



2024/KER/54564

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

MONDAY, THE 15TH DAY OF JULY 2024 / 24TH ASHADHA, 1946

CRA(V) NO. 895 OF 2018

CRIME NO.917/2014 OF KOYILANDY POLICE STATION, KOZHIKODE

AGAINST THE JUDGMENT DATED 9.3.2018 IN SC NO.669 OF 2015 OF
ADDITIONAL SESSIONS COURT-V, KOZHIKODE

APPELLANT/DEFACTO COMPLAINANT:

MUSTHAFA V.M
AGED 50 YEARS, S/O.ABU.V.M.,
RESIDING AT MAARIYA, POST MELUR,
CHENGOTTUKAVU, KOYILANDY TALUK,
KOZHIKODE DISTRICT.
KOZHIKODE
BY ADVS.
R.SUDHISH
M.MANJU

RESPONDENTS/ACCUSED NO.1 TO 8 & STATE:

- 1 PRAJEESH
S/O.UNNIRAJAN, KIZHAKKELATH VEEDU,
KINALOOR POST, BALUSSERY,
KOZHIKODE-673612.
- 2 UNNIRAJAN
KRISHNANKUTTI NAIR,
KIZHAKKELATH VEEDU,
KINALOOR POST, BALUSSERY,
KOZHIKODE-673612.
- 3 RADHAMANI
D/O.NARAYANAN,
KANNOOTTIPPARA VEEDU,
CHAMAL POST, THAMARASSERY,
KOZHIKODE-673615.
- 4 NARAYANAN
S/O.KANDAN, KANNOOTTIPPARA VEEDU,
CHAMAL POST, THAMARASSERY,
KOZHIKODE-673615.
- 5 HARIDASAN
S/O.KOMAPPAN NAIR,
POOTHERIKKULANGARA HOUSE,
CHAMAL, KATTIPPARA,
THAMARASSERY, KOZHIKODE-673615



- 6 **ABOBACKER**
S/O.ABDU, NADUVILAKKANDI VEEDU,
MOODADI POST, KOYILANDY,
KOZHIKODE-673307
- 7 **SHAMSUDHIN**
S/O.ABOBACKER, NADUVILAKKANDY VEEDU,
MOODADI POST, KOYILANDY,
KOZHIKODE-673307.
- 8 **SREEKANTH**
S/O.SREEDHARAN NAIR,
VETTAKKARANKANDI,
SREENILAYAM, NANMINDA, KOZHIKODE-673613
- 9 **STATE OF KERALA**
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.
BY ADVS.
K.NIRMALAN
J.R.PREM NAVAZ
A.RAJASIMHAN
SUMIN.S(K/187/2012)

ADV.SMT.SHEEBA THOMAS-PUBLIC PROSECUTOR

**THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING COME UP
FOR ADMISSION ON 15.07.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

**'CR'****P.G. AJITHKUMAR, J.**

Crl. Appeal (V) No.895 of 2018

Dated this the 15th day of July, 2024**JUDGMENT**

This appeal was filed invoking the proviso to Section 372 of the Code of Criminal Procedure, 1973.

2. The appellant was PW4 in SC. No.669/2015 on the files of the Sessions Court, Kozhikode. After trial, the Additional Sessions Judge-V, Kozhikode, found all the accused not guilty and acquitted. The said judgment of acquittal is assailed in this appeal.

3. Heard the learned counsel for the appellant, the learned counsel for the 5th respondent and the learned Public Prosecutor.

4. Respondent Nos.1 to 8 stood trial for the offences punishable under Sections 118, 115 and 120B of the Indian Penal Code, 1860. The allegations were that respondent Nos.2



to 6, with the knowledge and connivance of respondent No.7, hatched a conspiracy to cause the death of the appellant, the former husband of one Jeseera. Rs.25,00,000/- was agreed to as the reward. Respondent No.2 received Rs.19.5 lakhs from respondent Nos.6 and 7 through respondent No.3. Respondent No.8 received Rs.6 lakhs out of the said amount. While respondent Nos.1 and 2 were travelling on a motorcycle, they were intercepted by the Police at about 12.10 a.m. on 15.06.2014 and the conspiracy was unearthed. Those respondents were in possession of a photograph of the appellant and Rs.1 lakh. Following the investigation, a final report was filed. A trial followed.

5. Before the trial court, PWs 1 to 17 were examined and Exts.P1 to P25 were marked. M.Os. 1 to 10 were identified. The trial court, after appreciating the evidence came to the conclusion that the evidence was totally insufficient to establish the charge. Accordingly, respondent Nos.1 to 8 were found not guilty and acquitted.

6. The appellant would contend that the plot of the conspiracy was to cause his death. Hence, he has a right of



appeal. He is the victim of the offence, and on account of the alleged offences, he sustained injury. The learned counsel for the appellant would submit that any person who sustained any loss or injury by reason of the act for which the accused were charged is a victim. Section 44 of the IPC explains that the word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. The learned counsel for the appellant submits that on account of the conspiracy hatched between respondent Nos.1 to 8 for causing the death of the appellant, harm had occurred to his mind and reputation and in that view of the matter, the appellant is a victim coming within the ambit of Section 2(wa) of the Code.

7. The learned Public Prosecutor supports the view of the learned counsel for the appellant. However, the learned counsel for respondent No.5 would submit that except charging respondent Nos.1 to 8 for such offences, absolutely no evidence has been let in, to substantiate the charge even prima facie. Therefore, a prosecution for the offences of criminal conspiracy or abatement against respondent Nos.1 to 8 could be possible. Further, it is submitted that no consequence from



the alleged conspiracy flew, and therefore there is no basis for the appellant claiming him to be a victim of the offence. Therefore, he has no right of appeal.

8. Going by the definition in Section 44 of the IPC, harm caused to the mind or reputation is sufficient to cause injury. A person who suffers any loss or injury on account of the act of the accused is a victim under Section 2(wa) of the Code. But when the phraseology says that a person has suffered any "loss or injury" caused by reason of the act or omission for which the accused person has been charged, the term injury takes the shade of the word loss. Therefore, a person who sustained a perceivable harm to his mind or reputation alone can be said to have sustained injury in the context of Section 2(wa) of the Code.

It may be noted that a right of appeal to a victim has been provided by the amending Act 5 of 2009, with effect from 31.12.2009. When such a right is newly created as per the proviso to Section 372 of the Code and the definition of the victim has been added, essentially for that purpose, it needs a restricted interpretation. A possibility of injury to the mind or



reputation is not enough to mean injury for the purpose of Section 2(wa) of the Code. There must be some harm to the mind or reputation which can be perceived from the materials on record in order for the person to be a 'victim' entitled to prefer an appeal under the proviso to Section 372 of the Code. In that view of the matter, the appellant herein cannot come within the purview of the definition of victim in Section 2(wa) of the Code. Hence, the appellant has no right to prefer an appeal challenging the judgment of acquittal in S.C. No.669/2015. The appeal is not maintainable.

Accordingly, this appeal is dismissed.

Sd/-
P.G. AJITHKUMAR
JUDGE

SMF