

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

Crl.Rev.Pet.No. 1246 of 2003 (E)

**CRA 117/1996 of ADDITIONAL DISTRICT &.SESSIONS (ADHOC) FAST TRACK COURT-II ,
PATHANAMTHITTA
CC 25/1995 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA
=====**

REVISION PETITIONER/APPELLANT/ACCUSED:

**SAJI, S/O.VASU, ILLATHU VADAKKETHIL HOUSE
VALLIODE MURI, VALLICODE VILLAGE**

BY ADV. SRI.C.B.SREEKUMAR

RESPONDENT/RESPONDENT/COMPLAINANT:

**STATE OF KERALA, REPRESENTED
BY S.I. OF PLICE, PATHANAMTHITTA
BY PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16-01-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SD

K.RAMAKRISHNAN, J

Crl.R.P.No.1246 OF 2003

Dated this the 16th day of January, 2015

ORDER

Accused in CC.25/95 on the file of the Chief Judicial Magistrate Court, Pathanamthitta is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Sub Inspector of Police, Pathanamthitta police station in Crime No.50/95 of that police station under section 447 and 326 of the Indian Penal Code.

3. The case of the prosecution in nutshell was that on account of the previous enmity for the revision petitioner to the defacto complainant PW1 for engaging PW4-Bhaskaran as a coconut climber for the substitute for the revision petitioner. On 24.01.1995, at about 2.45 pm, criminally trespassed into the court-yard of Kainikkara Sree Matham House with House No.866 in Ward No.VII in Vallikkode Panchayath and inflicted injuries on PW1 with a chopper and thereby he had committed the offence punishable under sections 447 and 326 of Indian Penal Code. After investigation, final report was filed and it was taken on file as CC.No.25/95 on the file of the Chief Judicial Magistrate Court, Pathanamthitta.

4. When the revision petitioner appeared before the

court below, after hearing both sides, charge under sections 447 and 326 of Indian Penal Code was framed, and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 8 were examined and Exts.P1 to P5 and MO-1 were marked on their side. After closure of the prosecution evidence, the revision petitioner was questioned under section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution's evidence. He had further stated that he had not committed any offence and in fact he came to the property for doing work and at that time PW4 was engaged and when he questioned the same there was some scuffle occurred between PW1 and himself in which he sustained injuries and he had not committed any offence. In order to prove his case, DWs 1 and 2 were examined. After considering the evidence on record, the court below found that the evidence of Dws 1 and 2 is not helpful to prove the case of the revision petitioner and found him guilty under section 447 and 326 of Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for three years under section 326 of Indian Penal Code and also sentenced to undergo simple imprisonment for two months for the offence under section 447

of Indian Penal Code and directed the sentence is to run concurrently. Aggrieved by the same he filed CrI.Appeal No.117/1996 before the Sessions Court, Pathanamthitta, which was made over to Additional Sessions Court, (Adhoc-II) Pathanamthitta for disposal. The learned Additional Sessions Judge allowed the appeal in part, confirming the order of conviction and sentence passed by the court below under section 447 of the Indian Penal Code, but converted the conviction to one under section 324 of Indian Penal Code from 326 of Indian Penal Code and sentenced him to undergo rigorous imprisonment for six months under section 324 of Indian Penal Code and directed the sentence is to run concurrently. Aggrieved by the same, the present revision has been filed by the revision petitioner- accused before the court below.

5. Heard the counsel for the revision petitioner and the learned Public Prosecutor.

6. The counsel for the revision petitioner submitted that the evidence of PWs 1 to 3 is not sufficient to prove the case as they are interested witnesses and further the evidence of PW4 – Bhaskaran will go to show that there was no incident occurred as alleged by the prosecution and he came there, and there was some scuffle occurred between PW1 and revision

petitioner in which both sustained injuries. The evidence of DW1 will go to show that the case of the prosecution is not probable or believable and the evidence of DW2 will go to show that there was another case also registered against the same accused on the basis of the statement given by the same defacto complainant. That shows that he has been falsely implicated and being harassed by them. So, according to him, the conviction entered by the court below is not proper. Further, the learned counsel appearing the revision petitioner also submitted that if so any reasons, this court found that the conviction is proper, he prayed for leniency as regards the sentence on the ground that now the revision petitioner is suffering from serious illness.

7. The learned Public Prosecutor supported the concurrent findings of the court below.

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

PW1 the injured was a relative of PWs 2 and 3, who are the owners of the property in which the revision petitioner was working as a coconut climber. Further, the case of the prosecution was that on a particular day, the revision petitioner did not come for work and the property was managed by PW1 on behalf of PWs 2 and 3, and since the revision petitioner did

not come for work, he engaged PW4-Bhaskaran for plucking the coconuts and at that time, the revision petitioner came there and asked where Bhaskaran was and when PW1 came, he attacked him with MO-1 chopper and when he made hue and cry, PWs 2 and 3 came there and at that time he further inflicted cut injuries on him with MO-1 chopper. When PWs 2 and 3 and others came there, he threw away the chopper and left the place. PW1 was taken to hospital from where he was seen by PW5-the doctor who issued Ext.P2 wound certificate. On getting intimation regarding the incident, PW8, the head constable attached to the police station went to the hospital and recorded Ext.P1 statement of PW1, and registered Ext.P4 First Information Report as Crime No.50/95 against the revision petitioner under section 447 and 324 of Indian Penal Code. Thereafter, PW6 had undertaken the investigation and he went to the place of occurrence and prepared Ext.P3 scene mahazar and seized MO-1 chopper after describing the same in the scene mahazar in the presence of PW7 and another. During investigation, it was revealed that offence under section 326 was also committed. So, he filed a report to incorporate Section 326 of Indian Penal Code after deleting Section 324 of Indian Penal Code. He completed the investigation and submitted the final report.

