

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No. OF 2009
(Arising out of SLP(Crl) No. 7032 of 2007)

TOMY & ANR.

... Appellant(s)

Versus

STATE OF KERALA & ANR.

... Respondent(s)

JUDGMENT

Dr.ARIJIT PASAYAT,J.

Leave granted.

Challenge in this appeal is to the order passed by a learned Single Judge of the Kerala High Court allowing the revision petition filed by the de-facto complainant who was allegedly assaulted by the present appellant resulting in grievous injuries including fracture. According to the complainant the incident took place on 19.1.1997 about 4.00 P.M. The trial court on consideration of the evidence directed acquittal. It is to be noted that the accused persons faced trial for alleged commission of offences punishable under Sections 447, 324, 326 and 506(ii) read with section 34 of the Indian Penal Code, 1860 (in short 'Code'). The trial court analysed the evidence of the alleged victims PW1 and PW5. The stand of the prosecution

before the trial court was that the evidence of PW5 could be used to corroborate the evidence of PW1 and merely because the Doctor has opined that the injured could have sustained injuries by falling from height did not establish the defence version.

The prosecution witness admitted that PW1 sustained injuries due to fall from a kuthukallu. This was deposed by DW-1, the person, who carried the injured to the hospital immediately after the occurrence. It was his evidence that the injured while traveling in his car stated that he had sustained injuries due to the aforesaid fall. In any event, after analyzing the evidence, the trial court found that the prosecution has not been able to establish the accusations. Several factors apart from the aforesaid fact relating to the cause of injury were also noted. The de-facto complainant filed a revision petition before the High Court questioning the acquittal. Before the High Court the revision petitioners submitted that the findings of the trial court that prosecution has got two different versions and there is no proper justification for not accepting the version as to why PW1 was not taken to the government hospital amounts to absurdity. The High Court felt that the conclusion amounted to absurdity without even indicating any detailed reason as to why the High Court felt that the

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matter was to be re-heard. The High Court exercised the revisional jurisdiction and directed the matter to be heard afresh by setting aside the findings of the courts below acquitting the accused persons.

The learned counsel for the appellant submitted that the course adopted by the High Court is not permissible in law. The High Court has not indicated any reason as to why it considered the conclusions of the trial court to be erroneous by

picking up one or two sentences from the conclusions. The High Court could not have come to the a conclusion about need for reconsideration. Learned counsel for the State submitted that the State had a very limited role to play in the revision petition filed by the de-facto complainant. None appears for the de-facto complainant respondent No. 2 inspite of service of notice.

We find that the trial court had rightly dealt with the evidence and found the same to be not worthy of credence. Without indicating any plausible reason to set aside the order of the Trial Court, the High Court has remitted the matter back to the court below. In these circumstances, the impugned order cannot be sustained and it is accordingly set aside. The appeal is allowed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
((ASOK KUMAR GANGULY)

New Delhi,
April 20, 2009.

JUDGMENT