

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

Cr1.Rev.Pet.No. 3031 of 2003 ( )

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AGAINST THE JUDGMENT IN CRA 80/2001 of ADDL.SESIONS JUDGE,  
NORTH PARAVUR DATED 20-08-2003

AGAINST THE JUDGMENT IN CC 456/1996 of J.M.F.C.-I, ALUVA  
DATED 2-01-2001

REVISION PETITIONER(S)/APPELLANT/ACCUSED NO. 1 TO 3:

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1. BAIJU,  
S/O. APPU,  
ILLATHUPARAMBU HOUSE,  
VENNALA KARA  
EDAPPALLY.
  2. SUNILKUMAR, S/O. GOPALAKRISHNAN  
PATTARUMADATHIL  
VENNALA KARA  
EDAPPALLY SOUTH VILLAGE.
  3. SHIBU, S/O. SIVARAJAN  
IRUTHIPPARAMBIL HOUSE  
VENNALA KARA  
EDAPPALLY SOUTH VILLAGE.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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STATE OF KERALA REP. BY  
SUB INSPECTOR OF POLICE,  
THRIKKAKKARA POLICE STATION,  
(IN CRIME NO.133/95 OF  
THRIKKAKKARA POLICE STATION  
REP. BY PUBLIC PROSECUTOR,  
HONOURABLE HIGH COURT OF KERALA,  
ERNAKULAM.

R, BY ADV. SMT. SAREENA GEORGE - PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 01-07-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

acd

**P.D. RAJAN, J.**

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Crl.R.P.No.3031 of 2003  
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Dated this the 1<sup>st</sup> day of July, 2015

**ORDER**

The revision petitioners, who are appellants in Crl.Appeal No.80/2001 on the file of Additional Sessions Judge, North Paravur, challenge the judgment of conviction and sentence u/s.341, 324 and 326 r/w.34 IPC. The petitioners were accused in C.C.No.456/1996 of Judicial First Class Magistrate Court-I, Aluva for the same offence, in which they were convicted and sentenced to undergo rigorous imprisonment for two years each for offence u/s.326 IPC r/w.34 IPC, rigorous imprisonment for six months for offence u/s.324 IPC r/w.34 IPC and rigorous imprisonment for one month for offence u/s.341 IPC.

2. The facts considered for the indictment were that on 7.9.1995 at 11.40 p.m., A1 to A3 in furtherance of their common intention dragged PW1 out of his authorickshaw near Mahilasamajam road at Vennala and A2 and A3 wrongfully restrained him and A1 cut with a knife thrice causing injuries on the left forearm and on the left backside and thereby committed the offence. On the basis of information, Thrikkakkara Police registered Crime No.133/1996 against the revision petitioners and after investigation, laid charge before Judicial First Class Magistrate Court-I, Aluva for offence u/s.341, 324 r/w.34 IPC. The trial court after examining Pw1, the injured and PW2, the doctor, altered charge for offence u/s.341, 324, and 326 r/w.34 IPC.

3. The learned counsel appearing for the revision petitioners contended that there was an inordinate delay of three days in registering the FIR. The place of

occurrence was shifted, the investigating officer was not examined, no weapon was recovered and there was no identity of A2. These facts were not considered by the Courts below. Therefore, the illegality committed by the Courts below is to be rectified by invoking the revisional jurisdiction.

4. While considering the argument advanced by the learned counsel, it is pertinent to refer the oral testimony of PW1, the injured. PW1 deposed that one day in the year 1996 between 10 p.m. and 11 p.m., the incident had occurred near Vennala Mahilasamajam Road, there was an Anganawadi near the place of occurrence. While he was returning to his home driving KDE1248 autorickshaw, the revision petitioners showed hand signal to stop the autorickshaw and he stopped the autorickshaw there, at that time, they told him that they want to go to Vytilla, but he was not willing and he wanted to go his house, at

that time, A1 caught and pushed him down from the autorickshaw. When he stood up, A2 and A3 caught him. A1 cut with a sword stick on left palm and left shoulder and he sustained injuries on ring finger and middle finger, thereafter, they left the place. There was tube light at the place of occurrence, he identified the revision petitioners in that electric light. He went to General Hospital, Ernakulam from where the Police recorded Ext.P1 statement. The revision petitioners and PW1 belong to the same political party and A2 and A3 are also drivers. There was enmity with union matters and due to that enmity, they assaulted him.

5. The wound certificate shows that while PW2 was working as Asst. Surgeon, General Hospital, Ernakulam on 7.9.1995 at 11.55 p.m, he examined one Sabu, issued Ext.P2 certificate and noted following injuries:

"(1) injury on the middle portion of the

lateral 3 fingers cutting through the bone on the left side.

(2) incised wound about 2x5cm on the dorsal aspect of the distal part of left index finger.

(3) incised wound 3 cm in length cutting through the tender going to the index finger on the dorsal of the left hand near the base of the index fingers.

(4) Abrasion about 5x0.25 cm on the left elbow.

(5) Abrasion about 3x0.25 cms. on the left side of the back. Alleged cause of injury was that ഷിബു, ബൈജു പിന്നെ കണ്ടാലറിയാവുന്ന ഒരാളു് കൂടി വെണ്ണലയിൽ വെച്ച് വടിവാൾ കൊണ്ട് വെട്ടിയതിൽ വെച്ച്."

The accused were identified by PW1 before Court. While cross examination of PW2, the defence counsel asked a specific question as to whether injuries 4 and 5 can be caused by contact with a hard and rough object and injury No.3 can be caused by a fall on a sharp edged granite stone

during scuffle. Even though such a suggestive question was asked to PW2, there was no cross examination of PW1 with regard to a scuffle at the place of occurrence and as a result, PW1 fell down there. There was no evidence of any hard and rough or any sharp edged objects at the place of occurrence. In the absence of such evidence, the defence put forward by the revision petitioners is only to be discarded and no merit in that contention.

6. The next point put forward by the revision petitioners is that there is inordinate delay in registering FIR, which is a creation of after thought. PW5, the Head Constable recorded the statement of PW1 only on 10.9.1995 and a crime was registered at Thrikkakara Police. The incident had occurred on 7.9.1995, PW5 got information from General Hospital, Ernakulam on 10.9.1995 and he proceeded to the Hospital, obtained Ext.P1 statement. If that be the position, the delay in

registering the FIR was properly explained by the Head Constable and it will not extend any benefit to the accused.

7. The investigating officer was not examined in this case. The learned Public Prosecutor submitted that the investigating officer in this case had retired. Even though earnest effort was made, the trial Court could not obtain his presence during trial, which was also stated in the judgment. It is found that coercive steps were taken by the trial Court for obtaining presence of the Investigating Officer. When his presence could not be obtained in the trial Court for adducing evidence, the trial Court was forced to close the evidence. Apex Court in **Raj Kishore Jha v. State of Bihar** and others [AIR 2003 SC 4664] held that non-examination of Investigating Officer does not in every case cause prejudice to the accused or affects the credibility of the prosecution version. The prejudice caused by the revision petitioners were not

stated or highlighted to PW5 and PW1. Therefore, the revision petitioners are not entitled to get the benefit of non-examination of the investigating officer. Ram Gulam Chaudhury and others v. State of Bihar [2001 SC 2842] clarified this position. Since the nature of prejudice has not been stated, I need not look into that aspect.

8. Before parting with this judgment, I may observe that it is the sound and well established rule that the Court is concerned with the quality of evidence and not with the quantity, necessary for proving or disproving a fact. When the oral testimony of one injured witness is reliable, it is the first category of proof. Then the Court would not have any difficulty in coming to a conclusion that the conviction is maintainable on the basis of testimony of a single injured witness. This position was established by the Supreme Court in Vadivelu Thevar v. State of Madras [AIR 1957 SC 614]. It was held as follows:

"11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that "no particular number of witnesses shall, in any case, be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after the consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England both before and after the passing of the Indian Evidence Act 1872, there have been a number of statutes as set out in Sarkar's 'Law of Evidence' - 9th Edition, at pages 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized on S. 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted." Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter

thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable."

Considering the nature of offence in this case, the Court below naturally scrutinized the testimony of available witnesses and was satisfied that the evidence is reliable and then acted upon the evidence. Therefore, the conviction passed by the trial Court is only to be

confirmed.

9. The learned counsel appearing for the revision petitioners contended that no criminal antecedents were reported against the petitioners and some leniency may be shown in sentence. In Gopal Singh v. State of Uttarakhand

[AIR 2013 SC 3048] Apex Court held as follows:

"13. A Court, while imposing sentence, has to keep in view the various complex matters in mind. To structure a methodology relating to sentencing is difficult to conceive of. The legislature in its wisdom has conferred discretion on the Judge who is guided by certain rational parameters, regard been had to the factual scenario of the case. In certain spheres the legislature has not conferred that discretion and in such circumstances, the discretion is conditional. In respect of certain offences, sentence can be reduced by giving adequate special reasons. The special reasons have to rest on real special circumstances. Hence, the duty of Court in such situations becomes a complex one. The same has to be performed with due reverence for Rule of Law, the collective conscience on one hand and the doctrine of proportionality, principle of reformation and other concomitant factors on the other. The task may be onerous but the same has to be done with total empirical rationality sans any kind of personal philosophy or individual experience or any a-priori notion. "

In Modi Ram and another v. State of Madhyapradesh [AIR

1972 SC 2438], Apex Court held that in fit case, leniency can be shown. In Suresh and another v. State of Haryana [(2015) 2 SCC (Crl) 45], Apex Court held that victims are entitled to get compensation. Since no criminal antecedents were reported against the revision petitioners, I modify the sentence imposed by the trial Court as follows:

i) The revision petitioners are sentenced to undergo imprisonment for one year u/s.326 r/w.34 IPC and to pay compensation of ₹10,000/- each u/s.357 (3) Cr.P.C.

ii) They are also sentenced to undergo imprisonment for six months u/s.324 r/w.34 IPC.

iii) They are also sentenced to undergo imprisonment for one month u/s.341 IPC.

iv) The sentence shall run concurrently.

v) In default of payment of compensation,

imprisonment for one year. If the compensation amount is realised, it shall be disbursed to PW1, the injured.

Crl.R.P. is partly allowed.

**P.D. RAJAN, JUDGE.**

acd

