part of PWs 1 and 3 to the effect that several matrimonial disputes are pending against the parties the learned Magistrate scanned the evidence carefully to find out the genuineness of the case of the complaint. The evidence of PWs 1 and 3 would reveal that the accused persons had demanded ₹5,00,000/- and that according to them, the said liability arose out of the expenditure meted out in connection with the marriage of Vishnupriya. But, at the same time, while in box, PWs 1 and 3 would admit that in the lawyer notice issued by his son to Vishnupriya, his wife, no such allegation was made. PW2

deposed that he heard a commotion from outside and he has no case that he had virtually witnessed the incident. When he himself admitted the fact that he had not witnessed the incident and only heard a commotion and also taking into account his admission that he is a friend of PW1 the trial court found that his evidence cannot be safely relied on. The defence took up the contention that going by the evidence of PWs 1 and 3 on 15.4.2008 Vishnupriya, their daughter-in-law was available in the said house and if that be so, there was no reason for issuing a notice on that day in her address in Coimbatore. Going by their contention such a notice was sent by their son on 15.4.2008 for restitution of conjugal rights. But, at the same time, their own evidence would reveal that Vishnupriya, their daughter-in-law was very much there in the house when their son sent the notice for restitution of conjugal rights. The complainant/appellant took up the contention that it was only a clerical mistake committed by the lawyer's office. The learned counsel appearing for the appellant contended that the trial court went wrong in relying on the said piece of evidence as the said lawyer notice was not actually produced before the court. Per contra, the learned counsel appearing for respondents 1 to 3 submitted that the learned Magistrate had only considered the statements made by PWs 1 and 3 while being examined before the Court. It is further submitted that PW1 and PW3

during their examination before the court admittedly, deposed to the effect that their son had sent a lawyer notice on 15.4.2008 to Vishnupriya in her address at Coimbatore. The incident allegedly happened on that day. PW1 specifically deposed that even though the persons who entered the house made a demand of ₹5,00,000/= and threatened him Vishnupriya did not intervene. The discussion of the aforesaid aspects in the judgment would reveal that the learned Magistrate took note of such aspects only to find out the genuineness in the complaint of PW1. Evidently, in the complaint, PW1 alleged commission of offences under Sections 447, 456, 458, 506(i), 294(b), 326 and 380 read with Sections 34, 109, 120B and 149 of the Indian Penal Code against the accused. Though the learned Magistrate took cognizance only of the offences under Sections 447 and 506(i) read with Section 34, IPC the appellant got no contention that they took up the matter further or in other words, they raised the grievances against the failure to take cognizance of offences under Sections 326 and 294(b) appropriately. That again would reveal that the complaint was filed alleging commission of an offence under Section 326, IPC which is a serious offence causing grievous hurt voluntarily by dangerous weapons or means. Though PWs 1 and 3 deposed that the accused persons had uttered obscene words they had not deposed as to what exactly the

words which were uttered against them by the accused. As noticed hereinbefore, after filing a complaint alleging commission of such serious offences including offence under Section 326, IPC under which a penalty of life imprisonment could be imposed the appellant did not take any action to redress the grievance regarding the action in not taking cognizance of the aforesaid offences. As stated earlier, though the complaint was filed alleging commission of offences under Sections 447, 456, 458, 506(i), 294(b), 326 and 380 read with Sections 34, 109, 120B and 149 of the Indian Penal Code, cognizance was taken only on offences under Sections 447 & 506(i) read with Section 34, IPC. The commission of offence under Section 441, IPC, criminal trespass is punishable under Section 447, IPC. The evidence of PWs 1 and 3 would reveal that accused Nos.1 and 2 are the parents of their daughter-in-law Vishnupriya. In the absence of any proof to establish that they came there with an intention to commit the offence or to intimidate, insult or annoy any person in possession of such property it could not be said that they have trespassed into the property of PW1. The discussion of evidence by the learned Magistrate especially, taking note of the fact that a notice was sent in the address of their daughter-in-law in an address at Coimbatore when the daughter-in-law was very much in their house was viewed with suspicion by the trial court. The trial court also took note of

the delay in the matter of lodging the complaint. Though the incident allegedly took place on 15.4.2008 and repeated on 16.4.2008 the appellant who got the grievance regarding commission of serious offence under Section 326, IPC did not lodge any complaint on 16.4.2008 or within a reasonable time and he filed the same only after two months on 12.6.2008. The learned Magistrate also took note of the fact that the complainant/appellant herein deposed to the effect that it was not the institution of case against them that made him to lodge the complaint. As noticed hereinbefore, the contention of the learned counsel for the appellant is that the learned Magistrate went wrong in relying on the factum of issuance of notice by the son of PWs 1 and 3 to cast suspicion on the genuineness of the case of the appellant without the same on record. In that regard, it is to be noted that what was done by the learned Magistrate was only considered the depositions of PWs 1 and 3 in the box pertaining to such a letter. In such circumstances, I do not find any legal infirmity in the action in considering the testimonies of PW1 and PW3 regarding such a letter. More so, the said aspect was referred to solely for the purpose of weighing the behaviour of the appellant and his wife and of course, for the purpose of considering the genuineness of their complaint. It is all these aspects constrained the learned Magistrate to arrive at the conclusion that the case on had was filed as a counter

blast of the matrimonial disputes filed by the daughter-in-law and that the complainant had failed to adduce any evidence to prove the aforesaid offences.

5. It is to be noted that this is a case wherein the trial court carefully considered the evidence and acquitted respondents 1 to 3. It is well settled position that presumption of innocence of an accused would be further reinforced by his acquittal. Merely because another view is possible this Court would not be justified in interfering with the acquittal and to upturn it. The appellant has failed to establish that the court below had appreciated in an utterly perverse manner. In such circumstances, I am of the view that the appellant has failed to make out any prima facie case warranting interference. As already noticed, the grievance of the appellant is only with respect to the manner of appreciation of evidence. Since I am of the view that the appreciation cannot be said to be perverse I find no reason to interfere with the acquittal.

In the result, this appeal is liable to fail and accordingly, it is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS