

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

Cr1.Rev.Pet.No. 2631 of 2003 ()

AGAINST THE JUDGMENT IN CRA 167/1999 of ADDITIONAL SESSIONS JUDGE
FAST TRACK COURT-I, TRIVANDRUM DATED 30-06-2003

AGAINST THE JUDGMENT IN CC 444/1995 of J.M.F.C.-I, NEDUMANGAD DATED
30.03.1999.

REVISION PETITIONER(S)/APPELLANTS 1 TO 5/ACCUSED 1 TO 3, 5 & 7:

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1. BABURAJ @ KUNJUMON,
S/O. RAGHAVAN, VEEDU NO.X/76,
MAILAMOODU, VADAKELA,
ANAD MURI, ANAD VILLAGE (A1)
 2. THULASI, S/O. RAGHAVAN, VEEDU NO.X/76, MAILAMOODU,
VADAKKELA, ANAD MURI, ANAD VILLAGE (A2).
 3. MURALI, S/O. RAGHAVAN,
VEEDU NO.X/76, MAILAMOODU, VADAKKELA, ANAD MURI,
ANAD VILLAGE (A3).
 4. ANILKUMAR @ ANI, S/O. SEELAS,
VEEDU NO.X/84 VADAKKELA, ANAD MURI,
ANAD VILLAGE (A5)
 4. GIREESAN, S/O. RAVI @ YASAYI,
LAKSHAM VEEDU, NO.VIII/930,
MANIYANKODE, ANAD MURI,
ANAD VILLAGE (A7)

BY ADV. SRI.D.KISHORE

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

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

PUBLIC PROSECUTOR ADV. SMT. MADHUBEN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 26-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No. 2631 of 2003

Dated this the 26th day of March, 2015

ORDER

This revision petitioners were accused in C.C.No.444/1995 of Judicial First Class Magistrate-I, Nedumangad, which was registered for offences punishable u/s.143, 147, 148, 452, 323, 324, 427 and 380 r/w 149 IPC against A1 to A15. The trial Court convicted and sentenced A1 to A3, 5, 7, 8 and 11 u/s.452 and 324 IPC and acquitted under S.380 of IPC. A4, A12, A13, A14 and A15 were acquitted by the trial Court.

2. The prosecution allegation was that on 20.2.1995 at 2 a.m., A1 to A15 formed themselves into an unlawful assembly with deadly weapons like chopper, sword, 'kuruvadi' etc. and in furtherance of their common object, they

trespassed into the house of PW1 and A5 pushed him and A1 beat with a kuruvadi to PW2, A3 beat with the handle of sword to PW3, and they trespassed into the house of PW3, committed theft of ₹5001/-, and A1 beat with the handle of a sword to PW3 and pushed her down. Thereafter, they trespassed into the house of PW4 and A1 caught hold of her ear stud and A1 snatched the gold chain from the neck of PW4 and all the accused together destroyed the household articles in furtherance of their common object and thereby committed the offence.

3. In the incident, Valiyamala Police registered Crime No.78/1995 under the above Sections and after investigation laid charge before the Judicial First Class Magistrate Court-I, Nedumangad.

4. The accused 6, 9, 10 were absconding, so that

their case was split up by the trial Court. The prosecution examined PWs1 to 16 and marked Exts.P1 to P9 and admitted Mos 1 in evidence. The incriminating circumstances brought out in evidence were denied by them while questioning u/s.313 Cr.P.C. Exts.D1 to D3 were marked by the defence counsel while cross examination of PW3 and PW10. The trial Court after analysing the evidence, convicted A1 to A3, 5, 7, 8 and 9 and sentenced accordingly. On appeal, Sessions Court dismissed the case against A1 to A3, 5 and 7 and so far as the appeal relates to A8 and A11 was allowed by the Appellate Court. Hence, A1 to A3, 5 and 7 approached this Court.

5. The learned counsel for the revision petitioners contended that the evidence of PWs 1 to 5 are not admissible in evidence, since they are interested witnesses.

The material contradictions in Exts.D1 to D4 were not considered by the trial Court while disposing the above case. The major discrepancies and contradictions in the evidence on material witnesses were not considered, which led to the illegality in the finding. Moreover, the motive alleged by the prosecution is also not proved. Therefore, the above illegalities are to be rectified by invoking revisional jurisdiction.

6. The learned Public Prosecutor strongly resisted the above contention and contended that major contradictions were not highlighted in the oral testimony of the occurrence witnesses. When there is direct oral testimony of the occurrence witnesses, it is immaterial to go to the minor contradictions, which will not affect the credibility of the prosecution. No reasons are found in

this case to interfere in the findings recorded by the courts below.

7. For satisfying the correctness and legality and propriety of the finding and sentence passed by the courts below, I have considered the rival contentions put forward by both the counsel and perused the oral and documentary evidence. The incident was occurred at 2 a.m. in the night. The prosecution examined PW1 as the main witness to prove the occurrence. Analysing the oral testimony of PW1, it is found that on 20.2.1995 at 2 a.m., the accused trespassed into her house after breaking the door of the house and then A1 pushed her on the ground, when PW2, her daughter intervened, then A1 beat her with a stick on her abdomen and thus she sustained injury. Thereafter, he committed mischief by damaging the door of the house,

windows, mirror, tube lights and bulbs. This direct oral testimony was supported by PW2. The learned defence counsel cross examined these witnesses. Nothing has been brought out to discredit the oral testimony of PWs 1 and 2. Since the incident was occurred in the night, they deposed that they saw the accused in the kerosene light. The narration of incident made by the prosecution witnesses shows that no infirmity attached to their direct oral evidence.

8. The trial Court and the appellate Court believed the oral testimony of PWs 1 and 2. They identified A1 to A8. When witnesses identified the accused persons in the night, no reasons are brought out before me to discredit their evidence. Therefore, their evidence is admissible. PW3 to PW5 also gave similar evidence in tune of PWs 1

and 2. PWs 4 and 5 were also supported. Even though these witnesses were cross examined by the defence counsel, no infirmity pointed out by them in their cross examination. Exts.D1 to D3 were marked by cross examination of PW3, which will not affect the credibility of the prosecution case. Therefore, the occurrence was properly proved.

9. The doctor, who treated the injured, was examined as PW15. His evidence show that he examined PW2 on 22.2.1995. The wound certificates were marked as Exts.P7, P8 and P9. In Ext.P7, the injuries were sustained the abdomen by 'kuruthadi', beat on the face. In Ext.P8, the injuries were noted due to blunt portion of sword and in Ext.P9, the injuries were noted due to forceful push, there is a pain on the right side of buttock. This medical

evidence is supporting the oral testimony of PWs 1 to 5.

10. On the basis of information, PW14 arrived at the place of occurrence on 21.2.1995 and prepared Ext.P3 scene mahazar. He also prepared Exts.P4, P5 and P6 report, after completing the investigation, he laid the charge sheet before the Court. The Police officers, who participated in the investigation were examined as PW13, 14 and 16. Analyzing the oral testimony, it is found that no reasons are highlighted before me to discard the above evidence. The Court below rightly convicted A1 to A3, 5 and 7 by imposing fine alone. I am of the view that a lenient view was taken by the trial Court. I do not find any reason to interfere in the finding recorded by the Courts below. Accused Nos.8 and 11 were acquitted by the appellate Court. Therefore, the conviction and sentence

passed by the trial Court against A1 to A3, 5 and 7 are only to be confirmed. There is no merit in this revision petition and it is dismissed accordingly.

The petitioners are directed to surrender before Judicial First Class Magistrate Court-I, Nedumangad for receiving sentence, failing which non bailable warrant shall be issued forthwith. Bail bonds are hereby cancelled.

P.D. RAJAN, JUDGE.

acd

