

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

Crl.Rev.Pet.No. 1150 of 2003 ()

**AGAINST THE JUDGMENT IN CRL.A.NO.339/1999 of III ADDL. SESSIONS COURT,
KOZHIKODE DATED 07-03-2003**

**AGAINST THE JUDGMENT IN C.C.NO.471/1995 of JUDICIAL FIRST CLASS
MAGISTRATE COURT, KUNNAMANGALAM DATED 16-06-1999**

REVISION PETITIONER(S)/APPELLANTS/ACCUSED:

1. MUHAMMADALI,
S/O.KUNHAMMAD,
PUTHIYOTTIL MEATHAL HOUSE,
PERUVAYAL AMSOM,
POOVATTUPARAMBU.
2. ALIKUTTY, S/O. KUNHAHAMMAD,
KATTIL PARAMBATH HOUSE,
KUTTIKKATTOOR AMSOM,
VELLIPARAMBU.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

**STATE OF KERALA
REP.BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.**

BY PUBLIC PROSECUTOR SRI.K.K.RAJEEV.

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
14-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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K. Ramakrishnan, J.

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Crl.R.P.No.1150 of 2003

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Dated this, the 14th day of January, 2015.

ORDER

Accused Nos. 1 and 3 in C.C.No.471/1995 on the file of the Judicial First Class Magistrate Court, Kunnamangalam are the revision petitioners herein. They along with second accused was charge sheeted by the Sub Inspector of Police, Kunnamangalam police station in Crime No.102/1995 of that police station under Sections 323, 324, 325 and 326 read with Section 34 of Indian Penal Code.

2. The case of the prosecution in nutshell was that on 04.10.1995 at about 5.p.m., all the accused in furtherance of their common intention to cause hurt to CW1 and others voluntarily caused hurt to CW1 to CW4 by beating with hands and kicking and first accused stabbed CW1 with a dagger on his back, left ribs of CW2 and back of CW3 and causing grievous hurt to CW2 and simple hurt to CW1 and 3 and third accused caused hurt to CW4 by biting on her left little finger and broken her little finger and thereby, all of them have committed the above said offences. After investigation, final report was filed and it was taken on file as C.C.No.471/1995

on the file of the Judicial First Class Magistrate Court, Kunnammangalam.

3. When the accused including the revision petitioners appeared before the court below, after hearing both sides, charge under Sections 323, 324, 325 and 326 read with Section 34 of Indian Penal Code was framed against them and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 14 were examined and Exts. P1 to P12 and MO1 to MO4 were marked on the side of the prosecution. After closure of the prosecution evidence, the accused were questioned under Section 313 of Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution evidence. They had further stated that there was some matrimonial dispute between PW12, the sister of first accused and her husband who is the brother of PWs 1 and 3 and son of PWs 2 and 4 and when they asked about the same, there was some scuffle occurred between them and in fact, they were attacked by PWs 1 to 4 and in the scuffle, all of them sustained injuries and influencing the police, false case has been registered against them. In

order to prove their case, they filed an application to summon the wound certificate of the first accused, but, it was not produced and Ext.C1 letter was sent stating that it was not traceable and though DW1 was examined to prove a photostat copy of the wound certificate of first accused, that was not permitted by the court below as it was a photostat copy though it was admitted by DW1 that it was issued by Dr. Dileep who issued Ext.P5 to P8 wound certificates as well.

4. After considering the evidence on record, the court below found the second accused not guilty for the offence and acquitted him of all the charges under Section 248(1) of Code of Criminal Procedure. Court below also acquitted the first accused for the offences under Sections 323 and 325 read with Section 34 of Indian Penal Code and acquitted the third accused for the offence under Sections 323, 324, 326 read with Section 34 of Indian Penal Code, but, found the first accused guilty under Section 324 and 326 of Indian Penal Code and third accused for the offence under Section 325 of Indian Penal Code and convicted them thereunder and sentenced the first accused to undergo Rigorous Imprisonment for two years and also to pay a fine of Rs.2,000/- in default to undergo

Rigorous Imprisonment for two months more under Section 326 of Indian Penal Code and further sentenced to undergo Rigorous Imprisonment for one year under Section 324 of Indian Penal Code and third accused was sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for two months under Section 325 of Indian Penal Code. It is further ordered that if the fine amounts realised, an amount of Rs.2,000/- be paid to PW2 and Rs.1,000/- be paid to PW4 as compensation under Section 357(1)(b) of Code of Criminal Procedure. Aggrieved by the same, the revision petitioners filed Crl.Appeal No.339/1999 before the Sessions Court, Kozhikode which was made over to III Additional Sessions Court, Kozhikode for disposal and the learned Additional Sessions Judge dismissed the appeal confirming the order of conviction and sentence passed by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioners who are accused Nos. 1 and 3 in the lower court.

