

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

Crl.Rev.Pet.No. 833 of 2004 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 292/2003 OF THE ADDL.
SESSIONS COURT (SPL. COURT), KOTTAYAM DATED 31-12-2003**

**AGAINST THE JUDGMENT IN CC 16/1999 OF THE J.F.C.M., VAIKOM
DATED 27-05-2003**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**JOSHY, S/O.GEORGE,
VADAKARA KARA VEEDU,
CHAMAKKALA BHAGOM,
KOTHANALLOOR KARA AND VILLAGE.**

**BY ADVS.SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.**

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTER SRI.GITHESH R.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20-
05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P. No.833 of 2004

Dated this the 20th day of May, 2015

ORDER

This revision petition is preferred against the judgment in Criminal Appeal No.292/03 of the Additional Sessions Judge (Special) Kottayam, for the offence punishable under Sections 325, 323 and 341 of the IPC. Petitioner was accused in C.C. No.16/1999 of the Judicial First Class Magistrate, Vaikom and he was convicted under Sections 323, 324, 325 and 341 of the IPC and sentenced thereunder and against that he preferred the above appeal, where the conviction under Section 324 IPC was set aside.

2. The prosecution allegation was that on 24.12.1988 at 11.30 p.m. the revision petitioner wrongly restrained PW1 at Chamakkala church junction and twisted his left hand, thereafter beat on the head with a torch and kicked on his belly. As a result, he sustained injuries and immediately he was admitted in the hospital. On the basis of information, Kaduthuruthy police registered a Crime No.361/98 and after investigation laid charge before court.

3. To prove the offence, prosecution examined PW1 to PW8 and admitted Ext.P1 to P6 in evidence. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. The trial court after analyzing the evidence convicted him.

4. The learned counsel appearing for the revision petitioner contended that there was no medical evidence to attract the offence under Section 323 IPC, and a wrong appreciation was made by the courts below. The learned Public Prosecutor strongly resisted the above contention and contended that revision petitioner voluntarily caused grievous hurt and thereby a serious crime was committed, no interference is necessary in the sentence.

5. While appreciating the arguments advanced by both the counsel, I have considered what offences were proved by the prosecution in the trial court. In order to attract offence under Section 325 IPC, prosecution has to prove that revision petitioner voluntarily caused hurt

and hurt caused was grievous one. In order to prove the allegation of voluntarily causing hurt, PW1 was examined at the trial court and evidence shows that on 24.12.1998 at 11.30 p.m., while he was proceeding from the church after making Christmas Crib, the revision petitioner wrongfully restrained him. When PW1 proceeded further through the road, the revision petitioner obstructed his bicycle and prevented him from moving to any direction. Thereafter, he twisted the left hand of PW1 which caused dislocation of left shoulder, thereafter beat on the head of PW1 with a torch and kicked on his belly. He identified the revision petitioner in the street light. PW2 supported the evidence of PW1, identified the accused and narrated the story. He was present at the place of occurrence and saw the incident in the electric light. PW2 is the close relative of PW1 is not a ground to discard his evidence. From the oral evidence of PW1 and PW2, it is clear that the revision petitioner wrongfully restrained PW1 and assaulted him. The other witnesses PW3, PW4 and PW5 did not support

the prosecution case.

6. In this back drop, I have considered the medical evidence of PW6, the Doctor, who examined the injured and issued Ext.P2 wound certificate. In Ext.P2, the doctor noticed the dislocation of left shoulder which was confirmed in X-ray examination. But he did not notice any injury on head or in the belly. Therefore the corresponding injuries to attract offence under Sections 323 and 324 IPC were not noticed in Ext.P2 wound certificate.

7. There was no allegation of any default in the investigation. PW3 attested Ext.P3 mahazar. The Sub Inspector of Police, Kaduthuruthy recorded the statement of PW1 and registered the case. Ext.P4 is the FIR. Analysing the oral and documentary evidence in this case, it is found that offence under Section 325 IPC alone is proved. The first appellate court failed to appreciate that position. Therefore the conviction under Section 323 IPC, is to be set aside. Considering the peculiar circumstances of the case coupled with the

conduct of the accused, it is clear that accused committed offence punishable under Section 325 and 341 IPC alone and I convict him under Section 325 and 341 IPC and acquit under Section 323 IPC.

8. The incident occurred at a junction in the night, while PW1 was returning from the church. No previous enmity is alleged or proved against the revision petitioner. The learned counsel submitted that, that being a sudden quarrel, the sentence imposed by the trial court is too harsh and needs interference. The imposition of sentence is always a matter of discretion, unless the court finds that the discretion has been exercised arbitrarily or on unsound principles. Where the offence is punishable with imprisonment, the policy of law is to give adequate discretion to the court in awarding suitable terms of imprisonment.

9. In **Ram Navami V. State of U.P.(1973)2 SCC 86** apex court held that:

“the sentence to be appropriate should, therefore, be neither too harsh nor too lenient”

10. In view of the fact and circumstance of the case, the nature of injuries and the matter is relating to twenty five years back, a lenient view has to be taken. The concept of proportionality in sentence is significant while considering the nature of the crime, antecedent of the petitioner, the factum of the age and the period of its commitment.

11. In the result, the conviction and sentence passed by the trial court under Section 323 IPC is set aside. The conviction under Section 325 IPC is confirmed and the sentence is modified as follows:

- a)Revision petitioner is sentenced to imprisonment for six months under Section 325 IPC.
- b)He is sentenced to pay a fine of ₹25,000/- (Rupees Twenty five thousand only) under Section 325 IPC, in default of payment of fine, simple imprisonment for three months.
- c)He is also sentenced to imprisonment for 3 months under Section 341 IPC.
- d)The sentence shall run concurrently.

The revision petitioner is directed to appear in the trial court forthwith to receive the sentence. This revision petition is partly allowed.

**P.D. RAJAN,
JUDGE**

STK