9. PW1 is the injured and PWs 2 and 3 are the owners of the property and PW1 was residing with them in the house situated in the property and managing the property for on behalf of PWs 2 and 3. It is also an admitted fact that the revision petitioner was the usual coconut climber used to pluck the coconut from the property and on a particular day, he was not available and so PW1 engaged PW4-Bhaskaran for this purpose. On knowing about the same, the revision petitioner came with MO-1 chopper and called where Bhaskaran was and when PW1 came, he attacked PW1 with MO-1 chopper. Further, on hearing his hue and cry, when PWs 2 and 3 came there, he inflicted further injuries on him with MO-1 chopper and thereafter left the place, after leaving MO-1 chopper in the property itself. Though, he was cross-examined at length, nothing was brought out to discredit his evidence on this fact. Further, the evidence of PWs 2 and 3 also corroborated the evidence of PW1 on this aspect. The fact that the revision petitioner came there and asked for Bhaskaran on the date of incident was admitted by PW4 also. It was also admitted by PW4 that he came there as the substitute for the revision petitioner to pluck the coconuts and that was questioned by the revision petitioner. But he had stated that he did not see the revision petitioner inflicting injuries on PW1 but there was a

scuffle occurred between them and both of them fell down and when they got up, he saw bleeding on both. The fact that the revision petitioner came there and asked for PW4 when he came to know that he was engaged for plucking coconuts from the property as a substitute for him was proved by the evidence of PW4 as well. Further, the wound certificate will go to show that the cause of injury was given as cut with chopper (വെട്ടുകത്തികൊണ്ട് വെട്ടുകയാണ് ചെയ്തത്). Further, the evidence of PW5, the doctor will go to show that these injuries could be possible as alleged by the prosecution and he had also deposed that this could not be possible in a scuffle.

10. The evidence of DW1 is not believable as even according to him, he had witnessed the incident from the distance from one furlong away. So, courts below were perfectly justified in not relying on the evidence of DW1 to prove the case of the revision petitioner. The evidence of DW2 is also not helpful as he was examined only to prove that subsequent this incident another incident happened in which another crime was registered against the same accused. So courts below were perfectly justified in not relying on the evidence of DWs 1 and 2 adduced on the side of the defence to prove his case. Further, courts below were perfectly justified in relying on the evidence of PWs 1 to 3 coupled with the medical

evidence of PW5, and Ext.P2 wound certificate, rightly came to the conclusion that the revision petitioner had tress-passed into the property and inflicted injuries on PW1 with MO-1 chopper. Though, court below had convicted him for the offence under section 326 of Indian Penal Code, that was converted to one under section 324 of Indian Penal Code by the appellate court as no grievous injuries as defined under section 320 of Indian Penal Code was established by the prosecution. So, under the circumstances, the conviction entered by the court below for the offences under section 447 and 324 of Indian Penal Code as done by the appellate court is perfectly justifiable and there is no illegality committed by the courts below in appreciating the evidence and convicting the revision petitioner for the said offence.

11. As regards the sentence is concerned, the court below had sentenced him to undergo simple imprisonment for two months for the offence under section 447 of Indian Penal Code and further sentenced to undergo rigorous imprisonment for three years for the offence under section 326 of Indian Penal Code and directed the sentence is to run concurrently. But the appellate court had though sustained the sentence under section 447 of Indian Penal Code, since he was found guilty under section 324 of Indian Penal Code, the sentence was

modified to six months rigorous imprisonment.

12. The nature of injuries as narrated in the judgment of the appellate court does not show that they were grave in nature. They appear to be simple injuries. Further, the prosecution has no case that the revision petitioner has got any criminal background also. Now he is aged due to passage of time and the counsel for the revision petitioner submitted that he is ailing also. But considering the manner in which the offences committed, this court feels that it is not proper to confine the sentence to fine alone. But, this court feels that for the offence under section 447 of Indian Penal Code it can be confined to fine but for the offence under section 324 some substantive sentence of imprisonment with providing compensation will be sufficient and that will meet the ends of justice. So, the sentence imposed by the court below is set aside and the same is modified as follows:-

The revision petitioner is sentenced to pay a fine of Rs.500/- for the offence under section 447 of Indian Penal Code in default to undergo simple imprisonment for one month and further sentenced to undergo simple imprisonment for one week and also to pay a compensation of Rs.10,000/- to PW1 in default to undergo simple imprisonment for two months under section 357 (3) of the Code of Criminal Procedure. If the

compensation amount is recovered, the court below is directed to pay the same to PW1. Two months time is granted to the revision petitioner to deposit the amount of fine and compensation before the court below and serve the sentence. Till then the execution of sentence is directed to be kept in abeyance.

With the above modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly.

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

Sd/-
K.RAMAKRISHNAN, JUDGE

R.AV

//True Copy//

PA to Judge