5. Heard the Counsel for the revision petitioners and the Public Prosecutor.

6. The Counsel for the revision petitioner submitted that in Ext.P1, the case was that, when PW1 was coming through the property of one Unni Hassan, the accused persons attacked him and stabbed him with a knife and on hearing his hue and cry, PWs 2 to 4 came there and they were also attacked by the accused persons. He is stick on to that statement when he was examined in court. But, PWs 2 to 4 had a different case. According to them, the third accused had first beaten PW2 and when they escaped from there, he chased him and at that time, they saw the first accused stabbing PW1 and when they interfered, they were also attacked by the other accused persons and they sustained injuries and it was not the case before the police. So, it is an improvement made by them when they were examined before the court. Further, it was admitted that first and third accused were also admitted in the hospital and on the basis of the statement given by first accused, Crime No.103/1995 was registered and a common scene mahazar was prepared. The descriptions in the scene mahazar will go to show that the incident would not have happened as narrated by the prosecution witnesses. So, the prosecution has suppressed the real genesis of the incident

and that benefit must be given to the accused persons. He had relied on the decisions reported in **Pylan Vs. State of Kerala [1992 (2) KLT 661]** and **Ouseph Varkey Vs. State of Kerala [1957 KLT 526]** and **Sudir Vs. State of M.P. [2001 (1) KLT 682 (SC)]** in support of his case.

7. On the other hand, the learned Public Prosecutor submitted that merely because the injuries on the accused were not explained alone is not a ground for acquittal and PWs 1 to 4 and 9 and 11 have categorically supported the case of the prosecution. So, the discrepancies in the evidence cannot be said to be major discrepancies so as to disbelieve the case of the prosecution. So, according to him, the concurrent findings of the court below do not call for any interference.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:

PW1 is the son of PWs 2 and 4 and brother of PW3. PW12 is the wife of brother of PW1 and sister of the accused persons in the case. According to the prosecution, there was some matrimonial dispute and the accused persons came to enquire about the reason as to why the husband of PW12 did not send her to their house and on account of that enmity,

they have attacked the prosecution witnesses. But, the case of the accused was that, since there was some dispute between them and on account of that enmity, the alleged injured persons attacked them and caused injuries and in a scuffle, they also sustained some injuries.

9. The prosecution relies on the evidence of PWs 1 to 4, 9 and 11 to prove the incident apart from the medical evidence. The fact that PWs 1 to 4 sustained injuries in the incident is not disputed. It is also in a way admitted by PW14- the investigating officer that Crime No.103/1995 of the same police station was registered as a counter case to this incident on the basis of the statement given by the first accused, but, after investigation, it was referred. But, neither the First Information Statement, First Information Report or the wound certificate of first accused and third accused and the refer report showing the reason for referring the case were produced before the court by him. There is no explanation forthcoming for the same as well. Further, PW1 had no case either in Ext.P1 or at the time when he was examined that prior to the accused persons attacking him, some other incident occurred in which, third accused had attacked his father PW2.

According to him, while he was walking along the property of Unni Hassan which was situated on the opposite side of their house, the accused persons came there and first accused had stabbed him with a dagger and on seeing this, PWs 2 to 4 came one by one and accordingly, the accused persons were attacked them also. But, PWs 2 to 4 had a different case. According to them, even prior to this, the third accused had come and beat PW4 and when this was informed to PW2 and she complained of same pain, they wanted to go to hospital. So, both PWs 2, 3 and 4 were going towards the house of Unni Hassan, and at that time again, the third accused Alikkuty came and beat PW2 and when he ran away towards the house of Unni Hassan, they saw the first accused stabbing PW1 and thereafter they attacked him and PWs 3 and 4 also. But, they have no such case before the police. This was an improvement made by them at the time when they were examined before the court. They did not mention as to whether first and third accused also sustained any injuries in the incident. They denied the allegation that there was scuffle between them and in that scuffle all of them sustained injuries. But, in paragraph 26 of the judgment of the trial court, the court below had

come to the conclusion that the scuffle between the parties and intervention of second accused to remove them cannot be ruled out and it was on that basis that the benefit was given to the second accused and he was acquitted.

