

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

Crl.Rev.Pet.No. 1294 of 2003 ()

**AGAINST THE JUDGMENT IN CRL.A.NO.64/2001 of SESSIONS COURT, KALPETTA
DATED 19-05-2003**

**AGAINST THE JUDGMENT IN C.C.NO.588/1997 of JUDICIAL FIRST CLASS
MAGISTRATE COURT - I, SULTHAN BATHERY DATED 23.06.2001**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**BABU @ THOMAS,
S/O.ISHO
KARIMBUMKALAYIL VEEDU,
AMMAYIPALAM,
NENMENI AMSOM, S.BATHERY TALUK.**

**BY ADVS.SRI.BABU KUMAR (BY ORDER)
SRI.C.K.MOHANAN**

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24-
02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.Rev.Pet.No.1294 of 2003 ()

APPENDIX

PETITIONER'S ANNEXURES

M.V., SCIENCE	ANNX.A	:	MEDICAL CERTIFICATE ISSUED BY DR.BIJU DM WAYANAD, INSTITUTE OF MEDICAL DTD.25.9.14.
	ANNX.B	:	TRUE PHOTOCOPY OF THE DISCHARGE SUMMARY ISSUED BY DM WAYANAD, INSTITUTE OF MEDICAL SCIENCE DATED 25.9.2014.
	ANNX.C	:	TRUE PHOTOCOPY OF THE DISCHARGE SUMMARY ISSUED BY DM WAYANAD, INSTITUTE OF MEDICAL SCIENCE DATED 17.11.2014.
	ANNX.D	:	TRUE PHOTOCOPY OF THE DISCHARGE SUMMARY ISSUED BY DM WAYANAD, INSTITUTE OF MEDICAL SCIENCE DATED 17.1.2015.
	ANNX.A1	:	TRUE PHOTOCOPY OF THE ORDER IN CC NO.588/97 OF 1ST CLASS MAGISTRATE COURT-I, S.BATHERY DT.23.6.01.
	ANNX.A2	:	TRUE PHOTOCOPY OF THE ORDER PASSED BY SESSIONS COURT, KALPETTA IN CRL.APPEAL.NO.64/01 DT.19.5.03.

RESPONDENT'S ANNEXURES

NIL

//True Copy//

P.A. To Judge

Bb

K. Ramakrishnan, J.

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Crl.R.P.No.1294 of 2003

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Dated this, the 24th day of February, 2015.

ORDER

Accused in C.C.No.588/1997 on the file of the Judicial First Class Magistrate Court - I, Sulthan Bathery is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Sub Inspector of Police, Ambalavayal in Crime No.103/1997 of Ambalavayal police station under Section 324 of Indian Penal Code.

3. The case of the prosecution in nutshell was that on 13.07.1997 at about 4.30 p.m., on the side of the Ambalavayal thodu, in front of the tea shop of the revision petitioner, with an intention to cause injury to him inflicted injury on him with a knife, a dangerous weapon and thereby, he had committed the offence punishable under Section 324 of Indian Penal Code. After investigation, final report was filed and the case was taken on file as C.C.No.588/1997 on the file of the Judicial First Class Magistrate Court - I, Sulthan Bathery.

4. When the revision petitioner appeared before the

court below, after hearing both sides, charge under Section 324 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 6 were examined and Exts. P1 to P4 and MO1 were marked on the side of the prosecution. After closure of the prosecution evidence, the revision petitioner was questioned under Section 313 of Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated, since he had questioned the illegal sand mining, he has been falsely implicated in the case. No defence evidence was adduced on his side.

5. After considering the evidence on record, the trial court found the revision petitioner guilty under Section 324 of Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for six months under Section 324 of Indian Penal Code. He filed Crl. Appeal No.64/2001 before the Sessions Court, Wayanad at Kalpetta and the learned Sessions Judge, by the impugned judgment, 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 petitioner - accused before the court below.

6. Heard the Counsel for the revision petitioner and the Public Prosecutor.

7. The Counsel for the revision petitioner submitted that the incident occurred in front of the tea shop conducted by the revision petitioner and it was admitted by PW2 that he consumed alcohol on that day and there was some altercation occurred regarding the illegal sand mining and though a suggestion was given that there was some scuffle occurred and in which he sustained injuries, that was denied by him. But, the overall circumstances will go to show that the case of the prosecution is not believable or probable and the case of the revision petitioner is probable and court below had not considered these aspects properly. Further, the injuries sustained by PW2 is not so grievous and there is no case for the prosecution that the revision petitioner had any criminal background and he is aged 51 years even at that time. Court below should have granted the benefit of Probation of Offenders Act in this case. He had also submitted that he had

produced certain documents along with Crl.M.A.No.1022/2015 which will go to show that he is suffering from hyper tension and also suffering from kidney disease and he is undergoing treatment as an inpatient. He prayed for leniency regarding sentence.

