

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

Crl.Rev.Pet.No. 2491 of 2003 (C)

**AGAINST THE JUDGMENT IN Crl. APPEAL 124/1995 of ADDITIONAL DISTRICT & SESSIONS
COURT-I (ADHOC), PATHANAMTHITTA, DATED 08-04-2003**

&

AGAINST THE JUDGMENT IN CC 269/1992 of J.M.F.C., RANNI, DATED 29-11-1995

REVISION PETITIONER(S):

1. **RAJAN,
S/o. RAMAN,
THANNINILKUNNATHIL, KUMPLAMPOIKA,
MALAYALAPPUZHA.**
2. **VIJAYAN,
S/o. KUNJUKUNJU, PURATHUVELIL HOUSE,
PUTHUSSEERIMALA, RANNY.**
3. **SANTHOSH,
S/o. SANKARAN,
KARIMALIKUNNEL HOUSE,
PUTHUSSEERIMALA, RANNY.**
4. **JOHNSON CHACKO,
S/o. CHACKO, VARIKKELIL HOUSE,
PUTHUSSEERIMALA, RANNY.**
5. **MATHEW THOMAS,
S/o. THOMAS, VRIKKELIL HOUSE,
PUTHUSSEERIMALA, RANNY.**

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENT(S):

**STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT. V.H. JASMINE

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
09-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SS

K. RAMAKRISHNAN, J.

Crl.R.P.No.2491 of 2003

Dated this the 9th day of February, 2015

ORDER

Accused Nos. 3 to 7 in C.C.No.269/1992 on the file of the Judicial First Class Magistrate Court-I, Ranny, are the revision petitioners herein. The revision petitioners along with accused Nos. 1 and 2 were charge-sheeted by the Sub Inspector of Police, Ranny, police station, in Crime No.283/1990 under Section 143, 147, 148, 149 and 324 of the Indian Penal Code.

2. The case of the prosecution in nut shell was that, on 30.11.1990 at about 1.15 p.m., the accused Nos. 3 and 4 hired the Jeep with Reg. No.KLB/9630 driven by PW2 in which PW1 was working as cleaner, at the junction leading to Anchukuzhikkakam and thereafter they stopped the vehicle near a super market from where accused Nos. 1, 2 and 5 entered the vehicle and thereafter they reached the

place of occurrence, namely Government Tea Plantation at Karikulam and at that time at the request of first accused, the vehicle was stopped and when first accused got down, 2nd accused tied a 'thorth' on the neck of PW2 and he wriggled of the same, at that time first accused hit him with a stone causing injury and 6th accused beat him with iron rod on the left side of the head and accused Nos. 3 and 4 caught hold of the neck of CW1 and first accused hit CW1 with stone and also inflicted injuries with the broken glass piece and this was done with a common object of causing injury to them. By the time accused Nos. 6 and 7 came in a car to that place and joined the attack and thereby all of them have committed the offence punishable under Section 143, 147, 148, 324 read with Section 149 of the Indian Penal Code.

3. After investigation, final report was filed and it was taken on file as C.C.269/1992 on the file of the

Judicial First Class Magistrate Court, Ranny. Since accused Nos. 1 and 2 did not appear, the case against them was split up and the case was proceeded with the revision petitioners, who were shown as accused Nos. 3 to 7 in the case. When they appeared, after hearing both sides, charge under Section 143, 147, 148, 324 read with Section 149 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 10 were examined and Exts.P1 to P7, MO1 and MO2 series were marked on the side of the prosecution. 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 evidence and they had further stated that, they had not committed any offence and since they were witnesses in the

criminal case in which PW2 was an accused and on account of that enmity they have been falsely implicated in the case. Except marked Ext.D1, the contradiction of PW1 in his 161 statement, no other defence evidence was adduced on their side. After considering the evidence on record, the trial court found the revision petitioners guilty under Section 143, 147, 148, 324 read with Section 149 of the Indian Penal Code and convicted them thereunder and sentenced them to undergo rigorous imprisonment for three months each for the offences under Section 143 and 147 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for six months each for the offence under Section 148 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for one year each for the offence under Section 324 of the Indian Penal Code and direct to run the sentence concurrently. Aggrieved by the same, they have filed Crl. Appeal

No.124/1995 on the file of the Sessions Court, Pathanamthitta, which was made over to Additional Sessions Court(Ad-hoc-I), Pathanamthitta, for disposal and the learned Additional 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 Nos. 3 to 7 before the court below.

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

5. The counsel for the revision petitioners argued that, the identity of the revision petitioners as a person who have committed the crime has not been established by the prosecution beyond reasonable doubt. The evidence of PWs 1 and 2 are contradictory to each other regarding this aspect. Further the weapon alleged to

have been used for the commission of the offence namely, iron rods were not recovered. There is no evidence to show that, there was any common object of unlawful assembly formed as alleged by the prosecution. There is no evidence to show that, the accused persons were holding any dangerous weapon, so as to attract the offence under Section 148 of the Indian Penal Code. Further no offence under Section 324 of the Indian Penal Code can be alleged against the present revision petitioners and none of the witnesses have a case that they have inflicted any injury on PWs 1 and 2. Further the investigating officer was not examined in this case and thereby prejudice has been caused to them. The learned counsel for the revision petitioners relied on the decision reported in **Abdul Majeed v. State of Kerala (2012(4) KHC 107)**, in support of his case. The counsel for the revision petitioners also submitted that, the sentence imposed is harsh.

6. On the other hand, learned Public Prosecutor supported the concurrent findings of the court below. Further the learned Public Prosecutor also submitted that, the presence of the accused persons at the place of occurrence has not been disputed by them, as it is clear from the suggestions given from PW1 and PW2 at the time of their cross examination. Further the defence case has not been established by them, by adducing any independent witnesses. So under the circumstances, non-conducting of identification parade is not fatal in this case. So according to the learned Public Prosecutor, no interference is called for.

7. The case of the prosecution as emerged from the prosecution witnesses was that, PW2 was the driver of the jeep KLB/9630 and PW1 was working as cleaner in the jeep at the relevant time. On 30.11.1999 at about 1.15 p.m., from Ittiyappara stand at Ranny, accused Nos. 3 and 4 hired

the jeep for going to Naranammoozhy and when they reached near the super market at Kannadickal, at Ranny, accused Nos. 1, 2 and 5 also got into the jeep as directed by accused Nos.3 and 4 and when they reached at Karinkulam tea plantation, first accused wanted to stop the vehicle, as he was having some stomach problem to attend the call of nature and asked PW2 to stop the jeep and when he stopped the jeep, he got down and thereafter 2nd accused attempted to strangle PW2 with a towel by tying the same around his neck by sitting from behind and when PW2 wriggled and got out of the vehicle A3 and A4 caught hold of PW1 and A2 stabbed him with an iron rod on his spine, A1 and A3 broke the glass on the left side of the jeep and took of one piece of glass marked as MO1 and stabbed PW1 on the back near his spine, while they stopped the jeep there, they saw a car near by, in which accused Nos. 6 and 7 came and they also joined the remaining accused and

assaulted them with dangerous weapons like iron rod and stones and thereby they sustained injuries. Thereafter they went away from the place and PWs 1 and 2 some how drove the jeep and on reached the place called Chethonkara, they saw PW5, near his tea shop and he took them to hospital. PW1 was admitted in Government Hospital, Ranny, but PW2 was taken to Medical College Hospital, as his injuries were grievous. On getting information regarding the admission of PW2 in Medical College Hospital, PW7 went to medical college hospital and since he could not get the statement of PW1, he registered Ext.P3 first information report as Crime No.1067/1990 of Gandhinagar police station on the basis of Ext.P4 intimation letter under Section 324 of the Indian Penal Code against identifiable persons. Since on enquiry it was revealed that, the incident occurred from Ranny, within the jurisdiction of Ranny police station, he transferred the first information report to Ranny police station, which was

received by PW8 and he re-registered Ext.P5 first information report as Crime No.668/1990 of Ranny police station for the offence under Section 324 of the Indian Penal Code against the identifiable persons. PW4 had seen PW1 and issued Ext.P1 wound certificate. PW9 had seen PW2 and issued Ext.P6 wound certificate. Investigation in this case was conducted by CW11, the Sub Inspector of Police, Ranny police station. He went to the place of occurrence and prepared Ext.P7 scene mahazar in the presence of PW10 and another and seized MO1 and MO2 series from the place of occurrence after describing the same in Ext.P7 scene mahazar. He questioned the witnesses and recorded their statements. He gave the report showing the name and address of the accused persons and also to add Sections 143, 147, 148 and 149 of the Indian Penal Code also. He completed the investigation and submitted final report of the case.

8. PWs 1 and 2 are the injured in this case. They have categorically stated that, on the fateful day, accused Nos. 3 and 4 hired their vehicle and when they reached near the super market, accused Nos. 1, 2 and 5 also joined them and they boarded in the jeep and when they reached the Government Tea Plantation/ at the place of occurrence, first accused wanted to stop the vehicle, accordingly the vehicle was stopped and thereafter they saw accused Nos. 6 and 7 came from a car which was stopped there and narrated manner in which the incident occurred. They have also stated that, the accused persons have inflicted injuries on them with iron rod, glass piece and stones. It is true that, there are some discrepancies in the evidence of PWs 1 and 2 regarding the identification made about the accused. They have also stated that they know the accused persons and they saw them on the date on which they hired the vehicle. It is also in away admitted

that, during investigation there was no evidence to show that any test identification parade was conducted. But it may be mentioned here that, the incident occurred during bright day light and the accused Nos. 1 to 5 travelled in the jeep for some distance. So there is possibility for these witnesses identifying the accused persons and registering their identity in the mind for the purpose of identifying them later. Accused Nos. 6 and 7 reached the place and they also joined the accused persons in the attack. Further the presence of these accused persons were admitted by them while cross examining these witnesses. Their suggestion was that, they were present at the place of occurrence for the purpose of handing over an amount of ₹7,000/- to one Appachan, being the value of the rubber sheets and at that time PW1 and PW2 tried to attack them with lever of the jeep and tried to snatch away the money and in that process they sustained injuries. So under the

circumstances, the non-conducting of test identification parade is not fatal in this case, especially when they have admitted their presence at the place of occurrence and they have put forward a specific case that they have been attacked by PWs 1 and 2 and in that process they sustained injuries. So merely because there is some discrepancy in making identification of each accused by the witnesses in court is not a ground to disbelieve their case in the circumstance of the case.

9. There is no dispute regarding the dictum laid down in the decision reported in **Abdul Majeed v. State of Kerala (2012(4) KHC 107)**, as that was a case where there was no proper identification and there is no acquaintance and the name of these persons were not mentioned earlier as well. Under such circumstances, this court has come to the conclusion that identification of the accused for the first time in court in the absence of

corroboration is not safe to rely on and that benefit was given to them.

10. In this case, the presence of the accused was admitted by them and they have put forward a specific case that, it was PWs1 and 2, who tried to attack them in the transaction and trying to snatch away the amount they carried and in that PWs 1 and 2 some how sustained injuries. So under the circumstances, the courts below were perfectly justified in coming to the conclusion that, the non-conducting of test identification parade is not fatal in this case and the discrepancies in the evidence of PWs 1 and 2 regarding the identity is also not much relevant, especially when the presence of the accused persons were admitted by them in the process of cross examination of the witnesses and they put forward the case that it was PWs 1 and 2 who tried to attack them and in that process PWs 1 and 2 somehow sustained injuries. So under the

circumstances, there is no merit in the submission made by the counsel for the revision petitioners that, the identity of the accused persons have not been proved beyond reasonable doubt and they are entitled to get acquittal on that ground.

11. As regards the injuries are concerned, the evidence of PWs 4 and 9 coupled with Exts.P1 and P6 wound certificates will go to show that, these injuries could be caused by stabbing with glass piece like MO1 and also with iron rod and the doctors also have deposed that these injuries could not be possible by mere falling and coming to contact with rough surface and it is also spoken to by the doctors that this could not be caused by a single incident as well. So under the circumstances, the medical evidence also proved the nature of injury sustained by PWs 1 and 2 and that will be possible by using weapon like glass piece and iron rod, which are dangerous weapons. It is true that, at

the time when PWs 1 and 2 were examined, they have stated that, at the time when accused Nos. 1 to 5 entered into the jeep, they did not see any weapon. That does not mean that, they do not have any weapon at that time. Further it is seen from the evidence of PWs 1 and 2 that, the glass of the vehicle was broken by the accused persons and that was used as weapon for attacking PWs 1 and 2. They have also stated that, accused Nos. 6 and 7, who came there in the car used iron rod and stones for beating them. Further the evidence of PW6/ the driver of the car, though he turned hostile, will go to show that accused Nos. 6 and 7 hired his car and came to the place of occurrence and stopped the car there and went for some time and thereafter they came back. Though he turned hostile, his evidence can be relied on for the purpose of proving the fact that, his car was hired by accused Nos. 6 and 7 to come to the place of occurrence. So the presence of accused Nos.

6 and 7 at the place of occurrence is also established by this evidence. Further the evidence of PW3 will go to show that, he was a chance witness, happened to see the incident. According to him, when he was coming, he saw seven persons, whom he identified the accused persons attacking PWs 1 and 2, but by the time, he reached near the jeep, they ran away from the place. Only suggestion given by him was that he was working as a rubber tapper for PW1 and he is trying to help them, but he denied the suggestion. Except that suggestion, there is no other enmity for PW3 to give any false evidence against these revision petitioners brought out. He had categorically stated that seven accused persons were there at that time. He also stated that he knew the accused persons, tried by the court below. This evidence can be believed to the extent that they have attacked PWs 1 and 2, though he may not be able to say separate overt act attributed by each accused on the

injured witnesses. So his evidence though a chance witness, when it was brought out in the evidence to prove regarding his presence at the place of occurrence is probable, there is nothing wrong to rely on the evidence of such witnesses to prove the prosecution case. Under the circumstances, non-examination of the investigating officer is not fatal in this case, especially when the presence of the accused persons was in away admitted by them in the manner in which the suggestion were given to the injured witnesses and there was no much contradiction in their evidence and the contradiction as mentioned in Ext.D1 is not material, so as to affect the prosecution case as such. So under the circumstances, courts below were perfectly justified in coming to the conclusion that, the revision petitioners formed themselves an unlawful assembly with others with a common object of attacking PW2, whom according to the accused persons was an accused in the case where he

attacked a person who is a relative of Benny @ Mathew Thomas (7th accused) and in which these accused persons were shown as witnesses and that shows that the accused persons also having some enmity with PW2 and on account of the same they came and formed an unlawful assembly at the place of occurrence and inflicted injuries with deadly weapons like iron rod and glass pieces and caused injury to them. Merely because the iron rods were not recovered is not a ground to disbelieve the case of the prosecution as such, especially when the medical evidence proved that, some of the injuries sustained by the witnesses/injured could be possible by weapon like iron rod also. So under the circumstances, courts below were perfectly justified in coming to the conclusion that the prosecution has proved beyond reasonable doubt that the revision petitioners have formed themselves an unlawful assembly with other accused persons with a common object of causing injury to

PWs 1 and 2 with deadly weapons and inflicted injuries on them using those deadly weapons and thereby they have committed the offence punishable under Section 143, 147, 148 and 324 read with Section 149 of the Indian Penal Code and the concurrent findings of the court below do not call for any interference.

12. As regards the sentence is concerned, the court below had sentenced them to undergo rigorous imprisonment for three months each for the offences under Section 143 and 147 of the Indian Penal Code for each offence and further sentenced to undergo rigorous imprisonment for six months each for the offence under Section 148 of the Indian Penal Code and also further sentenced to undergo rigorous imprisonment for one year each for the offence under Section 324 of the Indian Penal Code and directed the sentence to run concurrently and this was confirmed by the appellate court as well. The

prosecution has no case that, the revision petitioners have got any previous criminal background. The sentence imposed appears to be on little harsh. This court feels that sentencing them for rigorous imprisonment for three months each for each of the offences will be sufficient and that will meet the ends of justice. So the sentence imposed is modified as follows:

The revision petitioners are sentenced to undergo simple imprisonment for three months each for each offence under Section 143, 147, 148 and 324 of the Indian Penal Code and the sentences are directed to run concurrently. Set off is allowed for a period of detention, if any undergone by them as under trial prisoner in this case.

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

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

Sd/-

K. RAMAKRISHNAN, JUDGE

// True Copy//

P.A. to Judge

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