10. Further, the case of PW6 and 9 was that they were also coming towards the place, at that time they saw both the incidents. But, before the police, they have also no such case and according to the statement given by PW6 before the police who is also a relative of PWs 1 to 4 (brother of PW2) that, when he came there on hearing the hue and cry, he saw the first accused standing with MO2 dagger and he removed the dagger and at that time, the accused persons ran away from the place and he had produced the dagger before the police on the next day which was seized by the police. This was supported by the evidence of PW9 as well. So, under the circumstances, it will be seen that the witnesses have given a go by to the first statement given by PW1 regarding the incident, on the basis of which, Crime No.102/1995 was registered against all the accused persons. The fact that another crime was registered on the same day on the basis of the statement given by the first accused against PWs 1 to 4

was not in dispute. There was an attempt made by the accused to get their wound certificate from the hospital, but, Ext. C1 letter was produced stating that the same could not be traced. Though an attempt was made to prove the photostat copy of the wound certificate through DW1 who proved Ext.P5 to P8 wound certificates of PWs 1 to 4 that was not permitted by the court below as it was a photostat copy and the original could not be traced out though DW1 had admitted that the signature in that wound certificate was that of the Doctor who prepared the same and he can identify that handwriting and the signature. So, under the circumstances, it cannot be said that the incident had happened in the manner in which the prosecution witnesses had stated. Further, in the scene mahazar Ext.P2, it was mentioned that there were blood stains seen on the wall of that house and some stones were also seen and marks of hit with the stone on the wall were also noted. There was no explanation forthcoming from the investigating officer as to how those blood stains have come in that place. None of the witnesses had a case that any part of the incident had happened in that place so as to leave blood marks at that place. That also causes some doubt regarding the genuineness

of the prosecution case.

11. In the decision reported in **Ouseph Varkey Vs. State of Kerala [1957 KLT 526]**, it has been observed that where the same occurrence gives rise to conflicting versions and to a case and counter-case, for the court to find out the truth it is always essential that the earliest record about it should be made available to the court whether the record is based on information supplied by the prosecution or the defence. This is an elementary duty which a State prosecution has to keep in view. In that case, non production of those documents was taken as a ground for acquittal of the accused on the ground that the genesis of the incident as to how it started and culminated has not been satisfactorily explained by the prosecution. The same view has been reiterated in the decision reported in **Pylan Vs. State of Kerala [1992 (2) KLT 661]** also.

12. Further, in the decision reported in **Sudir Vs. State of M.P. [2001 (1) KLT 682 (SC)]**, the Hon'ble Supreme Court has observed that in a case where there is case and counter, it is always better that both these cases have to be tried by the same court and disposed of by the same court

simultaneously, so that, court will get an opportunity to evaluate the evidence of the witnesses in both the cases to find out the truth of the prosecution case and also who can be treated as aggressor for the purpose of finding out the real incident and also the manner in which the incident happened.

13. Further, the evidence of PWs 1 to 4 will go to show that there is no scuffle at all, but, the evidence of PWs 6 and 9 will go to show that there was scuffle between the parties. But, they were trying to conceal the real incident and they have only projected the case of the prosecution in this case alone and it is also seen from their evidence that they are related to PWs 1 to 4 as well. Further, though PW10 - another eye witness was examined, he did not support the case of the prosecution. He is a resident of that house. PW5 was also another eye witness who supposed to be an independent witness. He also did not support the case of the prosecution. PW12 is the sister of accused and daughter in law of PW2 and PW4 and she did not support the prosecution case but in a way supported the case put forwarded by the accused. So, under the circumstances, it is not safe to rely on the interested related witnesses statement alone for the purpose of coming to

the conclusion that the prosecution has proved the case against the accused persons beyond reasonable doubt. It is true that the injured sustained some grievous injuries. That alone is not sufficient to come to the conclusion that the incident happened in the manner in which it was stated by the prosecution witnesses. Unless this is proved by the prosecution beyond reasonable doubt, the accused cannot be convicted on mere surmises and assumptions alone and on the basis of suspicion alone also. If there are two views possible in respect of the same incident and one view in favour of the accused is also possible which has not been properly considered by the court below, then, the view in favour of the accused has to be taken and that benefit must be given to the accused. This principle of criminal jurisprudence has not been properly applied by the court below before coming to the conclusion that the revision petitioners have committed the offence relying on the interested testimonies of PWs 1 to 4 and 6 and 9 without corroboration from independent witness alone to convict the revision petitioners for the offence alleged. So, the courts below have erred in coming to the conclusion that prosecution had proved the case beyond reasonable doubt and

the conviction entered on that observation and finding requires interference at the hands of this court as in view of the discussions made above, it cannot be said that prosecution has proved the case beyond reasonable doubt so as to convict the revision petitioners for the offence alleged and that benefit must be given to the accused. So, the conviction entered by the court below against the revision petitioners is liable to be set aside and they are entitled to get acquittal giving them the benefit of doubt. In view of the fact that the prosecution has not proved the case beyond reasonable doubt and the revision petitioners are entitled to get acquittal, the sentence imposed by the court below is also not proper and the same is also liable to be set aside.

In the result, the revision petitioners succeed and the revision is allowed. The order of conviction and sentence passed by the court below against the revision petitioners and confirmed by the appellate court are hereby set aside and they are acquitted of the charge levelled against them giving them the benefit of doubt. They are set at liberty. The bail bond executed by them will stand cancelled. The fine amount if any remitted by them is directed to be refunded to them on making

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an application to that purpose before the court below.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge