

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

Crl.Rev.Pet.No. 993 of 2003 ()

**CRL.A 15/1998 of ADDL.SESIONS COURT (ADHOC)-II, THALASSERY
CC 221/1994 of CHIEF JUDICIAL MAGISTRATE'S COURT, THALASSERY**

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REVISION PETITIONER(S)/APPELLANTS/ACCUSED:

- 1. M.P.MUKUNDAN, S/O. KRISHNAN,
THRIPPANGOTTUR.**
- 2. C.P.KUNHIKANNAN, S/O. PODAN,
THRIPPANGOTTUR.**

**BY ADVS.SRI.P.VSURENDRANATH
SRI.P.P.SUDHEER**

RESPONDENT/RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY GOVT. PLEADER SRI. REJI JOSEPH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10-04-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

Crl.R.P. No.993 of 2003

Dated this the 10th day of April, 2015.

O R D E R

The revision petitioners are the accused in C.C.No.221 of 1994 on the files of the Chief Judicial Magistrate,s Court, Thalassery, as well as the appellants in Crl. Appeal No.15 of 1998 on the files of the Additional Sessions Court, Thalassery. Now the revision petitioners stand convicted for the offence punishable under Sec.326 read with Sec.34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 months under Sec.326 read with Sec.34 of the Indian Penal Code. The legality and propriety of the concurrent findings of conviction and the modified sentence imposed by the appellate court are under challenge in this revision petition.

2. The prosecution case, in brief, is as follows: Both the accused, in furtherance of their common intention, voluntarily caused hurt to C.W.3, Ajithkumar, with deadly

object like sticks by beating him on his face, left forehead, right elbow, on the public road, in front of the Fashion Cool Bar at Kallikkandy Bazaar at or about 20.30 hours on 7/4/1994 and as a result of which, the said C.W.3, Ajithkumar, sustained fracture to his left maxilla and left ezygoma.

3. The revision petitioners pleaded not guilty. When they were questioned under Sec.313 of the Cr.P.C., they denied all the incriminating circumstances brought out by the prosecution against them. The prosecution examined P.Ws.1 to 11 and marked Exts.P1 to P7 and M.Os.1 to 3. No evidence had been adduced in defence. After considering the evidence on record, the trial court found the revision petitioners guilty under Sec.326 of the IPC and convicted thereunder. The revision petitioners were sentenced to undergo simple imprisonment for one year each. In appeal, the learned Sessions Judge re-appreciated the entire evidence on record and after re-appreciating the entire evidence on record, concurred with the findings of conviction; but modified the sentence. The substantive

sentence of rigorous imprisonment for a period of one year for the offence under Section 326 of the IPC was reduced to rigorous imprisonment for ten months.

4. The learned counsel for the revision petitioners advanced arguments challenging the concurrent findings of conviction and modified sentence imposed by the appellate court. The learned counsel drew my attention to Ext.P6 wound certificate, Ext.P7 discharge certificate and the oral evidence of P.Ws.3, 6 and 11 and contended that medical evidence disclosed by Exts.P6 and P7 are contradictory and mutually destructive as regards offence under Section 326 of the IPC. It is contended that according to Ext.P6 wound certificate the injured had sustained fracture on the right maxilla on the face. But according to Ext.P7 discharge certificate, the fracture is on the maxilla of the left side. Inconsistent and contradictory versions would show that the prosecution has miserably failed to substantiate medical evidence in terms with the prosecution case. It is further pointed out that when P.W.11, the Doctor, who treated the injured and issued Ext.P7 discharge certificate,

unequivocally deposed that the fracture is on the left side. Thus, it could be seen that the Doctor had deposed in contradiction to Ext.P6 wound certificate. Therefore, no reliance can be placed on the medical evidence to enter conviction for the offence under Section 326 of the IPC. Secondly, the learned counsel contended that the evidence of P.W.3 is inconsistent as regards the wooden stick said to have been used for the commission of the offence. At one instance, P.W.3 deposed that the weapon used for commission of the offence was a wooden stick. But in another instance he deposed that it was a “വാരിക്കഷണം”. Thirdly, the learned counsel contended that in order to prove the fracture, the prosecution should have produced the X-Ray, which would show the fracture, if any, beyond doubt. Therefore, an adverse inference also can be drawn against the prosecution for the non production of the X-Ray.

5. Per contra, the learned Public Prosecutor advanced arguments to justify the concurrent findings of conviction. The learned Public Prosecutor drew my

attention to the evidence of P.W.3 and pointed out that P.W.3 the injured unambiguously had spoken to that the accused beat him on both sides of his face. The evidence given by P.W.3 is supported by Ext.P6 wound certificate issued by P.W. 6. When P.W.6 was examined, he clearly deposed that there is a suspected fracture on the right maxilla. Therefore, there cannot be any confusion as regards the fracture sustained by the injured. It is further contended that wooden stick and “മരവടി ” are one and the same and may be named differently in accordance with perceptivity of each person.

6. In view of the submissions at the Bar, the question to be considered is whether there is any illegality or impropriety in the findings whereby the courts below concurrently found that the revision petitioners are guilty of the offence under Section 326 of the IPC. Put it differently, the question is whether the prosecution has succeeded in proving that the accused/revision petitioners caused fracture on the face of the injured.

7. Going by the impugned judgment, it could be seen

that the prosecution has examined P.Ws.1 to 3 as occurrence witnesses. Though P.Ws.1 and 2, the independent witnesses turned hostile, the courts below concurrently relied on the evidence of the injured as the same was found trustworthy. Even though the conviction is based on the solitary evidence of the injured, the courts below are justified in relying on that evidence as the evidence of the injured is credible and trustworthy. The criminal adjudicatory process has laid emphasis on value, weight and quality of evidence rather than quantity, multiplicity or plurality of witnesses. Therefore, on an analysis of the findings in the impugned judgment, in view of the evidence on record, it is seen that the prosecution has successfully proved that the accused caused grievous hurt to the injured. The evidence of P.W.3 to that extent is supported by the evidence of P.Ws.5, 6, 7 and 11. Further, this evidence gets assurance from Exts.P3 to P5 documents contemporaneously prepared by the police immediately after the commission of the offence.

8. But the question to be decided in this revision is

whether the medical evidence proved beyond doubt that the accused caused fracture on the face of the injured. Going by Ext.P6 wound certificate it is seen that the injured sustained injuries three in numbers and the third injury shows a suspected fracture on the right maxilla. But the place of fracture indicated therein is not legible. But P.W.11, the Doctor, who issued Ext.P7 discharge certificate, unambiguously clarified on examination that the fracture is on the left maxilla. Even though he has spoken to the place of fracture in dissonance with Ext.P6 wound certificate, the prosecution has not made any attempt to correct the position of fracture in consonance with Ext.P6 wound certificate or in terms with the deposition of P.W.3. At this juncture, it is pertinent to note that even though the X-Ray was taken, the same has not been produced in evidence to establish the fracture said to have been sustained on the face of the injured. Had the prosecution produced X-Ray, the same would have removed the ambiguity that centers around the exact place of fracture. In such circumstance, an adverse inference

under Section 114(g) of the Indian Evidence Act also can be drawn against the prosecution from the non production of the X-Ray, which could have been produced in evidence. In short, I find that the prosecution has failed to establish the guilt of the accused that they have caused fracture on the face of the injured.

9. But, at the same time, I have no doubt in my mind that the prosecution has succeeded in proving that they have caused grievous hurt on the face of the injured by beating with M.O.1 series of wooden sticks. Though the learned counsel for the revision petitioners submits that the evidence of P.W.3 is also inconsistent with regard to the weapon used for the commission of the offence, I find that the consistent version of P.W.3 is that a wooden stick was used for the commission of the offence. Further, the evidence of P.W.3 in this respect gets assurance from the recovery of M.O.1 series of wooden sticks.

10. In the light of the above discussion, I find that the concurrent findings of conviction under Section 326 of the IPC is unsustainable and liable to be set aside and I do so.

The revision petitioners will stand convicted under Section 324 read with Section 34 of the IPC. Prison term can be imposed to secure the interest of deterrence. But deterrence does not necessarily depend on the length of the term that the offender spends behind the bar. At the same time, misplaced sympathy has no place in the criminal adjudicatory process. In view of the conflicting views stated above, I am inclined to take a balanced view considering all the mitigating as well as aggravating circumstances, particularly, the age of the second accused at the time of commission of the offence.

11. The learned counsel for the revision petitioners submits that the first revision petitioner is no more and the second revision petitioner is aged 60 years and he is suffering from various age old diseases. The learned counsel urged for taking a lenient view in the matter of sentence.

12. In view of the submission that the first revision petitioner is no more, this revision petition as against the first revision petitioner will stand abated. The second

revision petitioner is sentenced to undergo simple imprisonment for two months and to pay a compensation of Rs.10,000/- (Rupees ten thousand only) to P.W.3 under Section 357(3) of the Cr.P.C. and in default to undergo further simple imprisonment for 45 days more.

This criminal revision petition is allowed in part.

Sd/—

(K.HARILAL, JUDGE)

okb.