

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Crl.Rev.Pet.No. 359 of 2006 ()

AGAINST THE JUDGMENT IN CRA 71/1998 of II ADDL. SESSIONS COURT,
TRIVANDRUM

AGAINST THE JUDGMENT IN SC 58/1996 of ASSISTANT SESSIONS COURT,
NEYATTINKARA

REVISION PETITIONER(S)/PETITIONER/IST APPELLANT/IST ACCUSED:

VIJAYAN, S/O. MARKOSE,
CHERUPARA PUTHEN VEEDU, NEAR I.G.O.CHURCH, CHEMBOOR
KEEZHAROOR VILLAGE.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
OFFICE OF THE ADVOCATE GENERAL, HIGH COURT BUILDINGS
ERNAKULAM, (SUB INSPECTOR OF POLICE, VELLARADA).

R1 BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 03-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 3rd day of September, 2015

ORDER

The revision petitioner was the first accused in S.C. No. 58 of 1996 on the files of the Assistant Sessions Court, Neyyattinkara.

2. The revision petitioner and the other accused were convicted by the trial Court under Section 307 read with Sec. 34 of IPC. Each of them was sentenced to rigorous imprisonment for six years and a fine of Rs. 3000/- each by the trial Court. The revision petitioner along with other three accused filed appeal before the Sessions Court challenging the aforesaid conviction and sentence. The II Addl. Sessions Court, Thiruvananthapuram as per judgment dated 5-09-2005 in Crl.Appeal No. 71 of 1998 acquitted accused Nos.2 to 4. However, the revision petitioner, who was the first accused, was convicted by the court below under Sec.324 read with

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Section 34 IPC modifying the conviction under Section 307 IPC. The revision petitioner was sentenced to rigorous imprisonment for one year and a fine of Rs. 3,000/-with a default clause for simple imprisonment for three months under Section 324 IPC. Aggrieved by the said conviction and sentence, the first accused before the trial Court has come up with this revision petition.

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

4. Before the trial court, PW1 to PW10 were examined and Exts. P1 to P10 were marked. No evidence was adduced by the defence.

5. The prosecution case is that during the night of 22-3-1993, the revision petitioner and the other three accused forcibly administered acid to PW1 and as a consequence, she sustained serious injuries. It was alleged that the attempt of the petitioner and the other accused was to commit the murder of PW1. The solitary evidence available before the Court with regard to the occurrence is the

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evidence of PW1. PW1 stated that on 22-3-1993 at about 12 p.m., when she woke up on hearing a sound, she saw all the four accused in her bed room. The fourth accused directed the other accused to kill PW1. At that time, PW1 cried aloud. The 2nd and the 3rd accused caught hold of the hands of PW1 and at that time the first accused attempted to pour acid in to her mouth forcibly. She resisted, and as a result, the acid spilled outside. The spilt acid fell on her chest and face and she sustained serious injuries. The lower appellate court acquitted accused Nos. 2 to 4 disbelieving the evidence of PW1. However, the lower appellate Court convicted the revision petitioner under Section 324 IPC relying on the same evidence of PW1. No appeal has been filed challenging the acquittal of accused Nos. 2 to 4. If the version of PW1 is believed, all the accused together had committed the offence. It has been rightly argued by the learned counsel for the revision petitioner that it is not probable that the revision petitioner alone could forcibly administer acid to the victim. It is also to be noted that the child of PW1 was also sleeping along her.

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The evidence of PW1 would show that when she got up on seeing the accused persons, the child was just near to her. It is not discernible as to how the child could escape without sustaining any burn injury if the incident had occurred. The evidence of PW3 is to the effect that PW3 came to know that PW1 had consumed acid on her own volition. PW4 also supported the evidence of PW3 that the victim consumed acid on her own volition.

5. Having gone through the relevant inputs, I find that apart from the solitary evidence of PW1, there is no other material to show that the revision petitioner have committed the offence. Considering the facts and circumstances of the case, including the fact that the lower appellate court acquitted the other three accused disbelieving the evidence of PW1, I am of the view that the evidence of PW1 alone cannot be relied upon to find the revision petitioner guilty under Section 324 IPC.

6. Having gone through the relevant inputs, I am of the view that the revision petitioner is entitled to be acquitted granting him

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benefit of doubt and accordingly, I order so.

In the result, this revision petition stands allowed, setting aside the conviction and sentence passed by the appellate court under Section 324 IPC and the revision petitioner is acquitted for the said offence. The bail bond of the revision petitioner stands cancelled and he is set at liberty.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge