

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

Crl.Rev.Pet.No. 1949 of 2003 ()

AGAINST THE JUDGMENT IN CRL.A 599/2001 of IIIIRD ADDITIONAL SESSIONS
COURT (ADHOC) FAST TRACK NO.1, THRISSUR DATED 27-06-2003

AGAINST THE JUDGMENT IN CC 65/1999 of J.M.F.C., KUNNAMKULAM
DATED 23-11-2001

REVISION PETITIONER/APPELLANT/ACCUSED:

BAKKER, S/O. ABU,
NANTHIYANATHAYIL HOUSE,
PUNNAYOOR VILLAGE,
AKALAD DESOM,
THRISSUR DISTRICT.

BY ADVS.SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENT/RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT.V.H. JASMINE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
20-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.1949 of 2003
.....

Dated this the 20th day of February, 2015.

O R D E R

The accused in C.C.No.65/1999 on the file of the Judicial First Class Magistrate Court, Kunamkulam is the revision petitioner herein.

2. The revision petitioner was chage sheeted by the Sub Inspector of Police, Vadakkekad in Crime No.177/1998 under sections 323, 326 and 506(ii) of the Indian Penal Code. The case of the prosecution in nutshell was that on 6.12.1998 at about 4.30 p.m while PWs 1 and 3 were talking in front of Arafa Hotel at Akalad, the revision petitioner came with a tube light and beat on the head of PW1 and thereafter took an iron pipe and beat him on his left hand and when he fell down, the revision petitioner kicked on his chest and due to the attack, he sustained fracture on his left hand and thereby the the revision petitioner had committed the above said offence.

3. After investigation, final report was filed and the case was taken on file as C.C.No.65/1999 on the file of the Judicial First Class Magistrate Court, Kunnamkulam. When the revision

petitioner appeared before the court below, after hearing both sides, the learned magistrate framed charge under sections 323, 326 and 506(ii) of the Indian Penal Code against the revision petitioner 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 8 were examined and Exts.P1 to P5 and MOs 1 and 2 were marked on their side. After closure of the prosecution evidence, the revision petitioner was questioned under section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that he was brutally manhandled by the uncle of PW1 and he was admitted in the Government Hosptial, Kunnamkulam. In order to prove the same, he examined DW1 and marked Ext.D1. After considering the evidence on record, the trial court found the revision petitioner not guilty of the offences under sections 323 and 506(ii) of the Indian Penal Code and acquitted him of those charges under section 248(1) of the Code of Criminal Procedure but found him guilty under section 326 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous

imprisonment for two years and also to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for 60 days. It is further ordered that, if fine amount is realized, an amount of Rs.4,000/- be paid to PW1 as compensation under section 357 (1)(b) of the Code. Aggrieved by the same, the revision petitioner filed Crl.A.No.599/2001 before the Sessions Court, Thrissur, which was made over to the Third Additional Sessions Court (Adhoc) Fast Track-I, Thrissur 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 above revision has been filed by the revision petitioner/accused before the court below.

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

5. The counsel for the revision petitioner submitted that prosecution has failed to explain the injuries sustained by the revision petitioner, which is evident from Ext.D1 and the evidence of DW1 and this was suppressed willfully so as to suppress the genesis of the incident. So that benefit must be given to him. Further he had submitted that the sentence imposed is harsh.

6. On the other hand, the learned Public Prosecutor submitted that the prosecution has proved case against the revision petitioner beyond reasonable doubt and no interference is called for.

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

On 6.12.1998 at about 4.30 p.m while PWs 1 and 3 were standing in front of Arafa Hotel at Akalad and talking, the revision petitioner came and beat PW1 on his head with a tube light and thereafter took an iron pipe and beat him on his left hand and when he fell down, the revision petitioner kicked him on his chest. When people gathered, the revision petitioner ran away from the place. PW1 was taken to hospital and seen by PW7, who issued Ext.P3 wound certificate. On getting intimation regarding the admission of the injured in the hospital, PW6, the Head Constable attached to Vadakkekad police station went to the hospital and recorded Ext.P1 statement of PW1, who registered Ext.P2 First Information Report as Crime No.177/1998 against the revision petitioner alleging offences under sections 323, 326 and 506(ii) of the Indian Penal Code. Thereafter investigation was

undertaken by PW8, the Sub Inspector of police, Vadakkekad. He went to the place of occurrence and prepared Ext.P4 scene mahazer in the presence of the witnesses and seized MO2 series broken tube light pieces seen at the place of occurrence. He had questioned the witnesses and recorded their statements. He arrested the revision petitioner and at that time he produced MO1 pipe which he seized as per Ext.P5 seizure mahazer. He completed the investigation and submitted final report.

