

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

Crl.Rev.Pet.No. 1443 of 2003 ()

AGAINST THE JUDGMENT IN CRL.A.NO. 45/1999 of ADDL. SESSIONS COURT (SPL. COURT), KOTTAYAM DATED 23-05-2003

AGAINST THE JUDGMENT IN C.C.NO.120/1993 of JUDICIAL FIRST CLASS MAGISTRATE COURT, ETTUMANUR DATED 18-02-1999

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**KRISHNANKUTTY
S/O.KUMARAN,
PAYATTATTUPARAMBIL HOUSE
MANNANAM P.O.,
ATHIRAMPUZHA VILLAGE
KOTTAYAM**

BY ADV. SRI.P.CHANDY JOSEPH

RESPONDENT(S)/RESPONDENT:

- 1. STATE OF KERALA
REP.BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA**

***ADDL RESPONDENT R2 IS IMPEADED**

- 2. PURUSHAN,
S/O.VELAYUDHAN
PAITTETTUPARAMBIL HOUSE
MANNANAM P.O.,
KOTTAYAM**

*** ADDITIONAL RESPONDENT R2 IS IMPEADED AS PER ORDER IN
CRL.M.A.NO.4468/2015 DATED 13.08.2015 IN CRL.R.P.NO.1443/2003**

**R1 BY PUBLIC PROSECUTOR SMT.M.G.LISHA.
ADDL.R2 BY ADV.SHRI.PRASAD CHANDRAN**

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Bb

RAJA VIJAYARAGHAVAN V, J.

CrI.R.P.No.1443 of 2003

Dated this the 13th day of August, 2015

O R D E R

The instant revision petition is preferred under sections 397 and 401 of the Code of Criminal Procedure by the accused in C.C.No.120 of 1993 of the Judicial First Class Magistrate Court, Ettumanoor. In the said case, the petitioner was charge sheeted for having committed offence punishable under sections 452, 323, 324, 429 and 427 of the Indian Penal Code.

2. The gist of the prosecution allegation is that the petitioner, with criminal intent, inflicted injuries on PW1 and caused loss to him by trespassing into the courtyard of his house bearing No.431/XIV at Athirampuzha Panchayat in Mannanam Village at about 7.30 p.m on 09.06.1993 and beat PW1 on his left hand with a wooden reaper causing

injuries and thereafter hit him on his knee and on the lower abdomen causing pain. It is further alleged that the petitioner had committed house trespass and hit a calf aged 2 months which was tied on the sit out of the said house causing death of the said calf and thereafter committed house trespass by entering into the kitchen after demolishing its door and damaged the steel utensils kept there and thus, caused a loss of Rs.1,200/- to PW1.

3. In order to prove the case of the prosecution, PWs 1 to 10 were examined and Exts. P1 to P5 were marked. The court below on an appreciation of the evidence let in came to the conclusion that the prosecution had succeeded in proving its case beyond the shadow of reasonable doubt and the accused was sentenced to undergo simple imprisonment for 2 years under section 452 of the Indian Penal Code and simple imprisonment for 1 year each under section 324 and 429 of the Indian Penal Code and simple

imprisonment for 6 months each under sections 323 and 427 of the Indian Penal Code. The sentences were ordered to run concurrently. Against the above judgment, conviction and sentence, the petitioner herein preferred appeal before the Court of Sessions as Crl.A.No.45/1999 and as per judgment dated 23.05.2003, the learned Sessions Judge confirmed the findings of the learned magistrate and dismissed the appeal. The above conviction and sentence are challenged in this Criminal Revision Petition.

4. When the matter had come up for hearing, Crl.M.A.No.4468/2015 was filed by the petitioner seeking impleadment of PW1 as additional 2nd respondent in the Criminal Revision. The same was allowed and the 2nd respondent has entered appearance through counsel. The 2nd respondent has also filed a petition under seeking compounding of the offence under section 320 read with section 482 of the Code of Criminal Procedure. It has been

contented that the dispute between himself and the petitioner has been settled inter se, they being near relatives. It is urged that the dispute is purely personal in nature and no public rights are involved. It is further contented that the matter has been settled out of court at the instance of mediators and well wishers and that the second respondent has no subsisting grievance as against the petitioner herein. It is also submitted that the second respondent and the petitioner are immediate neighbors and co-brothers and they are living in a congenial atmosphere at present.

5. I have anxiously perused the compounding petition and have evaluated the evidence in the case and also the judgment passed by the courts below. Both the courts below have evaluated the evidence in detail and have entered into a finding of guilt concurrently. As has been held in **Narinder Singh and Ors. V State of Punjab and**

Anr. [(2014) 6 SCC 466], cases where the conviction is already recorded by the Trial Court and matters are pending before the higher courts, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the Trial Court.

6. But at the same time, it has to be borne in mind that the revision petitioner is the co brother of PW1. They have filed an affidavit before court recording the fact that the matter has been compounded. It also has to be borne in mind that the incident had occurred in the year 1993 and more than 2 decades have elapsed. When the parties have buried the hatchet among themselves and wishes to live in a congenial and friendly atmosphere, and when most of the offences are compoundable there is no reason why, this court, invoking powers under section 320 read with 482 of the Code of Criminal Procedure cannot make appropriate

modifications in the sentence imposed.

7. In view of the settlement arrived at between the parties and in view of the pendency of the matter since 1993, after confirming the conviction entered into against the petitioner, the sentence is modified as follows:

(a) The petitioner is sentenced to undergo imprisonment till rising of the court and to pay a fine of Rs.1000/- under section 452 of the Indian Penal Code and in default to undergo Simple Imprisonment for one month.

(b) The petitioner is sentenced to undergo imprisonment till rising of the court and to pay a fine of Rs.1000/- under section 324 of the Indian Penal Code and in default he shall undergo Simple Imprisonment for one month.

(c) The petitioner shall undergo imprisonment till rising of court and pay a fine of Rs.1000/- under section 429 of the Indian Penal Code and in default shall undergo Simple Imprisonment for one month.

(d) The petitioner shall pay a fine of Rs.500/- under section 427 of the Indian Penal Code and in default shall undergo Simple Imprisonment for 15 days.

In the the result, this Criminal Revision Petition is dismissed confirming the conviction and sentence but after modification of the sentence as aforesaid.

Sd/-
**RAJA VIJAYARAGHAVAN V,
JUDGE.**

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[True copy]

P.A to Judge