

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. 1265 of 2003 ()

**Crl.A.No. 15/2000 of ADDITIONAL DISTRICT AND SESSIONS COURT (ADHOC-I),
THODUPUZHA
CC 623/1997 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II,THODUPUZHA
=====**

REVISION PETITIONERS/APPELLANTS/ACCUSED:

- 1. TOMY, S/O. THOMAS, EDATTU VEEDU
WARD NO.3, KARIMKUNNAM PANCHAYAT
KARIMKUNNAM VILLAGE**
- 2. JOYIS, S/O. THOMAS, AGED 32 YEARS
EDATTU VEED, WARD NO.3, THODUPUZHA
MUNICIPALITY, KARIMKUNNAM VILLAGE**
- 3. THOMAS, S/O. JOHN, AGED 64 YEARS, EDATTU VEEDU
WARD NO.I, KARIMKUNNAM PANCHAYAT, KARIMKUNNAM VILLAGE**
- 4. MARY @ MAMY, AGED 58 YEARS, EDATTU VEEDU
WARD NO.I, KARINKUNNAM PANCHAYAT
KARINMKUNNAM VILLAGE**

**BY ADVS.SRI.C.J.JOY
SRI.V.J.JAMES**

RESPONDENT/RESPONDENT/COMPLAINANT:

**STATE OF KERALA REPRESENTED BY THE
SUB INSPECTOR OF POLICE, KARINMKUNNAM
(CRIME NO.75/1997 OF KARIMKUNNAM POLICE STATION)
THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM**

BY PUBLIC PROSECUTOR SMT. MADHU BEN M.

**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

CrI.R.P.No.1265 OF 2003

Dated this the 16th day of January, 2015

ORDER

Accused in CC.623/1997 on the file of the Judicial First Class Magistrate Court-II, Thodupuzha, are the revision petitioners herein. They were charge sheeted by the Sub Inspector of Police, Karimkunnam, in Crime No.75/1997 of that police station for the offences under sections 452, 323, 506(ii) r/w section 34 of the Indian Penal Code.

2. The case of the prosecution in nutshell was that on account of the previous enmity for the accused persons with CW1 and others and with an intention to cause hurt to him and after making preparation to commit the offence, on 21.05.1997, at about 10.00 p.m, they criminally trespassed into the house of CW1, and infurtherance of their common intention, first accused beat him and second accused pointed the knife at him and threatened them to kill and thereby all of them have committed the offence punishable under sections 452, 323 and 506(ii) r/w section 34 of the Indian Penal Code. After investigation, final report was filed and the case was taken on file as CC.No.623/1997 on the file of the Judicial First Class Magistrate Court-II, Thodupuzha.

3. When the revision petitioners appeared before the

court below, after hearing both sides, charge under sections 452, 323 and 506(ii) r/w section 34 of the Indian Penal Code was framed, 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 8 were examined and Exts.P1 to P3 were marked on their side. After closure of the prosecution's evidence, the accused were questioned under section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution's evidence. They have further stated that they have been falsely implicated in the case. No defence evidence was adduced on their side. After considering the evidence on record, the court below found the revision petitioners guilty under sections 452, 323 and 506(ii) r/w section 34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for two years each under section 452 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for three years each under section 506(ii) of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for one year under section 323 of the Indian Penal Code and directed the sentences to run concurrently. Aggrieved by the same, the revision petitioners filed CrI.Appeal 15/2000 before the Sessions Court, Thodupuzha, which was

made over to Additional Sessions Court, (Adhoc-I), Thoudpuzha for disposal. The learned Additional Sessions Judge by the impugned judgment allowed the appeal in part, confirming the order of conviction passed by the court below, but reduced the sentence in respect of revision petitioners 1 to 3 to undergo imprisonment for three months each for each offence under sections 452, 506(ii) and 323 of the Indian Penal Code and directed the sentences to run concurrently and as regards the fourth revision petitioner is concerned, the sentence was reduced to imprisonment till rising of court and also to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month under section 452 of the Indian Penal Code and further sentence to pay a fine of Rs.500/- each and in default to undergo simple imprisonment for one month each for the offences under section 506(ii) and 323 of the Indian Penal Code. It is further ordered that if the fine is recovered, the same be paid to PW1 as compensation under section 357 (1) (b) of the Code of Criminal Procedure. Aggrieved by the same, the present revision has been filed by the revision petitioners-accused before the court below.

4. Heard the counsel for the revision petitioners and the learned Public Prosecutor.

5. The counsel for the revision petitioners submitted

that though the motive for committing the offence was alleged as a complaint filed by PWs 1 and 2 against the second revision petitioner for peeping through the window, no such complaint was produced before the court below to prove motive. Further, there were contradictions in the evidence of PWs 1 to 6, regarding the manner in which the incident occurred and that was not properly appreciated by the court below. The evidence of PWs 3 to 6, cannot be believed as they are chance witnesses and there was no proper evidence adduced on the side of the prosecution to prove their presence at that time. So, under the circumstances, courts below were not justified in relying on the interested testimonies of PWs 1 and 2 alone to prove the incident. Further, even going by the evidence of PW1, it will be seen that no offence under section 452 is attracted as he was invited to the house for a discussion and the entry was lawful and it cannot be said to be unlawful and trespass for the purpose of committing the offence so as to attract the offence 452 of the Indian Penal Code. So, according to him, the courts below were not justified in convicting the revision petitioners for the offences alleged. He had further argued having reduced the sentence in respect of fourth revision petitioner, the appellate court should have shown the same leniency in favour of the other accused persons also and he prayed for leniency if

this court did not accept the case of the revision petitioners that they are entitled for an acquittal.

