

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

Crl.Rev.Pet.No. 857 of 2006 ( )

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AGAINST THE JUDGMENT IN CRA 323/1999 of ADDL.SESIONS COURT  
ADHOC-III, THALASSERY DATED 06-12-2005

AGAINST THE JUDGMENT IN SC 139/1996 of PRL.ADDL.SESIONS JUDGE  
(SESSIONS COURT), THALASSERY DATED 15-09-1999

REVISION PETITIONER(S)/APPELLANT/IST ACCUSED:

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ALAKKAL RAJESH,  
S/O.KRISHNAN, PUZHATHI AMSOM, KUNHIPALLI DESOM  
KANNUR TALUK.

BY ADVS.SRI.BINDU SREEKUMAR  
SRI.K.G.RENGANATH

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

R1 BY ADV. SRI. GITHESH.R., PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 08-06-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

acd

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

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Crl.R.P.No.857 of 2006  
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Dated this the 8<sup>th</sup> day of June, 2015

**ORDER**

This revision petition is filed against the judgment in Crl.Appeal No.323/1999 of Additional Sessions Judge, Adhoc-III, Thalassery for offence punishable u/s.307 and 341 IPC. The revision petitioner and two others were charge sheeted by Kannur Town Police, for offence punishable u/s.341, 326, 307 r/w. 34 IPC and tried in S.C.No.139/1996 by the Principal Asst. Sessions Judge, Thalassery and convicted thereunder.

2. The prosecution allegation was that on 20.1.1995 at 7.30 p.m., the revision petitioner and two other accused wrongfully restrained PW1 infront of K.R. Bakery at Kunhipalli and A1 stabbed with a dagger on the left side of

his abdomen, as a result, PW1 sustained serious injury. PWs 4 and 5, who saw the incident, took PW1 to District Hospital, Kannur from there, he was referred to Medical College Hospital, Calicut, where he was treated. On 21.1.1995 at 7.30 p.m., Kannur Town Police registered a case and after completing investigation, laid charge before Judicial First Class Magistrate Court, Kannur. A2 is absconding, his case was split up and the case of A1 and A3 was committed to Sessions Court, Thalassery.

3. In the trial Court, the prosecution examined PWs 1 to 16 and marked Exts.P1 to P15 as documentary evidence and Mos 1 and 2 were marked as material objects. The incriminating circumstances brought out in evidence were denied by the accused, while questioning u/s.313 Cr.P.C. They were also heard u/s.232 Cr.P.C and called upon

to adduce defence evidence. They did not adduce any defence evidence. The trial Court, after analysing the evidence, acquitted the second accused and convicted A1 u/s.341 and 307 r/w.34 IPC and acquitted u/s S.326 IPC, against which the 1<sup>st</sup> accused preferred this revision.

4. The learned counsel appearing for the revision petitioner contended that there is delay of 24 hours in registering the first information and no explanation for the same. The Head Constable got information even before recording Ext.P1 and Ext.P1 is not the first information, which shows that there is suppression of facts. The fact that two mahazars were prepared by the investigating officers also shows suppression of facts in the investigation. There is no recovery on the basis of information given by the accused. The depth of injury is

not mentioned in Ext.P2 wound certificate. Hence, the petitioner is entitled to get the benefit of doubt.

5. The learned Public Prosecutor contended that the Court below properly considered the delay in registering the FIR. From the evidence of PW4, it is seen that there is no suppression of facts. The recovery of the weapon was made on the basis of information given by the revision petitioner. Even though two mahazars were prepared, the revision petitioner has no dispute with regard to the shifting of place of occurrence. The wound certificate and discharge summary are sufficient to confirm the finding of the Court below.

6. It is pertinent to note that the injured was examined as PW1 in this case. His evidence shows that on 20.1.1995 at 7.30 p.m., he sustained injury. While he was

standing at Kunhippalli near K.R. Bakery, A1 and A2 came there and A1 stabbed with MO2 dagger, as a result he sustained injury. One Harris and Vinod took him to District Hospital, Kannur from there he was referred to Medical College Hospital, Calicut, where he underwent an operation. The accused were identified in the street light and electric light from the shops. On the previous day of the incident, there was a quarrel between the revision petitioner and PW1, due to this enmity, the revision petitioner assaulted him. Moreover, there was political enmity between them. Nothing has been brought out to discredit the evidence in cross examination.

7. The medical evidence is corroborating the oral evidence of PW1. The doctor, who treated PW1 was examined as PW6. Her evidence shows that on 20.1.1995

at 7.50 p.m., she examined PW1 and issued Ext.P2 certificate and she noticed incised penetrating wound 5 x 2 cm on the left lumbar region. Due to bleeding, she could not ascertain the depth of the wound, therefore, immediately she referred PW1 to the Medical College Hospital. She stated that the injury noticed in Ext.P2 would be possible by stabbing with MO2. During cross examination, she stated that the injury could be possible by fall of a sharp type of object. PW15 issued Ext.P11 Discharge Certificate, in which it is stated that PW1 was admitted in the hospital on 20.1.1995 and discharged on 29.1.1995. PW1 sustained stab injury to the abdomen, for that laprotomy was done on 21.1.1995. The wound entered into the peritonium, retro peritoneal hamatoma near the lateral aspect of discending column, which is grievous in

nature and would be possible by MO2 knife. He admitted that he did not note any injury to vital organs and till discharge, there was no complication. Since there is no injury to vital part, the injury is not danger to the life. The occurrence witnesses, PW4 and PW5 saw the incident and analysing the oral testimony of PWs 1, 4 and 5, I am of the opinion that PW1 sustained injury due to the assault by the revision petitioner.

8. The delay was properly explained by the prosecution. Immediately after the incident, PW4 took PW1 to the Government Hospital, Kannur from there he was removed to Medical College Hospital, Calicut, where the victim underwent laprotomy. After donating his blood to PW1 at the time of surgery, he returned to Kannur and reported the matter to the Police Station. He informed

the matter to the relatives of PW1, but they failed to report the matter to the Police. That was not explained in Ext.P1 and it will not, in any way, affect the credibility of the prosecution case, since PW4 and PW5 were present at the time of occurrence. In the light of explanation given by PW4, the delay is immaterial.

9. The recovery was effected on the basis of information given by the revision petitioner. When anything is recovered, on the basis of information given by the accused, that part alone is admissible. Even though MO2 was recovered from an abandoned house, that recovery alone will not be a ground to discard the direct oral testimony of PWs 1, 4 and 5. Analysing the evidence, it is found that there are certain minor discrepancies in this case, i.e, two mahazars were prepared by the

Investigating Officers. PW13 prepared Ext.P9 mahazar and PW16 prepared Ext.P12 mahazar. That discrepancy itself is also not a ground to discard the prosecution evidence. Both the courts below analysed the evidence and acquitted the revision petitioner for the offence u/s.326 and convicted u/s.341, 307 IPC.

10. While advertng to the argument advanced by both counsel, I have considered whether the injuries sustained to PW1 is sufficient to attract the offence punishable u/s.307 IPC. In order to attract the offence u/s.307 IPC, two ingredients are required, whether there was any intention or knowledge in committing the act. Secondly, whether 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, 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 are sustained, the nature and gravity of injuries etc. The injuries noted in Ext.P2 show only a stab injury which attract an offence under S.324 IPC alone and no intention to cause death can be gathered from it. Apex Court in Ramesh v. State of U.P. [AIR 1992 SC 664] held that in peculiar circumstances of the case, it being a case of single injury in the back of neck, the conviction can be altered as under Section 324 Indian Penal Code. Therefore, the offence u/s.341 and 324 IPC are proved in this case. Therefore, the conviction u/s. 307 IPC r/w.34 IPC is hereby set aside and the conviction u/ss.324 and 341 r/w.34 IPC is confirmed and sentence is modified as follows:

a) The revision petitioner is sentenced to undergo rigorous imprisonment for six months and a fine of ₹10,000/- u/s.324 IPC, in default of payment of fine, imprisonment for six months.

b) He is also sentenced to 15 days simple imprisonment u/s.341 IPC.

c) The sentence shall run concurrently.

d) The period of detention undergone by the revision petitioner shall be set off against the term of imprisonment imposed on him.

The Crl.R.P. is partly allowed.

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

acd



