

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

Crl.Rev.Pet.No. 2879 of 2003 ()

AGAINST THE JUDGMENT IN CRA 391 /2000 of ADDITIONAL DISTRICT
COURT (ADHOC), THRISSUR

AGAINST THE ORDER IN CC 751 /1997 of J.M.F.C.,KUNNAMKULAM

REVISION PETITIONER(S):

MANIMUTHU @ MOIDEEN,
S/O. PERUMBULLY HAMZA,
TRICHOOR TALUK, THRISSUR DISTRICT

BY ADVS.SRI.ROBSON PAUL
SRI.C.D.DILEEP

RESPONDENT(S):

STATE OF KERALA ,
REPRESENTED BY THE PUBLIC PROSECUTOR,
TRICHUR

PUBLIC PROSECUTOR SRI. JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 3-09-2015, THE COURT ON 7-09-2015 THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 7th day of September, 2015

ORDER

The revision petitioner is the accused in C.C. No. 751 of 1997 on the files of the Court of the Judicial Magistrate of the First Class, Kunnankulam.

2. The trial Court convicted the revision petitioner under Section 324 IPC and sentenced him thereunder to rigorous imprisonment for six months and a fine of Rs. 2000/- with a default clause for simple imprisonment for one month. The appeal filed against the said conviction and sentence was dismissed by the III Addl. Sessions Court, Thrissur as per judgment in Crl.Appeal No. 391 of 2000. Aggrieved by the said conviction and sentence, the accused before the trial Court has filed this Revision Petition.

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

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4. The prosecution case is that on 19-11-1997 at about 6.30 p.m. the revision petitioner threw a country brick at the head of PW1 and consequently, PW1 sustained injury.

5. Before the trial Court, PW1 to PW7 were examined and Exts. P1 to P4 were marked for the prosecution, besides identifying MO1. Defence did not adduce any evidence.

6. PW1 is the injured in this case. PW2 is the sister of PW1. PW3 is an independent witness. PW1 stated about the incident in support of the prosecution case. PW2 corroborated the evidence of PW1 in all material aspects. PW3 also supported the evidence of PW1 and PW2 in all material aspects. PW2 did not see the appellant throwing brick at PW1.

7. The learned counsel for the appellant has argued that even though PW1 to PW3 had given evidence that the revision petitioner hit at the shoulder of PW1 with a brick, there is no corresponding injury in Ext. P4 wound certificate and in the said circumstances, the evidence of PW1 to PW3 has to be discarded. It is true that Ext. P4 wound certificate does not mention about the injury sustained on the shoulder of PW1. Merely because the injury on the shoulder of PW1 was omitted to be noticed by the

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doctor in Ext. P4 wound certificate, it cannot be said that PW1 did not sustain the said injury, particularly when PW1 had a consistent case even from F.I. statement that the revision petitioner hit at the shoulder of PW1 with a brick. In the said circumstances, the argument in this regard advanced by the learned counsel for the revision petitioner cannot be accepted.

8. The learned counsel for the petitioner has further argued that the narration of the incident in Ext. P1 statement is different from the evidence of PW1 and in the said circumstances, the evidence of PW1 must be thrown out on that reason alone. I have gone through the evidence of PW1 and Ext. P1 statement and I am fully convinced that eventhough there were some minor discrepancies, which were not material, no material deviation from Ext. P1 F.I. statement had been made by PW1 when he was examined before the court. In the said circumstances, the said argument of the learned counsel for the revision petitioner also fails.

9. The courts below relied on the evidence of PW1 to PW3 as well as the medical evidence of PW7 and entered into a finding that the revision petitioner had committed the offence under Section 324 IPC. Since there is concurrent finding on facts by

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two courts, this Court will not be justified in interfering with the same unless the finding is perverse or incorrect. No circumstance could be brought to my notice by the learned counsel for the revision petitioner to indicate that the appreciation of evidence by the courts below was perverse or incorrect. In the said circumstances, I do not find any reason warranting interference by this Court with regard to the concurrent finding of the courts below that the revision petitioner committed the offence under Section 324 IPC.

10. As regards the sentence, the courts below awarded sentence of rigorous imprisonment for six months and a fine of Rs. 2,000/- under Sec. 324 IPC. PW1 did not sustain any serious injury in the incident. Considering the facts and circumstances of the case, including the nature of injuries sustained by PW1, I am of the view that the sentence awarded by the courts below can be modified and reduced to a fine of Rs. 4000/- (Rupees four thousand only) to secure the ends of justice and accordingly, I order so.

In the result, this revision petition stands allowed in part,

- i) confirming the verdict of guilty and conviction

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passed by the courts below under Section 324 IPC.

- ii) the sentence awarded by the courts below stands modified and reduced to a fine of Rs. 4,000/- (Rupees four thousand only)
- iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for one month.
- iv) in the event of realisation of fine amount, the entire amount shall be given to PW1 under Section 357 (1)(b) Cr.P.C.

Dated this the 7th day of September, 2015.

Sd/- B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge