

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

Crl.Rev.Pet.No. 1999 of 2003 ()

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AGAINST THE JUDGMENT IN CRL.A 5/2001 OF SESSIONS JUDGE, WAYANAD
KALPETTA, DATED 30-04-2003**

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AGAINST THE JUDGMENT IN CC 794/1997 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, SULTHAN BATHERY DATED 18-12-2000
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REVISION PETITIONER(S)/APPELLANTS/ACCUSED(S):

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- 1. PURUSHOTHAMAN, S/O.RAMANKUTTY,
VADASSERI VEEDU, MANGACHAL, NAMBIARKUNNU,
CHEERAL AMSOM.**
 - 2. SUKUMARAN, S/O.KITTU, NAVALKKADU VEEDU,
NAMBIARKUNNU, CHEERAL.**
 - 3. SATHYAN, S/O.KESAVAN, MUNDAPPILLIL VEEDU,
NAMBIARKUNNU.**
 - 4. KARUNAKARAN. S/O.RAMAN, IRUMBAZHICKUNNEL VEEDU,
CHEERAL AMSOM, WAYANAD DISTRICT.**

**BY ADVS.SRI.PEEYUS A.KOTTAM
SRI.P.DALBI EMMANUEL**

RESPONDENT(S)/RESPONDENTS/STATE & COMPLAINANT:

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- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
 - 2. THE SUB INSPECTOR OF POLICE,
SULTHAN BATHERY.**

BY ADV.SRI.RAJESH VIJAYAN, PUBLIC PROSECUTOR.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
08-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

K.RAMAKRISHNAN, J

CRL.M.C.NO.1999 OF 2003

Dated this the 8th day of March, 2015

O R D E R

Accused in CC.No.794/1997 on the file of the Judicial First Class Magistrate Court, Sulthan Bathery, are the revision petitioners herein.

2. The revision petitioners were charge sheeted by the Sub Inspector of Police, Sulthan Bathery in Crime No.330/1997 of Sulthan Bathery police station under section 324 read with section 34 of the Indian Penal Code.

3. The case of the prosecution in nutshell was that on 24.8.1997, at about 7.45 p.m, while PWs 1 to 5 and 10 were returning after a procession, and when they reached near the Mosque at Nambiarkunnu in Cheeral Amsom, all the accused armed with deadly weapons like stick and iron rode attacked them with the common intention to cause hurt and thereby they have committed the offence punishable under section 324 read with section 34 of the Indian Penal Code. After investigation, final report was filed and it was taken on file as CC.No.794/1997 on the file of the Judicial First Class Magistrate Court, Sulthan Bathery.

4. When the revision petitioners appeared before the court below after hearing both sides, charge under section 324

read with section 34 of the 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 11 were examined and Exts.P1 to P6 and MO1 were marked on their side. After closure of the prosecution evidence, the revision petitioners were questioned under section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution's evidence. They had further stated that they had not committed any offence and in fact the defacto complainant and others who belong to congress party after the procession attacked the accused persons and using the political influence and also escaped from the consequence of the crime registered against them a false case has been foisted against them. In order to prove the case DW1 was examined. After considering the evidence on record, the court below found the revisions petitioners guilty under section 324 read with section 34 of the Indian Penal Code and convicted them thereunder and sentenced them to pay a fine of Rs.3000/- each in default to undergo simple imprisonment for six months each. It is further ordered, if the fine amount is realised, Rs.1000/- each be paid to PWs 1 to 4 and 10 as compensation under section 357(1) (b) of the Code of Criminal Procedure. Aggrieved by the same,

they afiled Crl.Appeal 5/2001 before the Sessions' Court Wayanad at Kalpetta and the learned Sessions Judge by the impugned judgment 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 Adv.Sri.Peeyus A.Kottam, the learned counsel appearing for the revision petitioners and Sri.Rajesh Vijayan, the learned public prosecutor appearing for the State.

6. The counsel for the revision petitioners submitted that as per Ext.P1 statement, there is no allegation that other accused persons have beaten any of the injured persons. According to Ext.P1, he was beaten by the first accused alone. Further, though a common witness in the case and counter case was cited as a witness in this case also but he was not examined. So, except the interested testimony of the injured witnesses, there is no other evidence which ought not have been relied on by the court below. So, under the circumstances, according to the counsel for the revision petitioners, the conviction entered by the court below on the basis of the interested testimony without corroborating from the independent witness is unsustainable and the same is liable to be set aside.

