

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

Crl.Rev.Pet.No. 1759 of 2003 ()

AGAINST THE JUDGMENT IN CRL.A.NO.182/1999 of ADDITIONAL SESSIONS COURT,
FAST TRACK (ADHOC) NO.II, TRIVANDRUM DATED 27-06-2003

AGAINST THE JUDGMENT IN C.C.NO.107/1993 of ADDL.CHIEF JUDICIAL MAGISTRATE
COURT, TRIVANDRUM DATED 06.05.1999

REVISION PETITIONER(S)ACCUSED:

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| 1. | RAMESH, S/O. KUNJUKRISHNAN NADAR,
T.C.18/1153, THRIKKANNAPURAM WARD,
THIRUMALA VILLAGE. | | |
| 2. | SURESH, S/O. KUNJUKRISHNAN NADAR OF | DO. | DO. |
| 3. | PAVITHRAN, S/O. KUNJUKRISHNAN NADAR OF | DO. | DO. |
| 4. | GOPAN, S/O. MADHAVAN, SOCIETY ROAD OF | DO. | DO. |
| 5. | CHANDRAN, S/O.ALIYAR,
KEKKECHARUVILAKATHU VEEDU, T.C.18/1617, OF | DO. | DO. |
| 6. | SUKUMARAN, S/O.K.CHELLAPPAN, T.C.18/1029,
SOCIETY ROAD, OF | DO. | DO. |
| 7. | GANGADHANRAN, S/O. APPY, T.C.18/1035,
JAYAVILASOM VEEDU, OF | DO. | DO. |
| 8. | JAYAN, S/O. CHELLAPPAN, T.C.18/1242, OF | DO. | |

BY ADVS. SRI.S.GOPAKUMARAN NAIR (SR.)
SRI. SURAJ.T.ELANJIKKAL

RESPONDENT(S):

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

BY PUBLIC PROSECUTOR SMT.VH.JASMINE.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11-
02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Ramakrishnan, J.

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Crl.R.P.No.1759 of 2003

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Dated this, the 11th day of February, 2015.

ORDER

Accused Nos.1 to 8 in C.C.No.107/1993 on the file of the Additional Chief Judicial Magistrate Court, Thiruvananthapuram are the revision petitioners herein. The revision petitioners were charge sheeted by the Sub Inspector of Police, Poojappura police station in Crime No.80/1992 of Poojappura police station under Sections 143, 147, 148, 323, 324, 427 read with Section 149 of Indian Penal Code.

2. The case of the prosecution in nutshell was that on 25.06.1992 at about 10.30 p.m by the side of Tagore road in Trikannapuram ward while PW1 was going through that road in his motor cycle with No.KBV 686, the revision petitioners formed themselves into an unlawful assembly with the common object of attacking him and they assembled there with that object with deadly weapons like iron rod and stick and when PW1 reached there, first revision petitioner shouting that they were waiting for him and had beaten on his head with an iron rod and due to that he fell down and thereafter, revision petitioner Nos. 2 and 3 beat him with stick and others

beaten him with hands and thereafter, revision petitioner Nos. 7 and 8 broke the motor cycle and caused damage to the tune of Rs.150/- and thereby, all of them have committed the offence punishable under Sections 143, 147, 148, 323, 324, 427 read with Section 149 of Indian Penal Code. After investigation, final report was filed and it was taken on file as C.C.No.107/1993 on the file of the Additional Chief Judicial Magistrate Court, Thiruvananthapuram.

3. When the revision petitioners appeared before the court below, after hearing both sides, charge under Sections 143, 147, 148, 323, 324, 427 read with Section 149 of 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 9 were examined and Exts. P1 to P11 were marked on their side. After closure of the prosecution evidence, the revision petitioners were questioned under Section 313 of Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution evidence. They have further stated that, they have not committed any offence and they have been falsely implicated in the case on account of previous

enmity as PW1 and PW4 along with others attacked first revision petitioner and others and caused injury to him and a case was registered in respect of that incident and in order to wreck vengeance, they were falsely implicated in the case. Except marking D1 series contradictions in the evidence of PW4, no other defence evidence was adduced on their side.

