

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

Crl.Rev.Pet.No. 2256 of 2003 ()

AGAINST THE JUDGMENT IN CRA 303/1998 of I ADDL.SESIONS JUDGE,
TRIVANDRUM DATED 05-07-2003

AGAINST THE JUDGMENT IN CC 806/1994 of J.M.F.C.-II,ATTINGAL
DATED 22-07-1998

REVISION PETITIONER/APPELLANT/2ND ACCUSED:

SANALKUMAR, S/O. SADANANDAN,
ROHINI BHAVAN, NJEKKADU,
CHEMMARUTHY DESOM,
CHEMMARUTHY VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI. SASTHAMANGALAM G.GOPALAKRISHNAN NAIR
SRI.R.BINDU (SASTHAMANGALAM)

RESPONDENT/RESPONDENT/COMPLAINANT:

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

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
06-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.2256 of 2003
.....

Dated this the 6th day of January, 2015.

O R D E R

The second accused in C.C.No.806/1994 on the file of the Judicial First Class Magistrate Court-II, Attingal is the revision petitioner herein. The revision petitioner along with two other accused persons were charged sheeted by the Sub Inspector of Police, Kallambalam police station in Crime No. 149/1991 under Sections 324 and 323 read with Section 34 of the Indian Penal Code.

2. The case of the prosecution in nutshell was that on 30.10.1991 at about 9.15 p.m at Njekkadu junction in Chemmaruthy village, the accused persons in furtherance of their common intention voluntarily caused hurt to PW1 while he was riding on a bicycle, first accused by inflicting an injury on the forehead by beating with the handle of a spade, second accused by beating with the same weapon causing an injury on his left shoulder and the accused by beating with an iron rod causing injuries on both his hands and further all the accused persons kicked and hit PW1 causing pain and hence committed

the offence punishable under sections 324 and 323 read with section 34 of the Indian Penal Code. After investigation, final report was filed against all the three accused persons. Originally, the case was taken on file as CC.No.563/1992 on the file of the Judicial First Class Magistrate Court-II, Attingal. The present revision petitioner was shown as third accused in that case. Since the original second and third accused including the revision petitioner were absconding, the case against the original first accused in the crime was proceeded with and it was disposed of by the judgment dated 30.11.1994. Thereafter the case against the present petitioner and the original second accused in the crime was refiled as C.C.No.806/1994. The petitioner surrendered later and when he surrendered before the court below, after hearing both sides, charge under Sections 323 and 324 read with Section 34 of the Indian Penal Code was framed against him 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 7 were examined and Exts.P1 to P8, P8(a) and Mos I and II were marked on the side of the prosecution. 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 has been falsely implicated in the case. After considering the evidence on record, the court below found the revision petitioner also guilty under section 323 and 324 read with section 34 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for one year under section 323 read with Section 34 of the Indian Penal Code and further sentenced him to undergo simple imprisonment for two years under section 324 read with section 34 of the Indian Penal Code and directed the sentences run concurrently. The revision petitioner filed Crl.A.No.303/1998 before the Sessions Court, Thiruvananthapuram, which was made over to the First Additional Sessions Court, Thiruvananthapuram for disposal and the learned Additional Sessions judge by the impugned judgment allowed the appeal in part confirming the order of conviction under sections 323 and 324 of the Indian Penal Code but reduced the sentence as follows:

The revision petitioner was sentenced to pay fine of

Rs.1,000/-, in default to undergo simple imprisonment for one month under section 323 of the Indian Penal Code and further sentenced to pay fine of Rs.5,000/-, in default to undergo simple imprisonment for two months more. It is further ordered that, if the fine amount is realized, an amount of Rs.3,000/- be paid to PW1 as compensation under Section 357(1)(b) of the Code of Criminal Procedure. Aggrieved by the same, the present revision has been filed by the revision petitioner/second accused before the court below (original third accused in the crime).

3. Heard the counsel for the petitioner and the learned Public Prosecutor.

4. The counsel for the revision petitioner submitted that the courts below had not properly appreciated the evidence and the sentence imposed is also harsh. He prayed for acquittal.

5. On the other hand, the learned Public Prosecutor submitted that the concurrent findings of the court below do not call for interference and this Court in respect of the first accused had confirmed the order of conviction and sentence passed by the court below.

6. I have gone through the concurrent findings of the court below. On going through the evidence adduced on the side of

the prosecution, the courts below were perfectly justified in coming to the conclusion that the present revision petitioner along with the other accused persons had inflicted injuries on PW1 with a dangerous weapon and also kicked him and thereby he had committed the offence punishable under section 324 and 323 read with section 34 of the Indian Penal Code. The evidence of PW1 will go to show that it was the revision petitioner along with the others, who had committed the offence. PW1 identified Mos I and II as the weapons used for commission of the offence as well. Though he was cross examined at length, nothing was brought out to discredit his evidence as well. Further MOII iron rod was seized on the basis of the confession statement given by the present revision petitioner as per Ext.P8 mahazer. So considering the circumstances and the evidence adduced, it cannot be said that the courts below have committed any illegality in coming to the conclusion that the revision petitioner had committed the offence punishable under Sections 324 and 323 of the Indian Penal Code and the conviction entered by the courts below do not call for any interference as there is no illegality has been committed by the courts below in convicting the revision

petitioner warranting interference of this Court on such concurrent findings arrived at by the court below on proper appreciation of evidence.

7. As regards the sentence is also concerned, the appellate court had only imposed fine as sentence by modifying the sentence imposed by the trial court, which cannot be said to be excessive considering the offences alleged. So there is no merit in this revision and the same is liable to be dismissed.

8. In the result, the revision fails and the same is hereby by dismissed confirming the order of conviction and sentence passed by the court below and modified by the appellate court.

Office is directed to communicate this order to the concerned court immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