7. On the other hand, the learned public prosecutor supported the concurrent findings of the court below on this aspect.

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

PWs 1 to 4 and 10 belong to congress party and after a procession on that day, while they were returning and when they reached the place of occurrence they heard some persons shouting 'ഓടൂ' and immediately the accused persons and others came there and attacked PW4-Noushad and others came there they were also attacked and thereafter they have driven them by showing the iron rode. When they went home and thereafter they went to hospital from where they were seen by PW7 the doctor, who issued Exts.P2 to P6 wound certificates in respect of PWs 1 to 4 and 10 respectively. On getting intimation regarding the admission of the injured in the hospital, PW8 went to the hospital and recorded Ext.P1 statement of PW1 and came back to police station and registered Ext.P7 First Information Report as Crime No.330/1997 of Sulthan Bathery police station against the four accused persons alleging offence under section 324, 326 read with section 34 of the Indian Penal Code. Earlier part of the investigation was conducted by PW9. He went to the place of occurrence and prepared the scene

mahazar and since the scene mahazar in this case and the counter case are one and the same. He had produced only a copy of the scene mahazar in this case. He questioned the witnesses and filed a report as no offence under section 326 of the Indian Penal Code was attracted to delete section 326 of the Indian Penal Code and add section 324 of the Indian Penal Code. The further investigation in this case was conducted by PW11, who verified the investigation and filed final report against the present revision petitioners.

9. DW1 was a witness examined on the side of the accused to prove that the accused persons have not committed any act and in fact one Nazar had thrown a fire ball (theepandam) and thereafter there was some scuffle occurred and in which some people fell in the drain and sustained injuries. But it was admitted by him in the cross-examination that some iron rods were seized from the place. He had denied the suggestion that he belongs to communist party of which the revision petitioners also sympathisers and workers. But he had further stated that the defacto complainant and others did not sustain any injuries that falsified by Exts.P2 to P6 wound certificates and the evidence of PW7, the doctor who examined them and issued the wound certificates. So, the court below was perfectly justified in not relying on the evidence of DW1 in

this aspect. This is a common witness alleged to be projected as a independent witness by the prosecution as well the defence counsel and projected the non examination of this witness by the prosecution as a suppression of material witness before the court. Since he was examined on the side of the defence, and the court below had considered that evidence has not reliable, it cannot be said that non examination of that witness had caused any prejudice to the accused in this case.

10. It is true that in Ext.P1, what is stated by PW1 was that while they were returning after the procession, when they reached the place of occurrence, they heard somebody shouting 'बोसो' and when he turned back he saw first accused beating PW4 -Noushad with an iron rod and when he reached there he was also beaten by him and thereafter others driven them by showing the iron rod in their hands. But when he was examined before the court he had stated that he was also beaten by others. But that alone is not sufficient to discard his evidence in toto and his evidence can be used for the purpose of coming to the conclusion that all the accused persons were present there and they have holding iron rods and they have beaten other injured persons as well. Further, the evidence of PWs 2, 3, 4 and 10, who are the other injured persons will go to show that they have been beaten by all the accused persons.

Further, the evidence of PWs 5 and 6 also will go to show that the accused persons have attacked the injured persons in this case and they have prevented them. Even assuming that first accused alone had beaten as contended by the revision petitioners, if all the revision petitioners were present with dangerous weapons and in furtherance of the common intention of attacking the injured any one of them had attacked with iron rod and caused injury, even then others can be convicted with an aid of section 34 of the Indian Penal Code as sharing the common intention and committing the crime. So, under the circumstances, courts below were perfectly justified in convicting the revision petitioners for the offence under section 324 read with section 34 of the Indian Penal Code and the concurrent findings of the court below on this aspect do not call for any interference.

11. It is submitted by the counsel for the revision petitioners that the counter case was ended in acquittal of the accused persons also. As regards the sentence is concerned, court below had only imposed fine which cannot be said to be excessive, which requires interference at the hands of this court. So the revision fails and the same is liable to be dismissed.

In the result, the revision is dismissed. Office is directed

to communicate this order to the concerned court immediately.

K.RAMAKRISHNAN, JUDGE

R.AV