8. The concurrent findings of the court below were supported by the Public Prosecutor.

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

On 13.07.1997 at about 4.30 p.m., while the injured was trying to take sand from the Ambalavayal thodu that was objected by the revision petitioner and he wanted Rs.1,000/- for taking sand per load and there was some altercation occurred, thereafter, he went from there and came with a knife and stabbed him causing injury to his shoulder. Thereafter, he was removed by PW3 and he left the place. He was taken to hospital and he was seen by PW4, the Doctor who issued Ext.P2 wound certificate and he was referred to Medical College Hospital. While he was in the hospital, PW5 came to the hospital and recorded Ext.P1 statement given by him and came back to police station and registered Ext.P3 First

Information Report as Crime No. 103/1997 of Ambalavayal police station against the revision petitioner under Section 324 of Indian Penal Code. He had conducted the investigation. He went to the place of occurrence and prepared Ext.P4 scene mahazar in the presence of witnesses and also seized the knife which was produced by the wife of the revision petitioner after describing the same in the scene mahazar. He questioned the witnesses and recorded the statement. The further investigation was conducted by PW6, the Sub Inspector of Police who verified the investigation and submitted the final report.

10. PW1 is an alleged eye witness, but, he did not support the case of the prosecution. PW2 is the injured. He had stated that while he was trying to take sand from the Ambalavayal thodu, that was objected by the revision petitioner whose tea shop was situated near the thodu and he demanded Rs.1,000/- for each load and there was some altercation occurred. Thereafter, the revision petitioner left and came back with a knife and stabbed him with the knife. He was taken to hospital. It is true that he admitted that he was accused in one or two cases and he had also admitted that

he used to consume alcohol and on that day also he consumed alcohol. But, he denied the suggestion that the incident occurred from the courtyard of the tea shop of the revision petitioner and there was some scuffle occurred in which he sustained injuries. The evidence of PW2 was supported by the evidence of PW3 who had witnessed the incident and it was he who had taken him to hospital. Though they were cross examined at length, nothing was brought out to discredit their evidence on this aspect. Merely because PW2 was accused in some cases is not a ground to disbelieve his evidence. Further, the revision petitioner is not expected to take law into his hands even if the sand mining was illegal and he was expected to inform the same to the authorities and not to inflict injuries on him. Further, the evidence of Doctor coupled with Ext.P2 wound certificate will go to show that the injury could be caused by using weapon like MO1 knife. Though the revision petitioner had a case that he had altercation and fell down after consuming alcohol, the Doctor's evidence is not helpful to prove this case. So, under the circumstances, courts below were perfectly justified in coming to the conclusion that the revision petitioner had voluntarily caused hurt to PW2 with

MO1 knife which is a dangerous weapon and thereby, he had committed the offence punishable under Section 324 of Indian Penal Code and rightly convicted him for the said offence. The concurrent findings of the court below on this aspect do not call for any interference.

11. As far as the sentence is concerned, court below had sentenced him to undergo rigorous imprisonment for six months which was confirmed by the appellate court. He had sustained only a simple injury on the shoulder. There is no bony injury. No other evidence adduced on the side of the prosecution to prove the seriousness of the injury as well. Further, the prosecution had no case that the revision petitioner has got any previous criminal background as well. But, considering the manner in which the incident occurred, the courts below were perfectly justified in not invoking the provisions of Probation of Offenders Act in this case. But, at the same time, considering the nature of injuries sustained and also considering the documents produced by the revision petitioner before this court along with Crl.M.A.No.1022/2015 that he was admitted in the hospital and undergoing treatment for kidney disease and he is aged 64 years now, this court

feels that imprisonment can be avoided and imposing the maximum fine 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.5,000/- in default to undergo simple imprisonment for one month. If the fine amount is realised, the court below is directed to pay Rs.4,000/- to PW2 as compensation under Section 357(1)(b) of Code of Criminal Procedure. Two months time is granted to the revision petitioner to pay the fine.

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.

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[True copy]

P.A to Judge