8. Though PWs 3 and 4 were examined as independent witnesses to the incident, they did not support the case of the prosecution. PW1 is the injured and PW2 is the relative of PW1, who was present along with PW1 at the time when the incident occurred. PW5 was also an independent witness to the incident who supported the case of the prosecution. PW1 had described the manner in which the incident occurred and the way in which the revision petitioner had attacked him. He had identified MO1 iron pipe and MO2 series as the broken pieces of the tube light used for beating him by the revision petitioner. PWs 2 and 5 had corroborated the evidence of PW1 on this aspect. Though PWs 1, 2 and 5 were cross examined at length, nothing was brought out to discredit their

evidence on this aspect. Merely because PW2 is a relative is not a ground to disbelieve his evidence unless material contradictions were brought out in his evidence or the circumstances brought out to infer his presence itself is suspicious at the place of occurrence but that had not happened in this case. PW5 had stated that he had no enmity towards the revision petitioner. So under the circumstances, the courts below were perfectly justified in relying on the evidence of PWs 1, 2 and 5 and coming to the conclusion that the revision petitioner had inflicted injury on PW1 with MO1 iron pipe and caused fracture to his left hand which is a grievous hurt as defined under section 320 of the Indian Penal Code and punishable under section 326 of the Indian Penal Code. Even if seizure of MO1 is not believable and it is not coming under section 27 of the Evidence Act, that is not going to affect the prosecution case as the evidence of PWs 1, 2 and 5 will go to show that PW1 was beaten with iron pipe which is a dangerous weapon which is likely to cause death as provided under section 326 of the Indian Penal Code and resulted in fracture, which is a grievous hurt.

The other contention raised by the revision petitioner was

that the courts below had not properly appreciated the evidence of DW1 and Ext.D1 produced on his side. In Ext.D1 the cause of injury was shown as ഇന്നു വൈകുന്നേരം 5 മണിക്ക് അകലാട് സ്കൂളിനടുത്തു വെച്ച് അബ്ദുൾറഹിമാൻ, അലി, ഹംസകുട്ടി എന്നിവർ ചേർന്ന് പെപ്പ് കൊണ്ട് അടിച്ചതിൽവെച്ച്. PW1 was not a party to the incident even as per the cause of incident given. Further in the incident mentioned, the time was 5 p.m and the place was seen Akalad school. But in this case the place of occurrence is in front of Arafa hotel and not near the school and the time of occurrence is 4.30 p.m. So, under the circumstances, it cannot be said that the revision petitioner had sustained injuries in the same transaction in which PW1 sustained injuries and so the prosecution has got any duty to explain that injury also in this case. So, under the circumstances, the courts below were perfectly justified in coming to the conclusion that the evidence adduced on the side of the revision petitioner is not sufficient to come to the conclusion that he had sustained injury in the same incident in which PW1 sustained injury. Further, the nature of cross examination also showed that he had not sustained injury in the incident or any of the person present there had attacked the revision petitioner. So

under the circumstances, the submission made by the counsel for the revision petitioner that the injury sustained by the revision petitioner had not been explained and thereby real genesis of the incident has been suppressed by the prosecution has no force. Under the circumstances, the courts below have concurrently come to the conclusion that the prosecution has proved beyond reasonable doubt that the revision petitioner voluntarily caused grievous hurt to PW1 and thereby committed the offence under section 326 of the Indian Penal Code and the courts below were perfectly justified in convicting him for the said offence and the concurrent findings of the court below on facts do not call for interference.

10. As regard the sentence is concerned, the court below had sentenced him to undergo rigorous imprisonment for two years and also pay fine of Rs.5,000/- , in default to undergo simple imprisonment for 60 days and further directed to pay Rs.4,000/- out of the fine realised be paid to PW1 as compensation under section 357(1) of the Code. The appellate court considering the sentencing policy relying on the decisions reported in **Joy v. State of Kerala** (1988 (1) KLT 815) and **Mohan Jose v. State of Kerala** (1988 (2) KLT

542) come to the conclusion that the sentence imposed is proper. Further, in this case, there is no reason stated by the revision petitioner having any enmity for committing the offence as well. Without any cause he had attacked PW1, an innocent person, and caused injury to him. So under the circumstances, and also considering the injury sustained, this Court feels that showing of too much of leniency will affect the system as such. But at the same time it is seen from the records that the revision petitioner had no previous criminal antecedents and he surrendered before the police and according to the prosecution, he had produced the weapon used for offence before the police. Considering these aspects, this Court feels that some leniency can be shown and reducing imprisonment to one year will be sufficient and that will meet the ends of justice. So the sentence is modified as follows:

The revision petitioner is sentenced to undergo rigorous imprisonment for one year and also to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for 60 days and the direction to pay compensation out of fine imposed is hereby confirmed. If the petitioner has undergone any detention as

under trial prisoner in the case, he is entitled to get set off to that period under section 428 of the Code.

With the above modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly.

Office is directed to communicate a copy of this order to the concerned court immediately

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

