

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

CRL.A.No. 591 of 2015 ()

AGAINST THE ORDER IN Cr.L.P. 70/2015 of HIGH COURT OF KERALA DATED
25.2.2015

AGAINST THE JUDGMENT IN CC 418/2009 of JUDICIAL FIRST CLASS
MAGISTRATE COURT, ERATTUPETTA DATED 17-06-2014

APPELLANT(S)/DEFACTO COMPLAINANT:

JOSE SEBASTIAN, AGED 50,
S/O SEBASTIAN, VATTAKKAVUNKAL(H), MELUKAVAU KARA
MELUKAVU VILLAGE

BY ADV. SRI.P.M.SEBASTIAN

RESPONDENT(S)/ACCUSED AND STATE:

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1. AJI JAMES, AGED 40,
S/O JAMES, OTTATHENKUMKAL (H), KONIPPADU BHAGOM
ERUMPARA KARA, MELUKAVU VILLAGE, PIN. 686 652
 2. ANOJ, AGED 38,
S/O JAMES , OTTATHENKUMKAL (H), KONIPPADU BHAGOM
ERUMPARA KARA, MELUKAVU VILLAGE, PIN. 686 652
 3. MATHEW, AGED 46,
S/O ABRAHAM, KALLEKKULATH (H) ERUMAPRA KARA
MELUKAVU VILLAGE PIN. 686 652
 4. JIMMI SCARIA, AGED 38,
S/O SCARIA, MATTATHIL (H), MATTATHIL (H)
MELUKAVU KARA, MELUKAVU VILLAGE, PIN 686 652
 5. STATE OF KERALA
SUB INSPECTOR OF POLICE MELUKAVU REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKUMAM PIN. 682 031

BY PUBLIC PROSECUTOR SMT.T.Y.LALIZA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 15-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

dlk

C.T.RAVIKUMAR, J

Crl.A. No.591 of 2015

Dated this the 15th day of June, 2015

JUDGMENT

This appeal is directed against the judgment in C.C.No.418/2009 passed by the court of the Judicial First Class Magistrate, Erattupetta. The appellant herein was the defacto complainant. The respondents 1 to 4 were tried for the offences punishable under sections 294(b), 323, 324, 427, 506(i) and read with section 34 of the Indian Penal Code. The trial court evaluated the evidence on record and arrived at the finding that the prosecution had failed to prove the culpability of the accused beyond reasonable doubt and therefore, the accused are entitled to get benefit of doubt and consequently, acquitted them under section 248(1), Cr.P.C. Hence, this appeal.

2. I have heard the learned counsel for the appellant as also the learned Public Prosecutor.

3. At the outset, it is to be noted that the appellant did not have a case that the evidence tendered by him were incorrectly adverted to in the impugned judgment. True that, he is having grievance with respect to the manner of appreciation of the

evidence on record.

4. The case of the prosecution was that owing to previous animosity towards PW1 the accused in furtherance of their common intention to cause him hurt attacked the appellant on 6.6.2009 at about 6.30 p.m on Erattupetta-Thodupuzha road in front of the waiting shed near the branch of Melukavu Co-operative Bank at Melukavu Mattom junction. The first accused/the first respondent abused in filthy language and also strangle hold him and voluntarily caused hurt. The second accused/the second respondent beat him on his left hand with a stick and also hit him on the right knee with stone. The third and fourth accused / respondents 3 and 4 in the course of the same transactions beat him and caused hurt voluntarily. In the incident he lost his gold chain, cell phone and ₹ 5000/-. It is alleging as aforesaid that he lodged the complaint that led to the registration of Crime No. 81/2009 of Melukavu Police Station under sections 294(b), 323, 324, 427, 506(i) and read with section 34 of the Indian Penal Code.

5. To bring home the charge against the respondents 1 to 4/accused persons the appellant got himself examined as PW1 besides getting examined PWs 2 to 8. Exts.P1 to P5 were marked on

his side. After the closure of the evidence of the prosecution the petitioner was questioned under section 313, Cr.P.C and he denied all the incriminating circumstances put to him. The accused did not adduce any evidence in defence. As noticed hereinbefore, the evidence consisted of the oral testimony of PWs 1 to 8 and documentary evidence in Exts.P1 to P9. The appellant herein, who was the defacto complainant was examined as PW1. In fact, it was he who gave Ext.P1 F I Statement and thus set the law in motion. PWs 2 and 3 are the independent witnesses. PW1 would depose that the incident occurred on 5.5.2009 at 6.30 p.m in front of a waiting shed at Melukavumattom. He deposed that while he was chatting with one Reji the first accused called him and on his reaching near the first respondent he was abused in filthy language. He further deposed that the first accused caught hold by his neck and broke his gold chain weighing 3 ½ sovereigns and took his cell phone and ₹ 5000/- . He would also depose that one Manoj who is the brother of the first accused beat him below the left elbow with a stick and also on the right knee with a stone and accused 3 and 4 hit him on the chest besides kicking him on the abdomen. According to him, he was taken to the hospital by one Thommachan in an autorickshaw

and he was admitted at Marian Hospital, Pala and Ext.P1 statement was recorded from there. PW2, Reji deposed that he had witnessed the incident that occurred on 5.5.2009 at 6.30 p.m. He deposed that while himself and PW1 were engaged in a conversation the first accused came there and called PW1 to the road. When PW1 went towards him the first accused abused PW1 in filthy language. The oral testimonies of PWs 2 and 3 discussed in the judgment would reveal that they deposed on the same lines as that of PW1. The accused persons took up the defence that it was PW1 and one Thommachan who attacked them and in connection with the said incident, PW1 and the said Thommachan are facing trial in C.C.No.436/2009. Their precise case is that it is only to defend the said case which is pending against PW1 and Thommachan that the case on hand was foisted. Evidently, the trial court scanned the evidence of PWs 1 to 3 and arrived at the definite conclusion that PWs 1 and 3 are tutored witnesses and there is a clear attempt from their part to make false case against the accused. PW3, Soman deposed that on hearing the sound from near the waiting shed he looked at there and saw the incident. The trial court also found that prosecution has suppressed the fact that the accused have also

sustained injuries in the incident and found that the said crucial suppression is sufficient to cast serious doubt with respect to the genuineness of the case of the prosecution. At any rate, it was found that the very genesis of the case was suppressed by the prosecution. The trial court also found that going by the evidence of PWs 1 to 3, PW1 was very severely attacked by the accused with a stick and a stone. But, at the same time, PW5 who examined PW1 deposed to the effect that he could only found a laceration abrasion on PW1. The evidence of PWs 1 to 3 is to the effect that PW1 was attacked with a stick and also stone. But, at the same time, the evidence of PW5, the doctor who attended PW1 on 5.5.2009 itself and issued Ext.P3 wound certificate would not reveal the presence of corresponding injuries on the body of PW1. True that when the ocular evidence and the medical evidence are not in corroboration depending upon the trustworthiness of the eye witnesses and if they cogently shows the participation of the accused the order of acquittal could be interfered with. From the evidence of PWs1 to 3 discussed in detail in the impugned judgment there can be no doubt that an attack in the manner narrated by them should have left definite signs of serious attack with dangerous weapons as going by

their version PW1 was attacked severely with stick and stone on the left elbow and right knee. True that PW5, the doctor examined PW1 on that day had noticed an abrasion on the right knee and a linear laceration across the left elbow. He had noticed tenderness on the lower abdomen and complaint of pain. But then, there is a very crucial suppression of sustainment of injuries by the accused persons. The alleged dangerous weapons were not recovered and no explanation whatsoever was offered for the non-recovery of the incriminating articles. The trial court which had the opportunity to assess the demeanour of the witnesses after scanning the evidence of PW2 and PW3 formed the opinion that their evidence do not appear to be natural. In this context it is also relevant to note that the crime was originally registered alleging commission of offence under section 392, IPC as well. However, after investigation PW5 filed Ext.P5 report deleting section 392, IPC and incorporating section 427, IPC only. The court below has also found that it was brought out during the examination of PW1 that he along with one Thomas are facing in trial in C.C.No.346/2009 on the allegation that at the alleged time and place of occurrence they had attacked the first accused and further that civil cases are also pending between

PW1 and the first accused. After a careful evidence it was found by the trial court that hardly no evidence was adduced by the prosecution to establish that PW1 sustained injury with a dangerous weapon. In view of the non recovery of the dangerous weapon allegedly used by the accused to attack PW1 and the evidence of PW5 with Ext.P3 Wound Certificate and the fact borne out from it that only an abrasion and a linear laceration was found on the body of PW1 coupled with the aforesaid materials including the suppression of the factum of sustainment of injuries by the accused I do not find any infirmity in this finding of the learned Magistrate that the prosecution had only depicted only one sided version of the real incident and that with the evidence on record the culpability of the accused could not be proved beyond reasonable doubt and that the accused are entitled to get the benefit of doubt. As noticed hereinbefore, the appellant does not have a case that the evidence tendered on his side were incorrectly adverted to by the trial court though he got grievance regarding their appreciation. Taking into account all those aspects I do not find any reason to hold that there is flaw on the part the trial court in holding that the accused are entitled to get the benefit of doubt. When the very genesis of the

case is suppressed, naturally, the accused are entitled to get the benefit of doubt, especially when it is brought out in evidence that the accused had also sustained injuries. When the accused are entitled to get the benefit of doubt no fruitful purpose could be served by admitting this matter as ultimately, the benefit would be given to them. That apart, the appellant had not succeeded in showing that the evidence on record were perversely appreciated by the courts below. When the appellant failed to bring out a case of perverse appreciation of evidence and when it is evident that the accused are entitled to get the benefit of doubt I am of the view that the appeal deserves to be dismissed summarily. This appeal is therefore, liable to fail and accordingly it is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE.

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