Sherimon vs State Of Kerala on 14 November, 2011

Equivalent citations: AIR 2012 SUPREME COURT 493, 2011 (10) SCC 768, 2012 AIR SCW 457, AIR 2012 SC (CRIMINAL) 260, 2012 (2) AIR JHAR R 733, (2012) 1 MH LJ (CRI) 626, 2012 (1) SCC(CRI) 116, 2011 (12) SCALE 514, 2011 ALL MR(CRI) 3895, 2011 (4) KER LT 159 SN, (2012) 76 ALLCRIC 934, (2011) 12 SCALE 514, (2012) 2 RECCRIR 947, (2011) 4 CURCRIR 253, (2012) 1 ALLCRIR 1, (2012) 1 UC 273, (2011) 4 DLT(CRL) 564, (2012) 1 CHANDCRIC 107

Bench: Ranjana Prakash Desai, Aftab Alam

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1221 OF 2005

SHERIMON ... APPELLANT

Versus

STATE OF KERALA ... RESPONDENT

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. The appellant (original accused 4) along with three others (original accused 1, 2 & 3) was tried by the Additional Sessions Judge, Kottayam in Sessions Case No. 256 of 2000 for offences punishable under Sections 302, 392, 120 (B) read with Section 34 of the Indian Penal Code (for short, "the IPC"). Learned Sessions Judge convicted accused 1 under Section 302 of the IPC and sentenced him to life imprisonment. Learned Sessions Judge convicted the appellant and accused 2 and 3 under Section 324 read with Section 120B of the IPC and sentenced them to undergo rigorous imprisonment for 3 years each. They were acquitted of offences punishable under Sections 392 and 302 of the IPC. The appellant was sentenced to pay a fine of Rs.1,50,000/- which was directed to be distributed as compensation amongst the heirs of deceased Binoy. The appeals carried from the said orders by the appellant and the other accused were dismissed by the Kerala High Court by its

judgment and order dated 3.3.2005. In this appeal, by special leave, the appellant has challenged the said judgment and order to the extent it confirms the conviction and sentence awarded to him.

2. It is necessary to give a gist of the prosecution story.

The appellant-Sherimon (A4) was the Managing Partner of a financial establishment called `City Auto Finance', Moovattupuzha which was engaged in the business of advancing money for purchase of automobiles under Hire Purchase arrangement. On 7.7.1997 one Shaji (PW-4) entered into a hire purchase agreement with the said establishment for purchase of an auto rickshaw bearing no.

KL-5/F-5245 (MO6) (for convenience, "the said auto rickshaw") and obtained loan amount of Rs.40,000/- which was to be paid in monthly installments. PW-4 committed default in repayment of the loan which prompted the appellant to re-possess the said auto rickshaw. On 25.3.1999 at about 12 noon the appellant called Shiju @ Kunjumon (A-1), Salim Joseph (A-2) and Ratheesh @ Kannan (A-3) in the office of City Auto Finance, Moovattupuzha and hatched a criminal conspiracy to seize the said auto rickshaw from the possession of PW-4 by hook or by crook. A1 to A3 were engaged in the profession of vehicle seizure. In pursuance of the conspiracy entered into between A1 to A4, on 31.3.1999 at about 08.15 p.m., A1 approached the deceased, who was driving the said auto rickshaw at that time in the area of Government Hospital, Mudakkayom to hire the same for a trip to Anakuzhy for which the deceased agreed. Manoj (PW-1) a friend of the deceased was present. A1 got into the said auto rickshaw along with A2 and A3. Thereafter, the deceased sharing the driver's seat along with Manoj (PW-1) drove the said auto rickshaw towards Anakuzhy through the Erattupetta-

Pathampuzha public road. When they reached the area of Poonjar-Thekkekara Panchayat the accused asked the deceased to stop the said auto rickshaw. As directed, the deceased stopped the said auto rickshaw. A3 caught hold of the collar of PW-1 who was sitting along with the deceased in the driver's seat and pulled him out. Meanwhile, A1 with intent to murder the deceased caught hold of him by his neck and with a knife stabbed him on the left side of his chest and his right armpit. Simultaneously, A2 with a knife stabbed the deceased repeatedly on the outer aspect of his right arm and on the inner aspect of his inner forearm and below right buttocks and pushed him out of the said auto rickshaw. Resultantly, the deceased fell on the road.

