

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

**WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936**

**Crl.Rev.Pet.No. 91 of 2002 ( )**  
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**(AGAINST THE JUDGMENT IN CRL.A.NO. 321/1996 OF SESSIONS COURT,  
THIRUVANANTHAPURAM)**

**(AGAINST THE JUDGMENT IN CC.NO. 293/1992 OF JUDICIAL FIRST CLASS  
MAGISTRATE COURT-II,NEDUMANGAD)**  
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**REVISION PETITIONER/APPELLANT IN CRL.A.NO.321/96/ACCUSED IN C.C.NO.2931/92:**  
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**BABU, AGED 37 YEARS, S/O. BHASKARAN,  
RESIDING AT SINIVILASOM, MANALY, ANAPPARA,  
KOTTAKKAKOM MURI, VITHURA VILLAGE,  
THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS.SRI.P.GOPAKUMARAN NAIR  
SRI.C.S.DIAS**

**RESPONDENT/RESPONDENT/ IN CRL.A.321/96/COMPLAINT IN C.C.NO.293/1992:**  
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**STATE OF KERALA,  
REPRESENTED 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 04-02-2015, ALONG WITH CRL.R.P. NO. 361/2003, THE COURT  
ON THE SAME DAY PASSED THE FOLLOWING:**

**sts**

**K. Ramakrishnan, J.**

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**Crl.R.P.Nos.91 of 2002 & 361 of 2003**

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**Dated this, the 04<sup>th</sup> day of February, 2015.**

**O R D E R**

Accused in C.C.No.293/1992 on the file of the Judicial First Class Magistrate Court, No-II, Nedumangadu is the revision petitioner herein while the de facto complainant - injured in that case was the revision petitioner in Crl.R.P.No.361/2003. I am referring to the status of parties as referred to in the trial court judgment for convenient sake.

2. The accused in this case was charge sheeted by the Sub Inspector of Police, Vithura Police Station in Crime No.56/1992 of that police station under Section 326 and 324 of Indian Penal Code.

3. The case of the prosecution in nutshell was that on 18.06.1992 at about 3.30 p.m., when an arecanut tree standing in the property of accused fell down in the property of the de facto complainant and the accused went there to cut and remove the same, PW1 - the de facto complainant told that he would cut and remove the same and asked the accused to go out of the property. At that time, the accused inflicted a cut injury on the head of PW1 with a chopper and when PW2 - his wife intervened, he had beaten her on the back side of the

neck with the back of the chopper and on account of the cut injury, PW1 sustained grievous injuries and thereby, he had committed the offence punishable under Sections 324 and 326 of Indian Penal Code. After investigation, final report was filed and the case was taken on file as C.C.No.293/1992 on the file of the Judicial First Class Magistrate Court, No-II, Nedumangadu.

4. When the accused appeared before the court below, after hearing both sides, charge under Section 324 and 326 of Indian Penal Code was framed 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 10 were examined and Exts.P1 to P8, P1(a) and P1(b) and MO1 were marked on the side of the prosecution. After closure of the prosecution evidence, the accused was questioned under Section 313 of Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that he had not committed any offence and he has been falsely implicated in the case. While he was returning home after his work as a postman, when he reached near the place of occurrence, PW1, his wife- PW2, PW3 and others attacked him with stick and pelted stones and he

sustained severe injuries and he fell down there and he was taken to hospital by the local people. In order to escape from the same, a false case has been foisted against him by PW1 and others. He had also stated that, there were some complaints about the accounts of the temple in the property, that was questioned by him and on account of that, there was some enmity between them. That resulted in the incident. In order to prove his case, DWs 1 and 2 and Exts. D1, D2, D2(a), D3 and D3(a) were marked on his side.

