

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

Crl.Rev.Pet.No. 1977 of 2003 ()

AGAINST THE JUDGMENT IN CC 344/2001 of J.M.F.C.-I,THAMARASSERY
DATED 30-05-2003

REVISION PETITIONER(S)/DEFACTO COMPLAINANT:

MUHAMMED, S/O. AHAMMEDKUTTY,
AGED 35 YEARS, MELEDATH HOUSE,
PUTHUR AMSOM,
OMASSERY DESOM

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/ACCUSED:

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1. ABDURAHIMAN P.O.,
S/O.POKKER,
PULPARAMBIL VEEDU,
PUTHUR AMSOM DESOM.
 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R,R1 BY ADV. SRI.PAUL KURIAKOSE K.
BY ADV. SRI. GITHESH. R., GOVERNMENT PLEADER.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 02-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.1977 of 2003

Dated this the 2nd day of June, 2015

ORDER

This revision petition is preferred against the judgment in C.C.No.344/2001 of Judicial Magistrate of First Class -I, Thamarassery which was charge sheeted by the Sub Inspector of Police, Koduvally for offence punishable u/s.326 IPC. The accused in the above case was acquitted by the above Court after trial.

2. The facts necessary for the indictment were that on 28.5.2001 at 8 p.m., while Pw1, the revision petitioner was proceeding through Thazhe Omassery road, the accused assaulted him with an iron rod over his forehead, head and face, as a result, he sustained serious injuries and

immediately, he was removed to Hospital. On the basis of information, Kozhuvally police registered Crime No.92/2001 and after completing investigation, the Sub Inspector of Police, Koduvally laid charge sheet u/s.326 IPC before Judicial First Class Magistrate-I, Thamarassery.

3. In the trial Court, prosecution examined PWs 1 to 9 and admitted Exts.P1 to P7 and MO1 in evidence. The incriminating circumstances brought out in evidence were denied by the accused, while questioning him u/s.313 Cr.P.C. He examined Dws 1 and 2 and marked Ext.D1, wound certificate. The trial Court after analysing the evidence, acquitted the accused u/s.248(1) Cr.P.C. Aggrieved by that, the injured approached the High Court for exercising revisional jurisdiction.

4. The learned counsel appearing for the revision petitioner contended that the major legal point highlighted by the prosecution was not considered by the Court below and acquitted the accused on misreading the defence version. The nature of injury shows that he sustained serious fractures on head and mandible which was not considered by the trial Court. The relevant evidence of PW1 and the injuries noted in Exts.P4 and P5 certificates were not considered by the Court. The judgment is cryptic, erroneous and defective, therefore, revisional jurisdiction should be exercised.

5. The revisional powers of the High Court have been discussed by the Apex Court in Pratap v. State of U.P. and others [1973 SCC (Cri.) 496], in which it is held as follows:

"29. The power of revision in criminal cases vesting in the High Court, though wide and also exercisable suo motu is a power which, generally speaking, is narrower and more limited than its appellate power, though in certain respects it has a somewhat wider scope. It is discretionary and cannot be invoked as of right such as is the case of appellate power. Broadly stated, the object of conferring revisional power on the High Court under S. 435 and S. 439, Cr.P.C. is to clothe the highest Court in a State with a jurisdiction of general supervision and superintendence in order to correct grave failure or miscarriage of justice arising from erroneous or defective orders. The error or defect may arise from mis-conception of law, irregularity of procedure, misreading of evidence, misapprehension or misconception about law or facts, mere perversity or even undue hardship or leniency. The real core of this power is that its exercise is justified only to set right grave failure of justice and not merely to rectify every error however inconsequential. Merely because the lower Court has taken a wrong view of law or misapprehended the evidence on the record cannot by itself justify interference on revision unless it has also resulted in grave injustice. It is no doubt not possible and is also not practicable to lay down any rigid test of uniform application and the matter has to be left to the sound judicial discretion of the High Court in each case to determine if it should exercise its extraordinary power of revision to set right injustice. Administration of criminal justice is as a matter of general policy of function which the State performs and private parties who may be inspired by a feeling or spirit of vengeance or vindictiveness are ordinarily not encouraged to prosecute criminal proceedings except when for

special reason the cause of justice so demands. The High Court is, therefore, ordinarily disinclined to interfere with the orders of subordinate criminal Courts in which the State is the prosecutor at the instance of private parties except where for some exceptional reason it considers proper to do so in the larger interests of justice.

6. The question of retrial has been considered by the Apex Court in Ayodhya Dube and others v. Ram Sumer Singh [1981 SC 1415], in which it is held as follows:

" The High Court referred to the judgment of this Court in *Chinnaswamy v. State of Andhra Pradesh* AIR 1962 SC 1788 after referring to the decision of this Court the High Court said, "In the instant case, we find that this is a case of non-application of mind on the part of the Court below. The probative value of the First Information Report (Ex. Ka-19.) has been entirely ignored. The individual testimony of the eye-witnesses has not been discussed and their reliable testimony has been ignored, from which it follows that material evidence has not been considered and it has been overlooked. The entire judgment is full of inconsistencies. The Court below has misquoted the evidence at some places, for example, while dealing with the copy of statement (Ex. Ka-18). The judgment consists of faulty reasoning and lack of judicial approach.

