

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

Crl.Rev.Pet.No. 193 of 2005 (D)

**Crl.Appeal 60/1999 of ADDL. DISTRICT AND SESSIONS COURT (ADHOC)-II,
PATHANAMTHITTA
CC 282/1996 of J.M.F.C., THIRUVALLA**

REVISION PETITIONER(S)/APPELLANT/1ST ACCUSED:

**SASEENDRAN, KAVIL HOUSE, KARUKACHAL MURI
KARUKACHAL.**

BY ADV. SRI.R.MANOJ

RESPONDENT(S):

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

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27-
03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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P.D.RAJAN, J.

Crl.R.P. No.193 of 2005

Dated this the 27th day of March, 2015

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ORDER

The first accused in CC No.282/1996, on the file of Judicial First Class Magistrate, Thiruvalla, was convicted under Section 451, 324, 427 read with Section 34 IPC is the revision petitioner. He was sentenced to undergo rigorous imprisonment for one month under Section 451 IPC and R1 for one month under Section 324 IPC and to pay a fine of Rs.5,000/- under Section 427 IPC and in default of payment of fine to undergo simple imprisonment for three months. Against that, he filed appeal before Sessions Judge, Pathanamthitta (Fast Track - II), where the conviction and sentence were confirmed.

2. The prosecution allegation is that on 3.02.1996, at about 7.45 pm, the accused trespassed into the building of PW1 (building No.568, ward No.4, Mallappally) and according to the common intention, A1

took a bottle from the shop veranda of PW1 and threw it on the ground, as a result, that broken bottle pierced into the right heel of PW1 and he sustained injuries. The second accused also threw bottles on the ground, as a result, PW1 sustained loss of Rs.3,835/-, thereby committed the offence.

3. In view of the allegation, prosecution examined PW 1 to 5 and marked Exhibit P1 to P4 and admitted MO 1 in evidence. The incriminatory circumstances brought out in evidence were denied by him while questioning him. Revision petitioner examined DW 1 as defence witness. The trial court, after analysing oral and documentary evidence, convicted the accused and sentenced thereunder.

4. The learned counsel appearing for the revision petitioner contended that prima facie no materials are produced to prove the alleged incident. There was no intention on the part of the revision petitioner to attack PW1 and he is entitled to get the benefit of Section 81 of the IPC. Since, the bottles were kept outside the bakery, no trespass as alleged is proved. When there is no house

trespass in order to commit an offence punishable with imprisonment, the concurrent findings of the court below liable to be set aside.

5. The learned Public Prosecutor strongly resisted the above contention and contended that there is no good faith in the act of the first accused for getting protection under Section 81 of IPC. The defence story put forward by PW1 itself is sufficient to discard the protection claimed under Section 81 of IPC. The bottles were kept on the veranda, mere taking of bottle from the veranda itself is sufficient to attract the offence of house trespass.

6. Before examining the correctness, legality and propriety of findings recorded by the courts below, I have considered the question of immunity under Section 81 of IPC claimed by the revision petitioner. According to Section 81 of IPC nothing is an offence by reason of its being done with knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm and in good faith for the purpose of preventing or avoiding other harm to person or property. This section explains that when an accused committing lesser offence,

in order to avoid a bigger one, then he is immune. This section stipulates the absence of criminal intention. This means that this section contemplates a situation that the accused has knowledge that he is likely to cause harm but such knowledge shall not be held against him. The primary importance of the protection is that such an act has been done in good faith i.e. with good care and attention. Section 52 of IPC says about good faith. Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention.

7. In this context, I have considered what was the bigger evil avoided by the revision petitioner, while committing the offence in this case. The evidence of PW1 shows that, on 3.02.1996 he was sitting in his shop between 7.30 and 8 pm, A1 came there took one bottle from the veranda of the shop, when he resisted, A1 threw it into the floor, as a result it was broken into pieces and broken pieces pierced into his right leg. Immediately, he was removed to Pushpagiri Hospital. The second accused was also present there, PW1 identified them in the electric light from the nearby "Sea Blue Hotel" where the

generator was working. Even though, this witness was cross examined by the defence counsel, nothing has been elicited in his cross examination to prove the necessity as a defence against criminal liability. On the other hand, he totally denied the allegation and raised a contention that he has not trespassed into the shop, when second accused chased him with intention to attack him, he took bottle from the shop and tried to protect his person. To prove this point, the revision petitioner examined DW 1. DW 1 deposed that on the relevant day he saw the first accused was assaulted by the second accused and his company. The first accused ran away in order to escape the attack, at this time, the second accused took a bottle from the shop of PW 1 and threw it at the first accused. Immediately PW 1 came out of his shop and asked the second accused as to why he had taken the bottle and thrown it at the first accused. According to DW 1 subsequent to this incident there was a scuffle between PW 1 and the second accused. The persons who were present along with the second accused entered the shop of PW 1 and threw soda bottles, as a result of which PW

1 sustained injury. PW 1 deposed that the first accused was admitted at the Government Hospital at Thottackadu for the injuries sustained by him. Considering the defence story, I am of the opinion that revision petitioner is not entitled to get protection under Section 81 of the IPC. No act was done by the revision petitioner to avoid a major incident or accident and there is no evidence to show that he has done anything in good faith.

8. In order to attract offence under Section 324 IPC prosecution has to be proved that the accused by his act caused pain or injury to the complainant; that he did such act intentionally with the knowledge that it would cause the injury. PW1 had told the accused to put back the bottles but instead of doing the same, the first accused threw the bottle towards him which hit the ground and the pieces scattered and one broken piece of the bottle pierced in to leg. Therefore the accused by his act caused the injury to PW 1 and from the circumstances of the case it can be concluded that he had the knowledge that his act would cause injury to PW 1. There was no provocation whatsoever from the part of PW 1, when he

asked the accused to return the bottle to its place. Analysing the above evidence of PW1, it is found that the above overt act was committed with criminal intention. The extend of mens rea is clear from the overt act, when the revision petitioner fails to prove the bigger evil.

9. The direct oral evidence of PW2 is supporting the evidence of PW1. There is no reason to disbelieve the oral testimony of PW1 and PW2. PW3 also supported the evidence of PW1. In this context, it is better to verify the wound certificate, i.e. Exhibit P2. PW4 examined PW1 and issued Exhibit P2. He noticed an incised wound 2 inches long and 1 inch deep over back of right leg cutting the achilles tendor partially, which is corroborating the story stated by PW1. The time of injury and the nature of injury is also corroborating the story of prosecution.

10. In this context, I have considered whether any house trespass was committed by the revision petitioner for attracting an offence punishable with imprisonment. In the scene mahazar, the place of occurrence was recorded as the veranda. Exhibit P4 is the scene mahazar prepared by PW5. Place of occurrence noticed

in Exhibit P4 is that 3mts 26 cms south east from the north western corner. This veranda portion has width of 1.17 mts. and 4.48 mts. length. Whoever commits criminal trespass by entering into or remaining in a building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit a house trespass. Here PW1 deposed that the bottles were kept in his shop veranda. In cross examination, he deposed that revision petitioner took a bottle from the shop veranda. Explanation portion of Section 442 says that the introduction of any part of the criminal trespasser's body is entering sufficient to constitute house trespass. If that be the position, taking of the bottle from the shop veranda itself is sufficient to attract house trespass. In order to remove the ambiguity introduction of the revision petitioner's hand for taking the bottle from the veranda would amounts to entry which is sufficient to constitute the offence of house trespass. Therefore the aggravated form of house trespass for offence punishable with imprisonment has been committed in this case and

an offence under Section 451 IPC is also proved.

There is no merit in this revision petition and it is dismissed accordingly.

P.D.RAJAN, JUDGE

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