5. After considering the evidence on record, the court below rejected the contentions of the accused and found him guilty under Sections 324 and 326 of Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for six months and also to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months under Section 326 of Indian Penal Code and further sentenced to undergo rigorous imprisonment for three months and also to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months under Section 324 of Indian Penal Code and directed the sentences to run concurrently. Aggrieved by the same, he filed Crl.Appeal No.321/1996 before the Sessions Court, Thiruvananthapuram and the learned

Sessions Judge by the impugned judgment allowed the appeal in part confirming the order of conviction under Sections 324 and 326 of Indian Penal Code, but, modified the sentence by sentencing him to undergo simple imprisonment for one month and also to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for one month more under Section 326 of Indian Penal Code and further sentenced to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month under Section 324 of Indian Penal Code. Aggrieved by the order of conviction and sentence passed by the trial court and modified by the appellate court, the accused filed Crl.R.P.No.91/2002 while dissatisfied with the quantum of punishment imposed by the appellate court, the de facto complainant filed Crl.R.P.No.361/2003. Since both these arose out of the same judgment, both are disposed of by this court by a common order.

6. Heard the Counsel for the revision petitioners in both the cases and the Public Prosecutor.

7. The Counsel for the accused in the lower court and revision petitioner in Crl.R.P.No.91/2002 argued that the evidence adduced on the side of the accused will go to show that he had also sustained injuries and the evidence of PW9

coupled with Ext.D1 will go to show that he was also seen by PW9 on the same day and it was on the basis of his reference that he was seen by DW1 and Exts.D1 and D2(a) were issued. No case was registered in respect of that incident. They did not make any attempt to prove the cause of injury caused to the accused also. This causes doubt regarding the genesis of the prosecution case regarding the manner in which the incident happened and that benefit ought to have been given in favour of the accused by the courts below and non application of that concept will amount to illegality and that can be corrected by the revisional court. He had also argued that MO1 chopper was not seized from the house from where he was residing as it will be seen from Ext.P1 and P2 - scene mahazar, the name of the house of the accused given was different and so, it was planted by the prosecution so as to suit the case of the prosecution and he had relied on the decision reported in **Raghubir Singh Vs. State of Rajasthan and Others [(2011) 12 Supreme Court Cases 235]** in support of his proposition. The Counsel also submitted that after considering the circumstances, the appellate court had reduced the punishment which does not require any interference as he had no bad precedent and it cannot be said that it was a pre-meditated incident as well.

8. On the other hand, the learned Public Prosecutor supported the concurrent findings of the courts below on facts and according to the learned Public Prosecutor, there is no question of law involved and no illegality has been committed by the courts below in appreciating the evidence. Exts. D1 and D2(a) and in Ext.D3, the cause of injury given was different and that gives a doubt regarding the manner in which the accused sustained injuries. Further, he had not explained as to how PW1 sustained injuries as well.

9. The Counsel for the de facto complainant who is the revision petitioner in Crl.R.P.No.361/2003 submitted that the evidence of PWs 1 to 5 proved the incident and considering the nature of injury and the manner in which the incident occurred, the sentence reduced by the appellate court is not warranted and he prayed for enhancement of sentence.

10. The prosecution relies on the evidence of PWs 1 to 5 to prove the incident. PWs 1 and 2 are the injured who are husband and wife. In Ext.P1, the case of the prosecution was that the accused and de facto complainant were neighbours and they are having properties adjacent to each other and arecanut tree from the property of the accused fell in the property of the de facto complainant and on 18.06.1992 at about 3.30 p.m.,

the accused came to their property for cutting and removing the arecanut tree and at that time, he told the accused that he need not cut and remove the same and he himself would cut and remove the same and asked the accused to go out of the property. Enraged by the same, the accused inflicted a cut injury with a chopper on the head of PW1 and on hearing the hue and cry of PW1, when PW2 came there, he attacked her also with the back side of the chopper and when PWs 3 to 5 came there, he left the place with the chopper and thereafter, PW3 took him to Vithura Police Station from where his Ext.P1 statement was recorded by PW9 and he registered Ext.P7 First Information Report as Crime No.56/1992 originally under Section 324 of Indian Penal Code against the accused. He had also prepared Ext.P1(a) body mahazar of PW1 and P1(b) body mahazar of PW2 and then, referred them to the District Hospital from where they were seen by Dr.Amina Beevi who issued Exts.P5 and P6 wound certificates respectively. Since the injuries sustained by PW1 were grievous in nature, he was referred to Medical College Hospital from where he was seen by PW7 who issued Ext.P4 photostat of discharge certificate where it is noted that he sustained depressed fracture of left parietal bone and he underwent a surgery and he was having difficulty