4. After considering the evidence on record, the trial court convicted the revision petitioners for the offence under Sections 143, 147, 148, 149, 323, 324, and Section 427 of Indian Penal Code and convicted them thereunder and sentenced them to undergo rigorous imprisonment for three months each for the offence under Section 143 of Indian Penal Code and further sentenced to undergo rigorous imprisonment for one year each under Sections 147, 148 and 149 of Indian Penal Code and further sentenced to undergo rigorous imprisonment for six months each for the offence under Section 323 of Indian Penal Code and further sentenced to undergo rigorous imprisonment for one and half years and also to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for two months each under Section 324 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 under Section 427 of Indian Penal Code and directed the sentences to run concurrently. If is further ordered, if the fine amount is realised, an amount of Rs.5,000/- be paid to PW1 as compensation under Section 357 (1)(b) of Code of Criminal Procedure. Aggrieved by the same, they filed Crl.Appeal No.182/1999 before the Sessions Court, Thiruvananthapuram which was made over to Additional Sessions Court (Adhoc) No.II, Thiruvananthapuram for disposal and the learned Additional Sessions Judge 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 petitioners - accused before the court below.

5. Heard the Counsel for the revision petitioners and the learned Public Prosecutor.

6. The Counsel for the revision petitioners submitted that originally the case was registered under the caption 'motor occurrence' and it was long after that it was converted to an offence of assault by the accused persons. Further, the cause of injury was given by none other than the father of the

injured and according to him, one Alphonse - a police constable had come and informed him about the incident and it was on that basis he went to the place and saw his son lying on the side of the road with bleeding injury near the motor cycle and with the help of the neighbours, he took him to the hospital and it was he who gave the cause of injury to the Doctor. Further, PW2 did not support the case of the prosecution. PW4 is the co-accused along with PW1 in an incident in which, they along with others attacked the first accused and others, in which, PW1 was convicted by the trial court. Further, the Doctor also deposed that the injury could be caused in a motor accident. So, the presence of PW4 at the place of occurrence is doubtful and he cannot be relied on as he is an interested witness. So, under the circumstances, courts below have not properly appreciated the evidence and conviction entered on that basis is unsustainable in law and he prayed for acquittal. He had further submitted that if for any reason, this court found that conviction is proper, the sentence imposed is harsh and he prayed for leniency.

7. On the other hand, the learned Public Prosecutor supported the concurrent findings of the court below. The

learned Public Prosecutor submitted that the cause of injury was earlier given by the father who was not an eye witness to the incident and it will be seen from the endorsement in the First Information Statement itself that, the Head Constable who registered the crime could not question the injured as he was not in a position to give statement. Only when subsequently his statement was recorded, the real incident was brought out and it was on that basis that the investigation was conducted and the revision petitioners were booked. There is nothing to disbelieve the evidence of PWs 1, 2 and 4 in respect of the incident. So, according to the learned Public Prosecutor, the courts below have properly appreciated the evidence and the conviction entered is proper.

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

The revision petitioners and PW1 were known to each other and they were hailing from the same place. According to PW1, there was some enmity between the accused persons and himself as he had informed about the illegal manufacture of arrack by these accused and on account of that enmity, on 25.06.1992 at about 10.30.p.m when he was coming in his

motor cycle along the Tagore road at Trikannapuram and when reached near the house of PW2-John, he saw the accused persons standing there and on seeing PW1, first accused shouted at him, they were waiting for him there and beat him with an iron rod which fell on his head and due to that, he fell down from the motor cycle, at that time, accused Nos. 2 and 3 beat him with stick and others beat him with hands and accused Nos. 7 and 8 broke the glass of the motor cycle. When PWs 2 and others came there on hearing his cry, they ran away from the place after throwing the weapons. He was taken to hospital by PW3 - his father and got admitted in the Medical College Hospital from where he was seen by PW7 who issued Ext.P5 wound certificate, in which, it was mentioned as motor occurrence and the cause of injury was given by PW3 - the father of the injured. On getting Ext.P6 intimation from the hospital, PW5 - the Head Constable attached to the City Traffic police station went to Medical College Hospital and since he could not question the injured as he was not in a position to give statement and he was in an unconscious state, he had prepared Ext.P3(a) body mahazar of the injured and came back to police station and registered Ext.P3 First Information

Report as Crime No.864/1992 under the caption 'motor occurrence' and thereafter, the investigation in this case was undertaken by PW6 originally. He questioned the witnesses, he got the Ext.P1 statement by PW1 recorded by Head Constable attached to City Traffic police station after he became conscious and it was revealed that it was not a motor occurrence and he was attacked by the accused persons. So, he gave Ext.P4 report to delete the caption motor occurrence and add Sections 143, 147, 148, 149, 324 of Indian Penal Code and also showing the name of the accused persons. Since the incident occurred within the jurisdiction of Poojappura police station, he transferred the file to Poojappura police station which was received by PW8 - the Head Constable attached to that police station and he re-registered the case and registered Ext.P7 First Information Report as Crime No.80/1992 of that police station against the accused persons alleging offences under Sections 143, 147, 148, 323, 324 read with Section 149 of Indian Penal Code. Thereafter, the investigation in this case was conducted by PW9. He went to the place of occurrence and prepared Ext.P8 scene mahazar in the presence of witnesses. He seized the motor cycle as per

Ext.P9 seizure mahazar and after preparing the body mahazar, he returned the same to the owner as per a kychit. He gave Ext.P10 report showing the name and address of the accused and also during investigation, it was revealed that offence under Section 427 of Indian Penal Code was also committed. So, he gave Ext.P11 report to add that Section also in the First Information Report. He questioned the witnesses and recorded their statements and he completed the investigation and submitted the final report against the revision petitioners for the above said offences.

9. It is true that originally the case was registered under the caption 'motor occurrence' on the basis of the statement given by PW3, who is none other than the father of the injured PW1. But, it will be seen from the evidence of PW3 that, he did not see the incident and at the time when he came there, he saw the injured - his son lying near the motor cycle with bleeding injury and it was on that basis, he had given the cause of incident to the Doctor. Further, it will be seen from the evidence of PW2 and PW4 that they did not inform the cause of incident to the father of the injured as well and it is also seen from the evidence of PW5 who registered the original

First Information Report under the caption 'motor occurrence' that he could not record the statement of the injured and none were there to give the real cause of incident and so, on the basis of the information seen in Ext.P6 intimation letter received from the hospital, he registered the crime under the caption 'motor occurrence'. But, only when PW1 was questioned later after he became conscious, the real incident could be revealed. So, merely because originally it was noted as motor occurrence on the basis of the information given to the Doctor by a person who is not an eye witness to the incident is not a ground to disbelieve the entire prosecution case, if it is really revealed later that the real incident was something else not stated in the original First Information Statement.

10. Further, it will be seen from the evidence of PW2 though he turned hostile that on hearing the cry, he came outside and at that time, he saw some people beating PW1 and also heard the sound of causing damage to the motor cycle and by the time he reached there, the assailants are left the place. He had only stated that he could not see the persons as by the time they ran away from the place. So, though he

turned hostile, his evidence will go to show that it was a case of attack and not a motor occurrence. Though he turned hostile, his evidence to that extent which was corroborated by the evidence of PW1 and PW4 can be relied on for the purpose of coming to the conclusion that the cause of incident mentioned in Ext.P5 wound certificate as motor occurrence is not the real cause of incident and that it was really a case of assault.

11. Further, PW1 had deposed the manner in which he was attacked by the accused persons. He had given the name of the accused persons to the Head Constable at the time when his statement was recorded, marked as Ext.P1. It is true that it was admitted by him that he was an accused in a criminal case, in which, the allegation was that he along with PW4 and others attacked first accused and he was convicted by the trial court. But, he had stated that appeal is pending in respect of the same before the Sessions Court. That alone is not sufficient to come to the conclusion that his evidence cannot be believed. If really he was the person who attacked first accused, the possibility of those persons retreating against PW1 and getting an opportunity for the same cannot be ruled

out. Enmity on both sides is a double edged weapon and that can be applicable to both the persons. PW1 also had deposed that the accused persons were having enmity towards him and it was on account of that enmity, he was attacked.

12. It is true that PW4 was a co-accused along with PW1 in the criminal case in which, the allegation was that, they attacked the first accused in this case. But, he is a chance witness. He had categorically stated that, though he was residing two kilometers away from that place, his uncle's house was there and he was going his uncle's house on that day and that was the reason how he happened to see the incident. It is not necessary to disbelieve the evidence of chance witnesses always, if the court is satisfied with the evidence given by that witness regarding his presence at the place of occurrence at the particular time, then, there is nothing wrong for the court to rely the evidence of chance witnesses to prove the incident. So, under the circumstances, the submission made by the Counsel for the revision petitioners that the prosecution has not proved the incident as a case of assault and the motor occurrence was converted to a criminal assault case has no force on the basis of the evidence adduced on the side of the

prosecution.

13. PW7 - the Doctor who issued Ext.P5 wound certificate had categorically stated that, the injuries could be caused by a stick also though he had stated that the injury could be caused as alleged as a cause of incident mentioned in the wound certificate namely., fell from the motor cycle when motor cycle skidded. That possibility also cannot be ruled out as on account of the hit, the motor cycle would have skidded and PW1 would have fallen down and that may be the reason why the cause of injury could have been mistaken by PW3 when it was told to the Doctor. The nature of injuries mentioned in Ext.P5 wound certificate also support the case of PW1 regarding the nature of injuries stated by him. So, under the circumstances, it can be safely concluded that the prosecution has proved beyond reasonable doubt that PW1 had sustained injuries in the incident as claimed by him.

