

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

Cr1.Rev.Pet.No. 2589 of 2003 ()

AGAINST THE JUDGMENT IN CRA 24/2002 of I ADDL. SESSIONS
COURT, THRISSUR DATED 14-08-2003
AGAINST THE JUDGMENT IN CC 118/1999 of J.M.F.C., KUNNAMKULAM
DATED 26-12-2001

REVISION PETITIONER(S)/APPELLANTS 1,2/ACCUSED 1,2:

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1. SUBASH, AGED 27 YEARS, MASON WORK,
S/O. SREEDHARAN, NAMBALATH VEETIL HOUSE,
CHAKKITHARA DESOM, VADAKKEKAD VILLAGE,
THRISSUR DISTRICT.
 2. BOSE, AGED 27 YEARS, PAINTING,
S/O. SANKARAN, KAIPPULLY VEETIL HOUSE,
CHAKKITHARA DESOM, VADAKKEKAD VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.RAJIT

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

STATE OF KEARLA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KEARLA.

PUBLIC PROSECUTOR ADV. SMT. MADHUBEN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 27-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.2589 of 2003

Dated this the 27th day of March, 2015

ORDER

The revision petitioners were accused Nos. 1 and 2 in C.C.No.118/1999 of the Judicial First Class Magistrate Court, Kunnankulam, which was charge sheeted by the Sub Inspector of Police, Vadakkekad for offence punishable u/s.143, 147, 148, 323, 324,342 r/w.Sec.149 IPC. The trial Court convicted the accused against which they preferred Crl.Appeal No.24/2002 before Sessions Court, Thrissur, which was partly allowed. Against that order, 1st and 2nd accused in the above case preferred this revision.

2. The prosecution allegation is that on 23.11.1998 at 9 p.m., all the accused formed themselves into an unlawful

assembly and committed riot with deadly weapons and wrongfully restrained PWs 1 and 2 and assaulted them with iron rode, as a result, they sustained serious injuries. On the basis of information, Vadakkekad Police registered the above crime and after completing investigation, laid charge before the Judicial First Class Magistrate Court, Kunnankulam.

3. To prove the allegation, the prosecution examined PWs 1 to 6 and marked Exts.P1 to P5 and admitted Mos 1 and 2 in evidence. The incriminating circumstances brought out in evidence were denied by the accused while questioning u/s.313 Cr.P.C. The trial Court, after analyzing the oral and documentary evidence, convicted the accused. Aggrieved by that, they preferred an appeal, in which accused 3 to 6 were acquitted.

4. The learned counsel for the revision petitioners contended that there was material contradictions in the oral testimonies of PWs 1 to 3 with regard to the incident, which was not considered by the Court below. This amounts to illegality in the findings entered by the Court below.

5. The learned Public Prosecutor strongly opposed the above contention and contended that there is no such material inconsistencies in the oral testimony and it is not necessary to interfere in the findings recorded by the Court below.

6. For ascertaining the illegality made in the wrong appreciation of the evidence, I have perused the oral testimonies of PWs 1 to 3. The oral evidence of PW1 shows that on 23.11.1998 he along with four other persons, had gone to the house of one N.M. Kunjumammed for

arranging a loan and after that at about 9 p.m., they reached at Chakkithara, the accused persons wrongfully restrained them and questioned them. But, when they proceeded further, A1 beat PW1 with iron rod, A2 beat PW2 with another iron rod, as a result both of them sustained injuries. The other accused, present there, fisted on their body. When PW1 was examined in the trial Court, he categorically narrated the overt act. PW2 supported the case of PW1. The independent witnesses would also support the case of PWs 1 and 2. No serious infirmities were pointed by the defence counsel while cross examination of these material witnesses. The trial Court and the appellate Court believed the oral testimony of these material witnesses.

7. In this context, I have considered Exts.P2 and

P3, wound certificates. PW4 is the Doctor, who examined PWs 1 and 2. The injuries noted in Ext.P2 are contusion on the left side of scapula 15 x 5 cm longitudinal shape. The injuries noted in Ext.P2 are a lacerated wound longitudinal shape 5 x .5 cm on the front of scalp parietal region and tenderness present right calf muscles. The evidence in Exts.P2 and P3 are corroborating the oral testimonies of PWs 1 and 2. PW4 in his evidence admitted Mos 1 and 2 weapons, which are sufficient for making such injuries.

8. On the basis of information, Ext.P1 statement was recorded by the S.I. Of Police. After registering the case, they proceeded with the investigation. Mos 1 and 2 are the weapons used for assaulting PWs 1 and 2, which were recovered by the investigating agency. A close analysis of the oral testimonies of PWs 1 to 4 and the

evidence of PW6 shows that PWs 1 and 2 sustained injuries with Mos 1 and 2 which was inflicted by the revision petitioners. The trial Court convicted them and the appellate Court confirmed the finding of the trial Court.

9. In the evidence of PWs 1 and 2 it is stated that the accused wrongfully restrained them, but the trial Court and the Appellate Court convicted them, u/s.342 IPC i.e. for wrongful confinement. In an offence under 341 IPC, whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person. But no such finding is recorded by the trial Court when PW1 and PW2 deposed about wrongful restraint. Therefore, I am of the view that they committed offence punishable u/s.341 r/w 34 IPC, instead

of offence punishable u/s.342.

In the result, the conviction and sentence u/s.324 r/w 34 IPC is confirmed, but the conviction and sentence u/s.342 is set aside. The revision petitioners are convicted u/s.341 IPC and sentenced to undergo simple imprisonment for one month. The sentence shall run concurrently.

The revision petition is disposed of.

P.D. RAJAN, JUDGE.

acd