to speak and weakness of right upper limb. Thereafter, the investigation was conducted by PW10. He questioned the witnesses and recorded the statement. He went to the place of occurrence and prepared Ext.P2 scene mahazar in the presence of PW6 and he conducted search of the house of the accused and recovered MO1 chopper as per Ext.P3 search list. Since during investigation, it was revealed that offence under Section 326 of Indian Penal Code was committed, he gave Ext.P8 report to add that Section. He arrested the accused on 30.06.1992 and produced before court on 01.07.1992 and after remand, he was released on bail later. He completed the investigation and submitted final report.

11. When PW1 was examined before the court, he had deposed in tune with the statement given by him in Ext.P1 and further stated that, after inflicting the injuries, PW1 ran away from there after falling down and then, fell into the nearby stream and escaped. It is true that, he did not mention the fact that the accused, after inflicting injury, ran away and fell into the stream and then escaped, in Ext.P1 or when he was questioned by the investigating officer. He denied the suggestion that he along with others had attacked the accused and in order to escape from the same, the false complaint has

been given. PW2 - wife of PW1 also deposed in support of the prosecution and corroborated the evidence of PW1 regarding the manner in which the incident occurred and how she was inflicted with injury by the accused. She had also deposed that while running away from there, the accused fell down and then, got up and fell into the stream and escaped. But, this fact was not mentioned in the statement given by her before police. PWs 3 to 5 were the eye witnesses to the incident and they are neighbours also. They have also corroborated to the evidence of PWs 1 and 2 on this aspect. The only suggestion given to these witnesses was that they attacked the accused and in order to escape from the same, a false case has been foisted which they denied. Accused had no explanation as to how PW1 had sustained such a grave injury. He had no case that there was any scuffle occurred and in the scuffle, PW1 fell down and sustained injury also. No suggestion was given to the doctors who were examined regarding the manner in which the injuries seen on PW1 would have been caused also. It is true that PW9 had given Ext.D1 requisition to the Doctor, Government Hospital to examine the person to whom it was given namely., the accused. It is also true that on the basis of Ext.D1, he went to hospital and DW1 had noted certain injuries in red ink. But,

later, the cause of injury was noted as “കല്ലെറിഞ്ഞതിൽ വെച്ച്”, that was in black ink. The explanation given by DW1 for that was that, the injuries were noted immediately and the cause of injury in Ext.D2(a) - the wound certificate was recorded later and it is on that basis, it was again recorded in Ext.D1 regarding the cause of injury. Further, the nature of injuries noted in Exts.D1 and D2(a) as explained in the appellate court judgment will go to show that there are some difference in the injuries also. Further, the evidence of DW1 was discussed by the appellate court and disbelieved the evidence on the ground that there is a possibility of manipulation in preparing the wound certificate of the accused later in consultation with him. Further, DW2 was an Ayurvedic Physician who examined the accused after he was said to have been discharged from Government Hospital and proved Ext.D3 case sheet where he had noted that he was treated for Kadee Kassaruka Kshathavikaram. No injuries were noted in Ext.D1 on the low lumbar region. But, in Ext.D3, it is seen that he was treated for the same as well and the cause of injury was given as due to kicking. Further, in Ext.D3, the cause of injury was given as attacked by mob. He had never mentioned the names of PWs 1

to 5 either to DW1 or DW2 who were examined on the side of the defence to prove that he was treated for the injuries sustained in the incident.

