

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

Crl.Rev.Pet.No. 3261 of 2003 ()

**AGAINST THE JUDGMENT IN C.C.NO.128/2000 of JUDICIAL FIRST CLASS MAGISTRATE
COURT - II, KANJIRAPALLY**

REVISION PETITIONER(S)/PW1(CW1):

**PAULY JOSE, AGED 51 YEARS, S/O.JOSEPH,
MUNDAKKAL HOUSE, KOTHAMANGALAM,
MALAYINKEEZHU**

BY ADV. SRI.JOHNSON MANAYANI

RESPONDENT(S)/ACCUSED & STATE:

- 1. GOPINATHAN NAIR (GOPI)
S/O.GOPALAN NAIR
THENGUMTHOTTATHIL VEEDU,
KOYIPALLY COLONY BHAGOM,
VADAKKUMBHAGOM KARA,
CHIRAKKADAVU VILLAGE**
- 2. JOSEPH JOSE, S/O.THOMAS
CHIRACKALAKETHU VEEDU
IDATHUMPAMPUR BHAGAM, VADAKKUMBHAGOM
KARA, CHIRAKKADAVU VILLAGE**
- 3. STATE OF KERALA, REP.BY
THE SUB INSPECTOR OF POLICE, PONKUNNAM**

**R1 & R2 BY ADV. SRI.LIJI.J.VADAKEDOM
R3 BY PUBLIC PROSECUTOR SMT.M.G.LISHA**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07-08-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

RAJA VIJAYARAGHAVAN V, J.

Crl.R.P.No.3261 of 2003

Dated this the 07th day of August, 2015

ORDER

In this petition filed under section 397 r/w section 401 of the Code of Criminal Procedure, the de facto complainant in C.C.No.128/2000 of the Judicial First Class Magistrate Court-II, Kanjirappally challenges the order of acquittal passed against the accused in the said case.

2. The gist of the allegation is that, on 31.01.2000, at 10.15 p.m., respondent Nos.1 and 2 who are the accused Nos.1 and 2 in the crime, with common intention, attacked the petitioner herein and inflicted bodily injuries owing to the previous enmity that existed between them. After investigation, charge sheet was laid before the learned Magistrate for offence under sections 326, 324, 294(b) read with section 34 of Indian Penal Code.

3. Prosecution examined PWs 1 to 9 and marked Exts. P1 to P7. On close of the prosecution evidence, the incriminating materials arising out of the prosecution evidence was put to the accused under section 313 of the Code of Criminal Procedure. The accused denied the various circumstances and maintained that he was innocent. No oral evidence was adduced on the side of the defence.

4. The learned magistrate after an elaborate consideration of the evidence held that the prosecution had failed to prove its case against the accused beyond reasonable doubt. Holding so, the benefit of doubt was extended to the accused and they were acquitted of the offence alleged against them. It is the above finding that is challenged in this Criminal Revision Petition.

5. The learned counsel appearing for the petitioner

argued that the evidence let in by PW1 was quite trustworthy and there was no reason for the magistrate to doubt the same and to acquit the accused. The mere fact that the occurrence witnesses turned hostile is not a sufficient enough reason to doubt the sterling evidence let in. According to the learned counsel, it is the quality of the evidence what matters and not the quantity.

6. On the other hand, the learned counsel appearing for the respondent Nos.1 & 2 has argued that no interference is warranted as the order of acquittal was passed by the learned Magistrate on a proper appraisal of the evidence let in.

7. I have carefully gone through the judgment passed by the lower court and have heard the respective counsels.

8. I am of the considered view that the learned

Magistrate has elaborately discussed the evidence and have sorted out the nuances with meticulous precision and have passed the impugned judgment. The learned Magistrate has taken note of the inconsistent nature of the evidence tendered by the petitioner and have entertained serious suspicion with regard to the veracity of his case. It was held that the evidence tendered by PW1 was not corroborated by any independent witnesses. It was also held that the defence version appeared to be more probable.

9. In a revision against acquittal by a private party the powers of the court is extremely limited. This Court will be justified in interfering only if there is any irregularity of procedure or if material evidence has been overlooked or misread by the court below. It is also settled that interference was not permissible if upon re-appraisal of the evidence, two views are possible.

In view of the above, I hold that the petitioner has not made out any ground for interference.

The revision petition stands dismissed.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE.**

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[True copy]

P.A to Judge