Accepted canons for appreciating evidence have been thrown to the wind the conclusions on the question of motive are against the weight of overwhelming evidence in the cases. IN our opinion, the view expressed by the Court below has resulted in grave miscarriage of justice so far as the opposite parties Uma Shanker, Girja Shanker, Gauri Shankar, Achhaibar, Jhabbar, Bansu, Ram Katal, Ayodhya Dube and Vindhyaachal are concerned. The above, in our opinion, are exceptional circumstances which compel us to order retrial of the aforesaid opposite parties."

7. The learned counsel appearing for the 1st respondent contended that there is no reason to disbelieve the defence version. There was a quarrel between the revision petitioner and the wife of the 1st respondent. In that incident, while running away from the place of occurrence, he sustained injury. To prove that, Dw1 was examined and Ext.D1 was marked. The trial Court considered the defence version and acquitted the accused, therefore no interference is necessary.

8. The revisional jurisdiction of the High Court are entirely discretionary and it can be used for the purpose of satisfying the correctness, legality or propriety of the finding and sentence or order of the courts below. For this, I have considered the records of the courts below as to whether they have committed illegality or irregularity while disposing the above case. For satisfying the correctness and legality of the findings of the courts below, I have perused the oral evidence of PW1. His evidence shows that on 28.5.2001 at 8 p.m., the accused Abdul Rahiman assaulted him with an iron rode, on his face and head at Thazhe Omassery road, as a result, he sustained a fracture on his left mandible as well as on head. The incident had happened due to the previous enmity. The accused, after beating him, threw iron rode in

the nearby paddy field. There was street light at the place of occurrence and also moon light in that night. He sustained injury on the left eyebrow, right eyebrow, depression over left zygoma, contusion on left neck, swelling of left mandible and haematoma over face. Immediately, he was admitted in a hospital. PW2 saw the incident and supported the evidence of PW1. The proportionate knowledge of the facts and the integrity of PW2 were not discussed by the trial Court. Moreover, truth and probability of the testimony and the special circumstances of the recovery of the weapon, the errors, if any, were not discussed by the trial Court. The evidence of PW1 and PW2 were not properly discussed by the learned Magistrate, while considering the incident. On the other hand, he discussed the defence evidence, without

considering the prosecution case.

9. The impact of medical evidence was not considered by the learned Magistrate. Ext.P4 is the wound certificate issued by PW8. In Ext.P4, he noticed lacerated wound over the left eyebrow, right eyebrow, depression over left zygoma, contusion on left neck, swelling of left mandible and haematoma over face. The alleged cause of injury was not discussed by the learned Magistrate. Ext.P5 is the discharge certificate issued by PW9. In the discharge certificate, the nature of fracture over the face was noticed. But, the fact that, how many days he was admitted in the hospital and who was the actual aggressor mentioned in the wound certificate were also not discussed by the trial Court and whether the accused in the above case is entitled to private defence or whether

the incident happened due to previous enmity, if that be so, the evidence of PW1 is believable or not, were not considered by the learned Magistrate.

10. The weapon was recovered on the basis of information received from PW2. What is the impact of that recovery was not discussed by the learned Magistrate. PW1 in his evidence deposed that Mo1 weapon was thrown into the nearby paddy field, immediately after the incident. PW2 took that iron rod from the paddy field and entrusted it to the police. The legal impact of that entrustment was not discussed by the learned Magistrate. He made an observation that "the identification of the property recovered by the prosecution and the manner in which PW2 is allegedly recovered the MO1 are also dubious." Without any

discussion of the evidence and legal point, the learned Magistrate misread the evidence.

11. The investigation was conducted by PW5. On the basis of information, he arrived at the place of occurrence and prepared Ext.P7 mahazar as well as the seizure mahazar. PW6 registered Ext.P6 FIR. PW7 attested Ext.P2 mahazar. From the evidence, it is clear that serious injuries were sustained by the victim, the incident was witnessed by the independent witness and the weapon used by the accused was also recovered. In such circumstances, I am of the opinion that misinterpretation has been given to the evidence in this case, which leads to miscarriage of justice. The learned Magistrate ignored the probative value of the wound certificate, MO1 weapon, the reliability of the testimony of PWs 1 and 2 and the

presence of the street light at the time of occurrence and the medical evidence on record. It shows that the judgment was full of inconsistencies and faulty reasoning. When there is miscarriage of justice, this Court can invoke the revisional jurisdiction for correcting the illegality committed by the inferior court.

12. When there is no discussion with regard to the relevant legal aspect, the matter needs reconsideration. Therefore, illegality committed by the trial Court is a serious one and therefore, the matter is remitted to the trial Court for fresh hearing, according to law. The trial Court is directed to peruse the prosecution case, wound certificate, material objects, the defence story put forward by the 1st respondent, the defence evidence and hear both parties and dispose the matter as early as

possible, at any rate, within six months from the date of receipt of a copy of this order. The parties are directed to appear before Judicial First Class Magistrate-I, Thamarassery on 17.8.2015.

Crl.R.P.is disposed of as above.

P.D. RAJAN, JUDGE.

acd

