

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. 2999 of 2003 ()

AGAINST THE JUDGMENT IN CRA 31/2001 of ADDL. SESSIONS COURT (SPL.
COURT), KOTTAYAM DATED 19-09-2003

AGAINST THE JUDGMENT IN SC 24/1997 of ADDL.ASST. SESSIONS
COURT, KOTTAYAM DATED 19-01-2001

REVISION PETITIONER(S) / APPELLANTS/ ACCUSED:

1. MAHESH BABU @ MAHESH,
S/O. THANKAN,
PUNNAKATTIL HOUSE,
PINANCHIRAKUZHI BHAGOM,
ARPOOKARA KARA AND VILLAGE,
KOTTAYAM.
2. VIJAYAN @ ARUN,
S/O. THANKAPPAN,
ENPATHILCHIRA HOUSE,
MUKKEL BHAGOM,
ARPOOKARA KARA AND VILLAGE,
KOTTAYAM.

BY ADVS.SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENT(S) /RESPONDENT/COMPLAINANT:

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

PUBLIC PROSECUTOR ADV. SRI. JITHESH.R.

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

acd

P.D. RAJAN, J.

Crl.R.P.No.2999 of 2003

Dated this the 20th day of May, 2015

ORDER

This revision petition arises out of the judgment in Crl.Appeal No.31/2001 of the Sessions Court, Kottayam, which was dismissed by the appellate Court. The revision petitioners were accused in S.C.No.24/1997 of the Additional Assistant Sessions Court, Kottayam and they were convicted u/s.341 and 307 r/w. 34 IPC and sentenced to undergo rigorous imprisonment for three years and fine of ₹10,000/- each u/s.307 r/w. 34 IPC and also sentenced to undergo simple imprisonment for one month u/s.341 r/w. 34 IPC, in default of payment of fine, imprisonment for one year.

2. The facts considered for the indictment were that

on 16.7.1995 at about 8 p.m., PW1 was proceeding towards his house from his paddy field through the bund road, when he reached southern side of one Sudhakaran's shop building, the 1st accused wrongfully restrained him and shouted to kill him, suddenly, the 2nd accused took out a knife and stabbed him on the right side of his chest and on the stomach, as a result, he sustained serious injuries and with those injuries, he jumped into the nearby canal for escaping from there, but he was rescued from drowning by one Pappen and Chacko and they removed him to the Medical College hospital, Kottayam. On the basis of information, Kottayam Police registered a crime and after investigation Circle Inspector of Police, Kottayam laid charge before Court.

3. To prove the offence, prosecution examined PW1 to PW11 and marked Exts.P1 to P8. The incriminating

circumstances brought out in evidence were denied by the revision petitioners while questioning them u/s.313 Cr.P.C. After hearing both sides, the trial Court called the revision petitioners to enter on their defence, they examined Dws 1 and 2 in support of their defence. The trial Court after sifting and weighing the evidence on record, convicted the revision petitioners.

4. The learned counsel appearing for the revision petitioners contended that the manner in which the offence had been committed was not revealed in this case. The first injury is a minor abrasion and the 2nd injury is an incised penetrating wound. After proper management, the victim was recovered and no harm is caused to his health, therefore, no offence u/s.307 IPC was committed as alleged.

5. The learned Public Prosecutor contended that

the previous enmity is sufficient to attract the intention in committing the offence. There is no reason to interfere in the finding of the courts below.

6. In order to attract the offence u/s.307 IPC, two ingredients are required, firstly, whether there was any intention or knowledge in committing the act. Secondly, the act is done with the above knowledge or intention. The words 'such intention' found in s.307, refer to the intention referred to in s. 300 of the IPC, which means: (i) intention to cause death; (ii) intention to cause such bodily injury, which the offender knows is likely to cause death; (iii) intention to cause such bodily injury, which is sufficient in the ordinary course of nature to cause death. Thus, the intention to cause death is an essential part of the offence of attempt to murder. Naturally intention means some aim or plan which precedes

the actual attempt and has to be proved independently of the act or the actus reus. Once the necessary intention to commit murder is gathered from judging the act, the ultimate result of the attempt will be immaterial, unless of course, the attempt results in murder, in which case, it will fall under s.300, IPC. If intention is not proved, then the accused cannot be convicted under this section. However, intention can be gathered from the nature of the weapon used, the words used by the assailant at the time of the act, the motive behind the attack, the parts of the body where the injuries sustained and the nature and gravity of injuries etc.

7. The commission of the offence is a question of fact which can be gathered from the evidence. PW1 deposed that there was a quarrel with the accused before 1 $\frac{1}{2}$ months and due to this previous enmity, they attacked

him. He stated that on 16.7.1995 at about 8 p.m., when he was returning to his house, A1 shouted 'to stab' and the 2nd accused inflicted two stab injuries, one on the right side of the chest and the other on the left side of the stomach of PW1. PW1 saw the accused in the electric light from the house of Sudhakaran. PW1 identified MO1 weapon used for assaulting him and admitted that he gave Ext.P1 statement to the police. PW2 identified the accused and stated that PW1 and the accused are his neighbours. PW2 and PW3 also supported the story stated by PW1 and identified MO1 weapon. Even though PWs 1 to 3 were cross examined by the defence counsel, nothing has been brought out to discredit their direct evidence.

