

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

Crl.Rev.Pet.No. 276 of 2005 ()

Crl.Appeal No. 58/2003 of ADDL.SESIONS COURT-II, MAVELIKKARA

CC 82/1999 of J.M.F.C-I, CHENGANNUR

REVISION PETITIONER(S)/1ST ACCUSED:

**PRASANNA CHANDRA KURUP @ RAJAN PILLAI,
S/O.GOVINDA PILLAI, AGED 59 YEARS, NALLUR PUTHEN VEEDU
CHERIYANADU WEST MURI, CHERIYANAD VILLAGE.**

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENT(S)/COMPLAINANT:

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

R1 BY PUBLIC PROSECUTOR SMT.MADHUBEN M.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 31-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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P.D.RAJAN, J.

Crl.R.P. No.276 of 2005

Dated this the 31st day of March, 2015

ORDER

Revision petitioner is the first accused in CC No.82/1999 of the Judicial First Class Magistrate Court - I, Chengannur, for offence punishable under Sections 326, 324 and 323 read with Section 34 of IPC. Both accused were convicted under Sections 326, 324 and 323 read with Section 34 of IPC and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.5,000/- each under Section 326 r/w Section 34 of IPC and separate sentence was not imposed under Section 323, 324 read with Section 34 of IPC.

2. The prosecution allegation was that on 19.11.1998, at 7.15 p.m. the revision petitioner who is A1 and other accused in furtherance of their common intention, assaulted the victim with a cudgel and A2 fisted 2-3 times. As a result, he sustained fracture on his right clavicle and immediately he was removed to

hospital. On the basis of information given from the hospital, Chengannur police registered crime 550/1998 and after investigation they laid charge before Judicial First Class Magistrate Court-1, Chengannur.

3. To prove the allegation, prosecution examined PW1 to PW7 and marked Exhibit P1 to P5. The incriminating circumstances were denied by the accused while questioning them under Section 313 Cr.P.C. The trial court, after analysing the oral and documentary evidence, convicted the accused. Against that, they preferred Crl.Appeal 58/2003 before the Additional Sessions Judge-II, Mavelikkara, where the conviction under Section 326 was modified as Section 325, 324, 323 read with Section 34 of IPC and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.5,000/- each and in default of payment of fine to undergo simple imprisonment for two months each.

4. The counsel appearing for the revision petitioner contended that, there is no independent evidence to support the prosecution case except the oral

testimony of PW2. There was inordinate delay in lodging the first information report. The weapon used for assaulting PW1 was not recovered. The only available evidence is the oral testimony of PW1 who is the injured in this case.

5. The learned Public Prosecutor strongly opposed the above argument and contended that, the direct oral testimony of PW1 and PW2 is sufficient to prove the alleged incident. Delay was caused due to conveying information from the hospital and there was no chance for embellishment of any incident. Medical evidence is corroborating the oral testimony and there is no reason to interfere in the findings recorded by the courts below.

6. In order to ascertain the legality of the findings recorded by the courts below, I perused the oral testimony of the witness and the documentary evidence relied by the courts below. In this context, I have considered the nature of the offence from the available circumstances. PW1 is the injured in this case. His oral testimony shows that on 19.11.1998 at 7.15 p.m, while

he was walking along the side of the canal, A1 came there from behind and beat on the right shoulder and again he beat on the right neck. A2 was also present there and assaulted him with his hand. This direct oral evidence of PW1 was supported with medical evidence. Exhibit P5 is wound certificate issued by PW7, medical officer. PW7 noticed contusion of supra clavicle area right side middle part 3 x 3 cm tenderness over clavicle middle in Exhibit P5. 'X' ray investigation shows fracture clavicle right. A perusal of Exhibit P5 shows that the name of the assailant was not mentioned in Exhibit P5. Even then, PW1 deposed that revision petitioner is his close relative and he identified him in the light from the nearby house. Even though PW1 was cross examined by the defence counsel, nothing has been brought out to discredit the oral testimony of PW1.

7. The occurrence was also supported by PW2, who is the eye witness present at the time of occurrence. The revision petitioner's case was that PW2 was travelling in another way, therefore, his presence at the time of

occurrence is not believable and that evidence is liable to be discarded. But no circumstances are brought out in evidence for discarding the oral testimony of PW2. Even though, they disputed the presence of PW2 at the place of occurrence, Court cannot take any inference with regard to his direct evidence. PW1 admitted that there was a civil dispute with revision petitioner. While appreciating the evidence of injured and independent witness present, the approach must be that the evidence of witness must be read as a whole and there is any truth in their version. Once an impression is formed with regard to the involvement of the revision petitioner, it is the duty of the court to scrutinize such evidence keeping in view the previous enmity and other points highlighted by the revision petitioner. Evaluating the tenor of evidence, I am of the view that the prosecution probably has proved the case beyond reasonable doubt and the defence put forward by the revision petitioner is only to be discarded. There is no illegality committed by the court below in appreciation of the evidence. Therefore,

the conviction recorded by the court below is only to be confirmed.

8. In **Nakheed v. State of U.P. (1998 SCC Crime 603)** it was held that “the victim of the crime was nephew of the appellant. I hope that during this period all the wounds of the parties have healed up. No purpose now would be served in sending the appellant to jail at this stage. I therefore reduce the sentence of the appellant to the period already undergone and dispose of the appeal”. Revision petitioner is the nephew of the victim. The incident happened in the year 1998 which shows that more than 15 years have lapsed. Considering the nature of injury and age of the victim and the accused, this is a fit case to show some leniency, which was not done by the courts below. The victim was nearly 82 years and the accused was nearly 72 years. Hence, the sentence is to be modified as follows:

Revision petitioner (1st accused) is sentenced rigorous imprisonment for 3 months and to pay a fine of Rs.25,000/- (Twenty five thousand only) under Section

326 read with 34 I.P.C., in default of payment of the fine, simple imprisonment for 3 months more. If fine amount is realised, a sum of Rs.15,000/- shall be given to the victim (RW1) as compensation under Section 357(1) Cr.P.C.

P.D.RAJAN, JUDGE

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PA TO JUDGE

(Contd. at page No.8)

The last paragraph of the final order dated 31/03/2015 in Crl.RP No.276/2005 is suo motu corrected and substituted as follows as per order dated 31/01/2017 in Crl.RP No.276/2005.

“Revision petitioner (1st accused) is sentenced to rigorous imprisonment for 3 months and to pay a fine of ₹ 25,000/- (Rupees Twenty five thousand only) under Sec. 325 read with Sec. 34 IPC, in default of payment of fine, simple imprisonment for 3 months more. If fine amount is realised, a sum of ₹ 15,000/- shall be given to the victim (RW1) as compensation under Sec. 357(1) Cr.P.C.”

sd/-
Registrar (Judicial)