12. It is true that in the decision reported in **Raghubir Singh Vs. State of Rajasthan and Others [(2011) 12 Supreme Court Cases 235]**, the Hon'ble Supreme Court has held that when the accused also sustained some injuries in the same incident and if those injuries were not explained by the prosecution considering the nature of injuries sustained and the manner in which the injury could have been sustained as stated by the accused if they are probable and if they were not explained by the prosecution, then, that will have to be taken note of by the court to come to the conclusion that as regards that injured is concerned, the incident would not have happened as stated by the prosecution. That was a case where one of the accused had sustained severe injuries in a free fight between group of people, in which, some of the injured had died. So, under the circumstances, when the prosecution failed to prove the grievous injuries sustained by first accused in that case was taken note of very seriously by the Hon'ble Supreme Court and that benefit was given to him as that could have been possible as exercise of private defence and that benefit must be given to

that accused. But, that was not the case here. The accused had no explanation as to how such a grave injury has been caused to PW1 in this case. So, merely because some injuries were sustained by the accused and they were not explained, if they were trivial in nature, then, that will not affect the case of the prosecution. Further, the medical evidence corroborated to the evidence of PWs 1 and 2 that the injury could be caused by a weapon like chopper. Further, sustaining fracture to the head is a grievous injury as well. The evidence of PW2 will go to show that she was attacked with MO1 chopper which is a dangerous weapon. Even assuming that there was some discrepancy in the house name from where MO1 was seized, that is not going to affect the case of the prosecution, especially, when even if the weapon of offence was not proved by the prosecution as the weapon used, but, if the medical evidence corroborates the nature of injuries sustained and the cause that has been stated by the prosecution is probable, then, that defect will not affect the case of the prosecution. So, under the circumstances, courts below were perfectly justified in convicting the accused for the offence under Sections 324 and 326 of Indian Penal Code and the concurrent findings of the courts below on this aspect do not call for any interference.

13. As regards the sentence is concerned, the trial court had sentenced the accused to undergo rigorous imprisonment for six months and also to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months under Section 326 of Indian Penal Code and further sentenced to undergo rigorous imprisonment for three months and also to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months under Section 324 of Indian Penal Code and directed the substantive sentences to run concurrently. But, the appellate court had reduced the substantive sentence under Section 326 of Indian Penal Code to one month simple imprisonment and enhanced the fine to Rs.2,000/- with default sentence of one months simple imprisonment and awarded only a fine of Rs.1,000/- and in default to undergo simple imprisonment for one month for the offence under Section 324 of Indian Penal Code.

14. It is true that sentencing policy must be followed very strictly and when grave offences have been committed unless severe punishments are provided, it will give a wrong message to the society. Showing unnecessary lenience in granting sentence for grave offences is also not justifiable and that will cause loss of confidence to the public in the criminal

justice delivery system. But, at the same time, while imposing the sentence, court also consider the circumstances under which the incident occurred also. In this case, the prosecutor had no case that the accused is having any criminal background. Further, he was a youngster working in a Central Government Department as Postman at the time when the incident occurred. It cannot be said it is a pre-meditated incident and when he came there to cut and remove the arecanut tree were fell down from his property in the property of PW1, since PW1 did not allow him to do that, he got provocation and did the act. These aspects were considered by the appellate court while imposing the sentence. So, it cannot be said that appellate court had committed any illegality in reducing the sentence and the sentence was reduced only after considering the circumstances under which the incident occurred as well. So, under the circumstances, this court feels that though sentence imposed appears to be of lesser in nature, considering the circumstances, it cannot be said that it was reduced without any basis. So, under the circumstances, this court does not feel any reason to interfere with the sentence imposed by the court below as well as it cannot be said to be a grave illegality committed by the court below and considering the

circumstances and also the circumstances in which the incident occurred and injuries sustained, it cannot be said to be unjust or improper as well. So, under the circumstances, both the revisions lack merit and the same are liable to be dismissed.

In the result, both the revisions are dismissed.

Office is directed to communicate this order to the court below at the earliest.

Sd/-  
**K.Ramakrishnan, Judge.**

Bb

*[True copy]*

*P.A to Judge*