

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

Crl.Rev.Pet.No. 1485 of 2003 ()

**CRL.A 190/2001 of III ADDL. SESSIONS COURT, THRISSUR
CC 898/1999 of J.F.C.M.COURT, CHAVAKKAD**

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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**MANOJ, S/O. CHAKKI VELAYUDHAN,
EDASSERY BEACH, THALIKULAM.**

BY ADV. SRI.C.HARIKUMAR

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR KUM. MADHU BEN

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26-02-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

Cr1.R.P. No.1485 of 2003

Dated this the 26th day of February, 2015

O R D E R

1.The revision petitioner is the second accused in C.C No.898/1999 on the files of the Judicial First Class Magistrate's Court, Chavakkad as well as the appellant in Cr1.A. No.190/2001 on the files of the III Additional Sessions Court, Thrissur. He faced trial on a charge alleging offences punishable under Sections 341, 324 and 326 read with Section 34 of the IPC. After trial, the learned Magistrate found the revision petitioner guilty of the offences alleged against him and convicted thereunder. He was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.20,000/- and in default to undergo rigorous imprisonment for 1½ months for the offences under Section 326 of the IPC. Out of the fine amount, if realised, Rs.15,000/- would be given to P.W.1 as compensation under Section 357(1) of the Cr.P.C. No separate sentence was awarded under Sections 341 and 324 of the IPC. Feeling aggrieved, though the revision petitioner had preferred

the above appeal, the appellate court also confirmed the conviction entered and the sentence imposed on the revision petitioner as such, and dismissed the appeal. This revision petition is filed challenging the legality, propriety and correctness of the concurrent findings of conviction and sentence.

2. The prosecution case, in brief, is that on 27-8-1994 at 11 a.m., on account of previous enmity towards P.W.1, the accused 1 and 2, in furtherance of their common intention, wrongfully restrained him in front of the shop of one Subrahmanian, when he came in his bicycle. A1 gave one blow each to P.W.1 with a dangerous iron rod below his left and right knees and A2 gave blows on his right arm and left shin with the iron rod causing fracture of his left patella and dislocation of the right ulna and thereby the accused committed the offences punishable for the above offences. To prove the prosecution case, the prosecution examined P.Ws.1 to 8 and marked Exts.P1 to P4 and M.O.1 iron rod. No evidence was adduced in defence. But, when questioned under Section 313 of the Cr.P.C., the accused pleaded not guilty.

3.The learned counsel for the revision petitioner advanced arguments challenging the concurrent findings of conviction and the sentence imposed on him thereunder. The crux of the arguments advanced by him is that the court below went wrong in placing reliance on the evidence of P.Ws.1 and 2. According to the petitioner, the evidence of P.Ws.1 and 2 are contradictory and mutually destructive. So also, the seizure of M.O.1 iron rod is not reliable. It is also contended that P.W.2 is an interested witness having distant relation with P.W.1.

4.Per contra, the learned Public Prosecutor advanced arguments to justify the concurrent findings of conviction and sentence. According to him, the prosecution has succeeded in proving the charge against the accused beyond shadow of doubt. So also, the sentence imposed on the revision petitioner is proportionate with the nature and gravity of the sentence.

5.First of all, this Court must remember that jurisdiction of this Court under Sections 397 and 401 of the Cr.P.C. is confined to legality, propriety and correctness of the concurrent findings of conviction entered and sentence imposed on the

revision petitioner only. There is no scope for re-appreciation of entire evidence once again. Certainly, if the appreciation of evidence is tainted with perversity, that can be interfered with. Even if an alternative view is possible, this Court cannot substitute its own view, in lieu of the concurrent views of the courts below. This is the legal position well settled by the Apex Court through plethora of decisions.

6. Keeping the above proposition in view, let us examine the question whether there is any illegality, impropriety or incorrectness in the findings whereby the courts below concurrently entered conviction against the revision petitioner.