Thereafter, the accused-assailants fled away from the scene of occurrence. The police reached at the spot upon information given by PW-1 on phone and removed the deceased to the Pala Taluk Hospital where he was declared dead.

3. On the basis of the information given by PW-1, FIR No.107/99 was registered and investigation commenced.

On completion of investigation, charge-sheet was filed against the appellant and A1, A2 and A3. The prosecution, in support of its case, examined as many as 13 witnesses (PW-

1 to PW-13). The prosecution exhibited 30 documents (Exhibits P1 to P30) and produced 23 material objects (MO1 to MO23) in evidence. No defence evidence was adduced. In his statement recorded under Section 313 of the Code of Criminal Procedure, (for short, "the Cr.P.C."), the appellant stated that he was innocent and he claimed to be tried.

Upon perusal of the evidence, the trial court convicted the appellant and others as above. As already stated, appeals preferred by the appellant and others were dismissed by the High Court.

4. Mr. Lalit, learned senior counsel submitted that learned Sessions Judge fell into a serious error in convicting the appellant for offence under Section 324 read with Section 120B of the IPC. Counsel submitted that admittedly the appellant was not present when the offence was committed.

No overt act has been attributed to him. Counsel submitted that to prove the charge of conspiracy, the prosecution has to establish that there was an agreement between the accused to do, or cause to be done an illegal act, or an act which is not illegal by illegal means. There must be a meeting of minds. Counsel submitted that in this case there is no direct or indirect evidence on the basis of which conspiracy could be inferred. No one has stated that the appellant met A1, A2 and A3 or that there was a meeting of minds. Assuming the conviction of A1, A2 and A3 is justified, in the absence of any cogent evidence on record, the appellant cannot be held vicariously liable for the acts of A1, A2 and A3 with aid of Section 120B. Counsel submitted that, in the circumstances, the order of conviction deserves to be set aside. He added that in case this Court acquits the appellant, he would not insist for recall of the order passed by the trial court directing the appellant to pay Rs.1,50,000/- which was to be distributed amongst the heirs of the deceased.

5. Learned counsel for the State, on the other hand, submitted that the impugned judgment is supported by cogent and reliable evidence and merits no interference.

6. We are concerned in this appeal only with the conviction of the appellant under Section 324 read with Section 120B of the IPC. The case of the prosecution as against the appellant, in short, is that PW-4 had purchased the said auto rickshaw from Jaina Automobiles on 11.7.1997. He had entered into a hire purchase agreement (MO4) with City Auto Finance of which the appellant is the Managing Partner. There was default in the payment of installments and this had infuriated the appellant.

Therefore, according to the prosecution on 25.3.1999 at about 12 noon in Moovattupuzha, the appellant had entered into a criminal conspiracy with A1 to A3, who were engaged in the profession of vehicle seizure, to re-possess the said auto rickshaw by hook or by crook irrespective of the consequences that may follow and, in pursuance of the said criminal conspiracy, on 31.3.1999, A1 to A3 under the pretext of going for a trip, hired the said auto rickshaw and at about 10.30 p.m., murdered Binoy, the driver and took away the said auto rickshaw.

7. Admittedly, the appellant was not present when the murder was committed. PW-1, a friend of the deceased, who is stated to be an eye-witness to the murder of Binoy does not speak about the appellant's presence. Similarly, PW-2 the auto rickshaw driver who claims that he had seen A1 to A3

on 31.3.1999 sitting on the varanda of the building owned by C.S.I. Church has not referred to the appellant.

PW-4 who had purchased the said auto rickshaw has admitted that he had taken loan from City Auto Finance, Muvattupuzha for purchase of the said auto rickshaw. He has identified his signatures on hire purchase agreement (MO4). He has admitted that he had taken a loan of Rs.40,000/- from City Auto Finance and that he had to repay the loan amount in 48 instalments. He has admitted that he was in arrears. According to him, he had sold the said auto rickshaw to one Shashi and Shashi, in turn, had sold it to Kanjumon. He has stated that he did not know what happened to the said auto rickshaw thereafter. This witness has not, in any manner, involved the appellant. He has identified MO2 as a certificate of registration in respect of the said auto rickshaw. He has identified MO3 as an agreement dated 7.7.1997. He has identified MO4, the Hire Purchase Agreement between him and City Auto Finance, against which he had obtained loan.

8. The prosecution has also examined PW-5 Biju an employee of City Auto Finance at Moovattupuzha to establish that on 25.3.1999 at about 12 noon, he had seen A1 to A3 visiting the appellant in his office. It is pertinent to note that this witness has turned hostile. His evidence does not further the prosecution case.

9. PW-13 was working as a Circle Inspect of Police, Erattupetta at the relevant time. According to him, on 15.6.1999 the appellant produced before him MO2 the certificate of registration, MO3, the Agreement dated 7.7.1999 between PW-4 and City Auto Finance, MO4 the Hire Purchase Agreement and MO23 the Insurance Card of the said auto rickshaw. He has stated that he seized the said articles under Exhibit P30, the Mahazar.

10. It is undoubtedly true that PW-4 had not repaid the entire loan to City Auto Finance. He was in arrears.

However, in our opinion, on the basis of the evidence on record to which we have made a reference hereinabove, it was wrong on the part of the trial court and the High Court to come to the conclusion that the appellant was a party to the alleged criminal conspiracy entered into by the appellant and A1 to A3 to repossess the said auto rickshaw irrespective of the consequences and, pursuant thereto, on 31.3.1999, A1 to A3 murdered the driver of the said auto rickshaw and repossessed it. It was wrong to come to the conclusion that the evidence referred to hereinabove indicates the existence of a strong motive on the part of the City Auto Finance to repossess the said auto rickshaw at any cost. When it is not the case of the prosecution that the appellant was present when the murder took place and when no overt act is attributed to him by any witness, to hold him responsible for offence under Section 324 IPC with the aid of 120B is clearly improper and illegal. The gist of the offence of conspiracy is the agreement between two and more persons to do or cause to be done an illegal act or a legal act by illegal means. There must be meeting of minds resulting in an ultimate decision taken by the conspirators regarding commission of the crime. In this case, no such evidence has come on record. PW-5 Biju, the employee of City Auto Finance at Moovattupuzha was the only witness examined by the prosecution to prove the alleged meeting between the appellant and the other accused. He has turned hostile.

Therefore, there is nothing on record to establish meeting of minds between the appellant and the other accused.

Assuming that the appellant had produced certain documents pertaining to the said auto rickshaw, it cannot be concluded on the basis thereof that he had entered into conspiracy with A1 to A3 to repossess the said auto rickshaw because the loan amount was not repaid and in pursuance thereto A1 to A3 murdered the driver of the said auto rickshaw. The evidence on record is totally inadequate to come to such a conclusion. It is, therefore, not possible to sustain the impugned judgment.

11. In the result, the impugned judgment and order of the Kerala High Court confirming the conviction and sentence awarded to the appellant under Section 324 read with Section 120B of the IPC by the trial court will have to be, therefore, set aside and is accordingly set aside. However, we make it clear that the order passed by the trial court directing the appellant to pay a fine of Rs.1,50,000/- is not set aside, in view of the statement made by his counsel, which we have quoted hereinabove. The fine amount, if not already paid, should be deposited in the trial court within a period of three months so that the trial court can take necessary action.

12. The appeal is allowed in the aforesaid terms. The appellant is on bail, his bail bond is discharged.

.....J. (AFTAB ALAM) .....J. (RANJANA PRAKASH DESAI) NEW DELHI NOVEMBER 14, 2011