6. On the other hand, the learned Public Prosecutor supported the concurrent findings of the court below on this aspect.

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

On 21.05.1997, at about 10.00 p.m, while PWs 1 and 2 were in the house, the accused persons came there with weapons like dagger and stick etc and pressed the calling bell and when PW1 came out side, second accused wanted him to come out side. But he wanted them to come inside the house for the purpose of discussion. But when he entered the house, the first accused stopped him and others threatened them by showing the weapons in their hands and caused hurt to them and when PWs 3 to 5, came there, the accused persons left the place. Thereafter, PW1 gave Ext.P1 statement, which was recorded by PW7 and registered Ext.P2 First Information Report as Crime No.75/1997 of Karimkunnamm police station under sections 452, 323 and 506(ii) r/w section 34 of the Indian Penal Code against the accused persons. Thereafter, the investigation was undertaken by PW7. He went to the place of occurrence and prepared Ext.P3 scene mahazar in the presence of PW8. He

questioned the witnesses and recorded the statement. He completed the investigation and submitted the final report.

8. The motive for committing the offence was that on a previous occasion, the second accused had pipped through the window and that was objected by the inmates of the house and he threatened them and so PWs 1 and 2 filed a complaint against the second accused regarding that incident. Estranged by the same, they came with an intention to attack PW1 is the case of the prosecution. It is true that the alleged complaint has not been proved. In the case where there were eye witnesses in the incident, non proving motive loses importance. But it may have some impact in proving the case of the prosecution, where the prosecution relies on their case mainly on circumstantial evidence. PWs 1 and 2 have categorically stated that on the fateful day at that time mentioned in the First Information Statement, the accused persons came and pressed the calling bell and PW1 came out and at that time the first accused wanted him to come out and he wanted him to come inside the house for discussion. But the first accused entered the house and slapped on his face and thereafter the second accused had threatened him with a knife in his hands stating that they would kill him and on hearing the hue and cry PWs 3 to 6 the neighbours came there and on

seeing them they ran away from the place. PW2 had corroborated the evidence of PW1 on this aspect. PWs 3 to 6 who are admittedly neighbours have stated that while they were coming through the road they happened to see the accused persons in the court-yard of the house of PW1 and they have also stated that they have seen the second accused threatening them with knife in his hands and PW6 has stated that he had seen them going out of the house along the road. Though, they were cross-examined at length, nothing was brought out to discredit their evidence on this aspect. There was no material contradictions in their evidence also on this aspect. Their presence at that place was also explained by them. It is settled law that merely because PWs 3 to 6 happened to be chance witnesses their evidence need not be discarded as such on that ground and it can be relied on by the court if the court is satisfied about their presence at the place and time to witness the incident. The reasons stated by them appears to be probable to make their presence at that place believable as well. So, under the circumstances, courts below were perfectly justified in relying on the evidence of PWs 3 to 6, to come to the conclusion that the accused persons were there in the house and threatened PW1 with by showing the knife in the hands of second accused. The evidence of PWs 1 and 2 will

go show that after entering the house, first accused had beaten him with hands and second accused had threatened with the knife and that was supported by third accused as well. Even though the entry to the house was as requested by PW1. It cannot be said to be lawful as such because they came with deadly weapons with an intention to do some crime and with a preparation for the same and even after entering the house they did not give up that preparation but prosecuted the same. So, under the circumstances, there is no merit in the submission made by the counsel for the revision petitioners that entry is lawful and as such the offence under section 452 of Indian Penal Code is not attracted. So, considering the over all evidence it cannot be said that courts below having committed any irregularity in appreciating the evidence and convicting the revision petitioners for the offence under section 452, 323 and 506(ii) r/w section 34 of the Indian Penal Code and the conviction entered by the courts below is perfectly legal and justifiable.

9. As regards the sentence is concerned, the court below had sentenced all the revision petitioners to undergo rigorous imprisonment for two years each for the offence under section 452 of the Indian Penal Code and three years each for the offence under section 506(ii) of the Indian Penal Code and

one year each for the offence under section 323 of the Indian Penal Code and directed the sentence is to run concurrently and the appellate court had reduced the sentence in respect of accused numbers 1 to 3, to simple imprisonment for three months each for all the offence and directed the same to run concurrently, but reduced the simple imprisonment for the fourth revision petitioner to imprisonment till rising of court and also to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month for the offence under section 452 of Indian Penal Code and further sentence to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month each for the offences under sections 506(ii) and 323 of Indian Penal Code and directed the fine if recovered to be paid as compensation to PW1 under section 357 (1) (b) of the Code of Criminal procedure.

10. The prosecution had no case that the accused have got any previous criminal back ground. As regards the sentence imposed on fourth revision petitioner is concerned, it cannot be said to be excessive. Considering the circumstances and also considering the fact that no grievous injuries was sustained by PW1, this court feels that the same sentence imposed on the fourth revision petitioner can be imposed on the other revision petitioners as well. So, the sentence imposed against the

revision petitioners 1 to 3 by the trial court and modified by the appellate court is set aside and the same is modified as follows:-

The sentence imposed and modified by the appellate court as regards the fourth revision petitioner is confirmed. The revision petitioners 1 to 3 are sentenced to undergo imprisonment till rising of court and also to pay a fine of Rs.500/- each and in default to undergo one month each for the offence under section 452 of Indian Penal Code and further sentenced to pay a fine of Rs.500/- each in default to undergo simple imprisonment for one month each for the offence under sections 506(ii) and 323 of Indian Penal Code and if the fine amount is realised, the same be paid to PW1 as compensation under section 357 (1) (b) of the Code of criminal Procedure. One month time is granted to the revision petitioners to remit the fine amount. Till then the execution of the 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