8. In this back drop, I have considered the wound certificate issued by Dr. Rosamma Joseph, then Lecturer in surgery, working in P4 unit. PW5 deposed that

Dr. Rosamma Joseph was working in his unit and he identified her signature in Ext.P3 wound certificate. She noticed two injuries in Ext.P3. PW6 issued Ext.P4 discharge certificate as per the direction of the unit chief. Injury No.1 is a penetrating incised injury, which can be caused by MO1 weapon. The abrasion also can be caused by MO1 weapon. PW5 conducted laprotomy operation, since the abdomen muscles were cut due to assault. The injury No.1 is penetrating incised injury and even if there is internal injury, if not treated properly or leniently, it can be lead to infection and caused to death. But, doctor has not opioned that the vital organs were damaged due to the penetrating injury.

9. The discovery of true motive for a crime is not necessary in every criminal case, since motive is not an ingredient for an offence. Motive alone cannot be the

basis for conviction of an accused unless it means corroboration from other sources. From the evidence of PW1, it is clear that , there was a quarrel between the revision petitioners and PW1 before 1 $\frac{1}{2}$ months back. Due to that enmity, both of them were waiting for the arrival of PW1 at the place of occurrence. When he reached there, the accused jumped near to him and the 1st accused caught hold on him and the 2nd accused stabbed him, but their previous enmity was not proved. If that be the position, a reading of the circumstances with the intention and their knowledge, the act itself is not sufficient to attract the ingredients as stated u/s.307 IPC. In this context, I have considered the defence put forward by Dws 1 and 2. The oral evidence of Dws 1 and 2 shows that they got only hearsay information about the overt act and the accused. Therefore, both the courts below rejected

the oral testimony of DWs1 and 2 and therefore, I do not find any illegality in such appreciation. Therefore, the alleged motive is not proved in this case.

10. When the second injury was a simple one and the first injury was a penetrating injury, I have to consider as to what offence has been proved in this case. For that, I have referred the book Dr. Hari Singh Gour's Penal Law of India 11th Edition (Volume 3, Page 3146), which is extracted as follows " in **Sacha Ram V. State of Punjab** (1978 Punjab Law Journal 61): the ocular version given by Raj Kumar and Dharam Pal is sufficient to hold that the accused had caused injuries on the person of Raj Kumar. Injury No.1, which is attributed to the present appellant, in the opinion of the doctor, would have caused the death of Raj Kumar injured but for timely medical aid. If the injured was really in danger of death, it was expected of

Dr. Gurbux Singh that he should have made a mention of it in his operation notes. His mere saying in the Court at the time of his explanation that the injured would have died if no medical aid was provided to him is not sufficient to hold that the injury was sufficient to cause his death or that the injured was in fear of death." In Dharma Pal V. State of Punjab (1993 Crl.LJ 2856) held that "the injuries inflicted by them are somewhat serious though the conviction under S.307 is not made out." In this case, the Doctor stated that the injury was described to be a grievous nature but he had not noted down which organs were damaged by the injury inflicted by the appellant. When two inferences can be drawn on the question whether the accused committed offence under Section 307 IPC or 324 IPC, the benefit of inferences lead to lesser offence likely to be preferred by a court. Even

though appellant was charge sheeted under Section 307 IPC, his case did not go beyond the purview of Section 324 IPC. Therefore, I am of the view that the conviction under Section 307 read with 34 IPC is to be set aside and the revision petitioners are convicted under Section 324 read with 34 IPC.

11. The principle behind the imposition of sentence is that the accused must realise that the crime committed by him has created a dent in the social fabric. The need of just punishment in a case is that the individuals in the society, which ultimately constitute the collective, do not suffer again for such crimes. Learned counsel appearing for the petitioner contended that the incident had occurred 19 years back and the parties were aged 23 and 21 years at that time. Now they are married and leading a family life and leniency may be shown in sentence. Apex

Court in State of Punjab v. Saurabh Bakshi [(2015 (4) Scale 340] (para 16) held that, "in Shyam Narain v. State (NCT of Delhi) [(2013) 7 SCC 77], though in a different context while dealing with the issue of sentencing it has been stated that primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. True it is, on

certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. While carrying out this complex exercise, it is obligatory on the part of the court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim." The principles of granting compensation has been discussed by the Apex Court in Harikishan V. Sukhbir Singh (1988 SCC Crl.984), in which reiterating the principle, Apex Court directed to give compensation to the victims of the crime at the time of disposal of cases. In Suresh and another v. State of Haryana [(2015) 2 SCC (Crl) 45] Apex Court held that the victims of the crime are entitled to get compensation at the time of admission of

the complaint also. The victim sustained a penetrating injury to the abdomen and undergone laprotomy operation. Therefore, he is entitled to get some amount as compensation. Hence, I set aside the conviction u/s.307 IPC, but convict the petitioners u/s.324 IPC and sentence as follows:

(a) Revision petitioners are sentenced to rigorous imprisonment for one year each u/s.324 IPC.

(b) They are also directed to pay a compensation of Rs.50,000/- each u/s.357 Cr.P.C and in default of payment of compensation, to undergo imprisonment for six months.

(c) If compensation amount is realised, the amount shall be disbursed to PW1.

(d) The period of detention undergone by the revision petitioners shall be set off against the terms of imprisonment.

Crl.R.P is partly allowed.

P.D. RAJAN, JUDGE.

acd