

Sivanandan Vs State Of Kerala And Ors

Court: High Court Of Kerala

Date of Decision: Jan. 6, 2021

Acts Referred: Indian Penal Code, 1860 " Section 34, 435
 Code Of Criminal Procedure, 1973 " Section 313(1)(b)

Hon'ble Judges: N. Anil Kumar, J

Bench: Single Bench

Advocate: C.P. Peethambaran, Mini V.A, M.S Breez

Final Decision: Disposed Of

Judgement

1. The revision petitioner is the 2nd accused in CC No. 497 of 2003 on the file of the Judicial First Class Magistrate Court, Mattanur and the appellant

in Crl. Appeal No. 403 of 2007 on the file of the Additional Sessions Court, Thalassery. The offence alleged against the accused is punishable under

Section 435 r/w Section 34 of the Indian Penal Code (hereinafter referred to as, "the IPC").

2. The prosecution case, in brief, is that PW2 - the wife of PW1, and CW5 - the mother-in-law of PW1, are in joint possession of 2.20 acres of land

comprised in Re.Sy.No. 508 of Ayyankunnu Village. Due to a boundary dispute between the 1st and 2nd accused and CW5, the accused 1 and 2 in

furtherance of their common intention to commit mischief by fire, set fire and destroyed 150 rubber trees and 15 cashew trees knowing it to be likely

that they would thereby cause damage to the property, and thereby sustained loss to the tune of Rs.50,000/-. Thus, the accused 1 and 2 are alleged to

have committed an offence punishable under Section 435 r/w Section 34 of the IPC.

3. On the appearance of the accused, after having heard both sides, the trial court framed charge against the accused for the offence punishable

under Section 435 r/w Section 34 of the IPC. The charge was read over, to which the accused pleaded not guilty.

4. During the trial, PWs 1 to 7 were examined and marked Exts.P1 to P4 on prosecution side. On closing the evidence of the prosecution, the accused

were questioned under Section 313(1) (b) of the Code of Criminal Procedure. They denied all the incriminating circumstances appearing in the

evidence against them. When they were called upon to enter on their defence, no evidence was adduced.

5. On appreciation of the evidence, by its judgment dated 30.08.2007, the trial court convicted the accused under Section 435 r/w Section 34 of the

IPC and sentenced them to undergo simple imprisonment for two years each and to pay a fine of Rs.5,000/- each and in default of payment fine to

undergo simple imprisonment for three months each more.

6. Challenging the conviction and sentence imposed by the trial court, the accused 1 and 2 preferred separate criminal appeals as Crl. Appeal Nos.

403 and 410 of 2007 before the Sessions Court, Thalasserry. By its common judgment dated 26.08.2013, the learned Additional Sessions Judge

allowed Crl. Appeal No. 403 of 2007 filed by the 2nd accused in part. While maintaining the conviction under Section 435 r/w Section 34 of the IPC,

the substantive sentence of imprisonment of two years was modified and reduced to six months. The fine imposed by the trial court was made intact.

Feeling aggrieved, the 2nd accused is before this Court in revision.

7. During the pendency of Crl. Appeal No. 410 of 2007, the 1st accused passed away. Hence, the learned Additional Sessions Judge closed Crl.

Appeal No. 410 of 2007, stating that the charge against the 1st accused stood abated. As against the 1st accused, composite sentence of

imprisonment and fine was awarded by the trial court. The sentence of imprisonment alone stood abated consequent to the death of the 1st accused.

So far as the fine is concerned, it does not abate. However, the finding in Crl. Appeal No. 410 of 2007 is not challenged by the State in accordance

with law. Hence, it is not just and proper to reopen the same in this revision.

8. Heard Smt.V.A.Mini, the learned counsel for the revision petitioner; and Sri.M.S.Breez, the learned Senior Public Prosecutor for the respondent-

State.

9. PW1, is the defacto complainant, who lodged Ext.P1 First Information Statement before the police. PW2, who is the wife of PW1, is the joint

owner of the property, whereas PWs 3 and 4 are the owners of the neighbouring property. PW5 is the attesting witness in Ext.P2 scene mahazar.

PW6 is the Village Officer attached to Ayyankunnu Village and issued Ext.P3 Ownership Certificate. On the strength of Ext.P1 First Information

Statement lodged by PW1, PW7 registered Ext.P4 First Information Report, questioned the witnesses, conducted investigation and filed final report

before the court.

10. On going through the oral evidence of PWs 1 to 4, it is clear that the accused and PW2 were at loggerheads in connection with a boundary

dispute. When examined before the trial court, PWs 1 and 2 clearly admitted that the accused and PW2 were not on good terms in connection with a

boundary dispute. It goes without saying that the parties had been disputing title and possession over the disputed property on the date of occurrence.

The 1st accused, who was instrumental in causing mischief, is no more. Although he was convicted and sentenced by the trial court, the appellate

court, on erroneous consideration of the legal position, entered a finding that the charge against him stood abated. So far as the sentence of fine is

concerned, as indicated earlier, it does not abate even after the death of the person, who was convicted and sentenced to pay the fine amount. The

said order is not challenged by the State in accordance with law.

11. The 2nd accused, who preferred this revision before this Court, was only a worker working under the 1st accused on the date of occurrence. PWs

1 and 2, when examined before the court, categorically admitted that the 2nd accused was only an employee working under the 1st accused. Then, the

question before this Court is as to whether the 2nd accused had any dishonest intention to cause mischief by fire with intent to cause damage to the

property owned by PW2 as alleged by the prosecution. When the parties were in dispute in connection with a boundary, it would not be possible to

enter a finding that PW2 had been in possession of the disputed property on the date of occurrence unless and until positive evidence was adduced by

the prosecution to substantiate the factum of possession over the disputed property. Going by the evidence, PW6, the Village Officer attached to

Ayyankunnu Village Office, who issued Ext.P3 Ownership Certificate, stated that PW2 was the owner of the disputed property on the date of

occurrence. Ext.P3 Ownership Certificate issued by the Village Officer itself is not an evidence to prove the factum of title and possession over the

disputed property. No other documents including tax receipt, title deed etc. were produced before the trial court to prove that PW2 had been in

possession of the disputed property on the date of occurrence. PW2's mother, CW5, was not examined to prove her title and possession over the

disputed property.

12. In the case on hand, admittedly, there existed a boundary dispute between the parties. The prosecution case itself would show that the boundary

dispute was the reason for the occurrence. When such a case was set up by the prosecution, the prosecution was obliged to produce necessary

documents to substantiate the factum of possession over the disputed property. It is incorrect to enter a finding that PW2 was in possession of the

disputed property on the date of occurrence based on Ext.P3 Ownership Certificate issued by the Village Officer. Ext.P3 Ownership Certificate itself

is not an indication to prove that PW2 was the owner of the property, particularly when there existed a boundary dispute between PW2 and the

accused relating to the property.

13. Both the trial court and the appellate court appreciated the evidence erroneously without considering the above legal aspects. The evidence

adduced is not sufficient to show that the 2nd accused, who is the revision petitioner herein, committed mischief by fire intending to cause or knowing

it to be likely that he would thereby cause damage to the property of PW2 to the tune of Rs.50,000/- as alleged by the prosecution. The amount

arrived at by the prosecution is also without any basis. There is no evidence before this Court to come to a conclusion that PW2 sustained loss of

Rs.50,000/- as alleged by the prosecution.

In the result, the criminal revision petition is allowed. The revision petitioner/2nd accused is found not guilty of the offence punishable under Section

435 r/w Section 34 of the IPC and he is acquitted thereunder. Cancelling his bail bond, this Court directs that he be set at liberty. If any amount is

deposited pursuant to an interim order passed by this Court, the same shall be released to the revision petitioner/2nd accused in accordance with law.

Pending applications, if any, stand disposed of.