7. Going by the trial court judgment, it is seen that the prosecution has mainly relied on the evidence of P.Ws.1 and 2. P.W.1 is the injured who had given Ext.P1 First Information Statement. He had given evidence in terms of Ext.P1 F.I.S. He had deposed about the overtacts on him by the accused. He sustained injuries including fracture. According to P.W.1, he was beaten by the accused with an iron rod on his right hand. He had also struck him on the left abdomen. He further deposed that both

the accused were previously known to him and they were nursing enmity in their mind against him. The evidence of P.W.1 got assurance from the evidence of P.W.2. Though the revision petitioner had contended that he was an interested witness having distant relationship with P.W.1, no further materials or evidence were produced to show that P.W.2 was interested to see that the accused is convicted and sentenced thereunder for any other reason. After analysing the evidence of P.Ws. 1 and 2, the court below observed that nothing brought out to discredit their evidence and their evidence is corroborative and reliable. Their evidence further got support from medical evidence. The Doctor who treated P.W.1 was examined as P.W.6 and the wound certificate was marked as Ext.P3. The injuries spoken to by P.W.1 in evidence are noted in Ext.P3. It is stated in Ext.P3 that P.W.1 had fracture of patella, left knee and dislocation of lower end of ulna. As per Ext.P3, P.W.1 was referred to Medical College Hospital for expert treatment. There is no reason to disbelieve Ext.P3 and the evidence of P.W.6. Ext.P3 wound certificate undoubtedly discloses the offence under Section 326 of the IPC. The above evidence was further supported by the evidence of P.W.7, the

Investigating Officer, and P.W.8, the Head Constable who registered the case and conducted investigation under the supervision of P.W.7. I do not find any kind of perversity in the appreciation of evidence of P.Ws.1, 2, 6, 7 and 8. In the absence of any perversity in the appreciation of evidence, this Court is not inclined to interfere with the factual findings. The contention that the evidence of P.Ws.1 and 2 are not reliable, is liable to be rejected at the threshold and I do so.

8. Coming to the recovery of M.O.1, it is true that the only one iron rod used by the accused was recovered from the place of occurrence. But it is clearly stated in Ext.P1 F.I.S. and the statement of the witnesses before the police that the second accused ran away from the scene of occurrence with the iron rod used for inflicting injuries on P.W.1. As rightly held by the court below since the second accused ran away with the iron rod used for inflicting injuries on P.W.1 and the police could not arrest him during the stage of investigation, the non recovery of iron rod which was used by the second accused is not fatal to the prosecution case, in view of other evidence available on record to prove that the second accused gave blows on the right

arm and left shin of P.W.1 with an iron rod causing injuries including fracture on his left patella and dislocation of right ulna. There is no illegality or impropriety in any of the findings and I do not find any kind of perversity in the appreciation of evidence from which those findings have been arrived at.

9. Coming to sentence, the prison term can be imposed to secure the interest of deterrence. But deterrence does not necessarily depend on the length of the term that the offender spent behind the bars. At the same time, it is to be remembered that misplaced sympathy has no place in the criminal adjudicatory process as the same would convey wrong message to the society. So also, grievance of the victim including his pain, suffering and financial loss sustained for treatment also has to be considered seriously. On a balancing of mitigating and aggravating circumstances, this Court is inclined to take a balanced view in the matter of sentence.

10. Consequently, in supersession of the sentence imposed by the trial court and confirmed by the appellate court, the substantive sentence of rigorous imprisonment for six months imposed on

the revision petitioner will stand reduced to simple imprisonment for three months and the revision petitioner is directed to pay a compensation of Rs.20,000/- (Rupees twenty thousand only) to P.W.1 under Section 357(3) of the Cr.P.C. for the offence under Section 326 of the IPC. In default, he shall undergo simple imprisonment for two more months.

This criminal revision petition is allowed in part.

Sd/—
(K.HARILAL, JUDGE)

okb.