14. The fact that there were eight persons in the place was proved and all the persons have the common object of attacking PW1 is also clear from the evidence of PWs 1, 2 and 4. So, it can be safely concluded that the courts below were perfectly justified in coming to the conclusion that the accused

persons had formed themselves into an unlawful assembly for the purpose of committing riot and so, courts below were perfectly justified in convicting the revision petitioners for the offence under Sections 143 and 147 read with Section 149 of Indian Penal Code. But, as regards the offence under Section 148 of Indian Penal Code is concerned, only those persons who were holding dangerous weapon alone can be convicted for that offence. Even as per the evidence of PWs 1 and 4, only accused Nos. 1 to 3 were holding iron rod and stick and there is no evidence to show that the other persons were holding any dangerous weapon as claimed. So, only accused Nos. 1 to 3 alone can be convicted for the offence under Sections 148 of Indian Penal Code and the court below was not justified in convicting the revision petitioners 4 to 8 for the offence under Section 148 of Indian Penal Code and the same is liable to be set aside.

15. As regards the injury also concerned, those persons used dangerous weapon to attack PW1 alone can be convicted for the offence under Section 324 of Indian Penal Code and it cannot be believed for a moment that the other accused persons also share the common object for the purpose of

causing injury with the deadly weapon. So, accused Nos.1 to 3 alone can be convicted for the offence under Section 324 of Indian Penal Code as they alone had attacked him with dangerous weapon namely., iron rod and stick and even according to PWs 1 and 4, accused Nos. 4 to 8 had beaten with hands and caused pain alone. So, accused Nos. 4 to 8 cannot be held responsible for the offence under Section 324 of Indian Penal Code and they can be convicted only for the offence under Section 323 of Indian Penal Code as they have beaten him with hands. So, the conviction entered against accused Nos. 4 to 8 for the offence under Section 324 of Indian Penal Code is unsustainable in law and the same is liable to be set aside.

16. As regards the damage caused to the vehicle is concerned, it cannot be said that it was caused on account of any common object. Even according to PW1, accused Nos. 7 and 8 alone had caused damage to the vehicle and the loss caused is only Rs.150/-. So, the court below was not justified in convicting all the accused for the offence under Section 427 of Indian Penal Code and conviction to that extent as against accused Nos. 1 to 6 has to be set aside. So, the conviction

entered by the court below has to be modified as follows:

Accused Nos. 1 to 8 are convicted for the offence under Sections 143, 147 read with Section 149 of Indian Penal Code while accused Nos. 1 to 3 are convicted for the offence under Section 324 read with Section 149 of Indian Penal Code while accused Nos. 4 to 8 are convicted for the offence under Section 323 read with Section 149 of Indian Penal Code and accused Nos. 7 and 8 are convicted for the offence under Section 427 of Indian Penal Code.

17. Since the conviction has been modified as stated above, the sentence imposed by the court below is also unsustainable in law and the same is liable to be set aside and has to be modified accordingly. Considering the nature of injuries sustained, this court feels that it is not necessary to impose so harsh punishment, showing some leniency in imposing the substantive sentence and enhancing the fine will be sufficient and that will meet the ends of justice. So, accused Nos. 1 to 3 are sentenced to undergo simple imprisonment for one week and also to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for one week each for each offence under Sections 143, 147 and

148 read with Section 149 of Indian Penal Code and further sentenced to undergo simple imprisonment for one month and also to pay a fine of Rs.2,000/- each in default to undergo simple imprisonment for one month each under Sections 324 read with Section 149 of Indian Penal Code and directed the substantive sentences to run concurrently. Accused Nos. 4 to 8 are sentenced to undergo simple imprisonment for one week each and also to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for one week each for the offence under Sections 143 and 147 read with Section 149 of Indian Penal Code and further sentenced to undergo simple imprisonment for one week each and also to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for one week each for the offence under Section 323 read with Section 149 of Indian Penal Code and directed the substantive sentences to run concurrently. Accused Nos. 7 and 8 are further sentenced to pay a fine of Rs.500/- each in default to undergo simple imprisonment for one week each for the offence under Section 427 of Indian Penal Code. If the fine amount is realised, an amount of Rs.10,000/- be paid to PW1 as compensation under Section 357 (1)(b) of Code of Criminal

Procedure. The fine if any already remitted is directed to be adjusted towards the fine imposed and they need pay only the balance amount.

With the above modification of the conviction and sentence, 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