

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

Crl.Rev.Pet.No. 272 of 2005 ()

AGAINST THE ORDER/JUDGMENT IN CRA 69/1998 of ADDL.DISTRICT & SESSIONS
(ADHOC)FAST TRACK COURT-II, PATHANAMTHITTA DATED 04-12-2003

AGAINST THE ORDER/JUDGMENT IN CC 108/1996 of J.F.M.C-I.,RANNY
DATED 16-04-1998

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SIMON, S/O.PODIYAN,
CHELIKUZHIYIL HOUSE, POZHICKUNNU, PAZHAVANGADI
RANNI.

BY ADVS.SRI.M.NARENDRA KUMAR
SMT.LEENA KRISHNAN
P V CHANDRAMOHAN

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

R, BY ADV. SRI. MADHUBEN - PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 08-04-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.272 of 2005

Dated this the 8th day of April, 2015

ORDER

The accused in C.C.No.108/1996 of Judicial First Class Magistrate Court, Ranny, for offence punishable u/s.447, 427, 323, 324, r/w.34 IPC is the revision petitioner. The prosecution allegation is that on 26.1.1996 at 9 p.m. both accused trespassed into the house of PW1 and abused him, A2 caught hold of PW1 and A1 hit with a stone, while he was running away from the scene, A1 pelted stones which hit on the asbestos sheet of the house which caused a loss of ₹500/- and thereby committed the offence. Since the 1st accused is absconding, his case was split up and refiled. The revision petitioner, who is the 2nd accused was convicted,

against that, he filed Crl.Appeal No.69/1998 before Sessions Court, Pathanamthitta, where the conviction and sentence passed u/s.427 IPC was set aside.

2. To prove the allegation, prosecution examined PWs 1 to 6 and marked Exts.1 to P5. The incriminating circumstances brought out in evidence were denied by the accused while questioning him.

3. The learned counsel appearing for the revision petitioner contended that there was no proper appreciation of evidence of PW1, 2 and 4, which resulted in miscarriage of justice. There was no previous enmity between the revision petitioner and PW1. There was no light at the place of occurrence and he is entitled to get the benefit of doubt, which was not granted by the Courts below.

4. The learned Public Prosecutor strongly resisted the above contention.

5. After analysing the oral evidence of PW1, the conviction and sentence passed u/s.427 was set aside by the appellate court. I have analysed the oral testimony of PW1 and PW2 occurrence witness. PW1 is the injured. His evidence shows that on 26.1.1996 at about 9 p.m., A1 and A2 called obscene words in front of his house and abused him. He told the accused to go from there. At that time, the accused questioned him and asked whether he was having police job and A2 caught him from behind and A1 hit with stone on the head twice. As a result, he sustained injuries. Immediately, he was admitted in hospital. PW3 treated him and issued Ext.P2 certificate. He noticed three injuries. PW3 categorically stated that injury No.2 can be caused by a fall. Injury Nos.1 and 3 is not

probable to cause by falling. This ocular evidence of PW1 is supported by Ext.P2 wound certificate. Nothing has been brought out to discredit the evidence of PWs 1 and 3. Therefore, the prosecution case has been established in the trial Court.

6. PWs 2 and 4 were the occurrence witnesses supported the evidence of PW1. There was minor discrepancies in their oral testimony, which will not affect the credibility of the oral testimony of PW1. According to PW1, there was sufficient light at the place of occurrence and he identified the accused in the night. The fact that PWs 1 and 4 are related witnesses, is not a ground to discard their evidence.

7. There was no discrepancies detected in registering the case and conducting the investigation. PW6 is the ASI, who recorded the statement of PW1, which was

marked as Ext.P1 in the trial Court. Ext.P1(a) is the body note. On the basis of Ext.P1, he registered Ext.P4 F.I.R and prepared Ext.P3 scene mahazar. From the evidence of PW1 and 3 it is clear that the revision petitioner trespassed into the courtyard of PW1, which was proved in the trial Court. There is no illegality or irregularity in the findings of the Court below. Therefore, no reasons are stated by the revision petitioner in the trial Court for getting a leniency in the sentence. Since the 1st accused is absconding, the 2nd accused, who was participated in committing the offence equally liable that of 1st accused, who shared the common intention. According to Section 34 of IPC, when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. I am of the view that a lenient

view was taken by the trial Court at the time of imposing sentence. There is no merit in this revision and it is dismissed accordingly.

P.D. RAJAN, JUDGE.

acd

