

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

Crl.Rev.Pet.No. 1491 of 2004 ()

SC 61/2001 of ADDITIONAL DISTRICT COURT (ADHOC), MANJERI

CP 41/2000 JUDICIAL FIRST CLASS MAGISTRATE COURT,PARAPPANANGADI

REVISION PETITIONER(S)/DEFACTO COMPLAINANT::

**CHERIYA BAVA, S/O. KASIMKUTTY,
ARAYANDEPURAKKAL, PARAPPANANGADI, MALAPPURAM DIST.**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/ACCUSED A1 TO A5::

- 1. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.**
- 2. MUHAMMED, S/O. SAIDALI,
KARTHAMANTEPURAKKAL, ALUNGAL KADAPPURAM, CHETTIPADY
MALAPPURAM.**
- 3. BASHEER, S/O. MUHAMMED,
-DO- -DO-.**
- 4. NOORUDHEEN, S/O. KARANAMAN MUHAMMED,
-DO- -DO-.**
- 5. HAMZA KOYA, S/O. MUHAMMED,
-DO- -DO-.**
- 6. KUNHUMON, S/O. KARANAMAN MUHAMMED,
-DO- -DO-.**

**R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS
R3,R5,R6 BY ADV. SRI.K.P.SUDHEER
R3,R5,R6 BY ADV. SRI.Y.JAFAR KHAN**

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SKV

K.RAMAKRISHNAN, J.

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Crl. R.P. No.1491 OF 2004

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Dated this the 14th day of October, 2015

ORDER

The defacto complainant in Crime No.116/1995 of Parappanangadi Police Station is the revision petitioner herein. The respondents 2 to 6 were charge sheeted by the Sub inspector of Police, Parappanangadi Police Station alleging offences under Sections 143, 147, 148, 447, 324 read with 149 of the Indian Penal Code.

2. The case of the prosecution in nut shell was that on 11.6.1995 at about 6 pm, the accused persons formed themselves in an unlawful assembly and in furtherance to the common object of committing the offence, criminally trespassed in to the court yard of the house of PW1, armed with iron bar, cycle chain etc. and beat PWs 1 to 3 with deadly weapons and caused injury to them and thereby all of them have committed offence punishable under Sections 143, 147, 148, 447, 324 read with 149 of the Indian Penal Code.

3. After investigation, final report was filed before the Judicial First class Magistrate Court, Parappanangadi where it was taken on file as CP No.41/2000 and after complying with the formalities, the case against the accused persons were committed to the Sessions Court, Manjeri, where it was taken on file as SC 61/2001. After committal, the sessions court took cognizance of the case as SC 61/2001 and it was originally made over to the Assistant Sessions Court, Tirur for disposal.

4. When the case was pending before that court, all the accused persons appeared and they were heard and after hearing both sides, charge under Sections 143,147, 148, 447, 324, read with Section 149 of the Indian Penal Code was framed and the same was read over and explained to them and they pleaded not guilty. Thereafter, the case was withdrawn and made over to Additional Sessions court, (Adhoc-1), Manjeri for disposal by the Sessions Judge.

5. In order to prove the case of the prosecution, PWs 1 to 8 were examined and Exts.P1 to P6 were marked on their side. After closure of the prosecution evidence, the

accused were questioned under Section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution evidence. They have further stated that they have not committed any offence. Infact the prosecution witnesses have attacked them and another crime was registered in respect of the same incident and in order to escape from the same the present crime was foisted against them.

6. Since the evidence in this did not warrant an acquittal under Section 232 of the Code, the accused were called upon to enter on their defence, but no oral evidence was adduced on their side, but Exts.D1 to D7 were marked on their side. After considering the evidence on record, the court below found that the prosecution has failed to prove the case against the accused as claimed by them and it was an afterthought, that the present case was registered to scape from the consequences of case registered against them and they were the aggressors and the court below had acquitted the accused giving them the benefit of doubt under Section 235(I) of the Code of Criminal Procedure.

Aggrieved by the same, the present revision has been filed along with the delay condonation application and the delay was condoned and the revision was admitted to file.

7. During the pendency of the revision, it is seen that respondents 2 and 4 expired. Sri. K.P. Sudheer appeared for other accused persons.

8. Heard Smt. Smitha Babu counsel representing Sri. Babu S. Nair, counsel appearing for revision petitioners and Sri. K.P. Sudheer counsel appearing for respondents 3,5 and 6 and Sri. Jibu P. Thomas learned Public Prosecutor appearing for the State.

9. The counsel for the revision petitioner submitted that the court below had not properly appreciated the evidence, especially when they also sustained injuries in the case and they went to hospital on the same day and they were seen by PW5 who issued Exts.P2 to P4 wound certificates of PWs 1, 2 and 3 respectively. Further, the delay in filing the case is not fatal in this case as they were under the impression that police would have registered the case as they also sustained injuries in the incident. So

under the circumstances, the order of acquittal passed by the court below is not proper and the court below ought to have convicted the accused for the offence alleged.

10. On the other hand, the counsel appearing for respondents 2, 3 and 5 submitted that the court below had properly appreciated the evidence and rightly acquitted the accused. Being a revisional court it should not interfere with the order of acquittal passed, if such a view is also possible. Further it will be seen from the documents produced on the side of the defence viz, Exts.D1 to D7 that the prosecution witnesses were the aggressors and it was they who had inflicted injuries on accused Nos. 2 and 3 causing grievous injuries. So the court below was perfectly justified in acquitting the accused.

11. It is an admitted fact that there was an incident occurred on 11.6.1995, at about 6 pm, from the property claimed by both as their own and accused Nos. 1 to 4 sustained injuries in that incident and in respect of the same, Crime No.114/1995 of Parappanangadi Police Station was registered against PWs1 to 3 and brother of PW1 and

another person alleging offences under Sections 143,147, 148,447, 324, 323 read with Section 149 of the Indian Penal Code originally, and after investigation Ext.D1 final report was filed alleging offence under Section 307 of the Indian Penal Code as well, along with the other offences mentioned in the First Information Report. It will be seen from Exts.D3 to D7 wound certificates that the accused Nos. 1 to 3 and Suhara and Nabeesa sustained injuries along with one Basheer. It is also seen from the evidence that the nature of injuries said to have been sustained by PWs 1 to 3 is not that grave and the wound certificate Exts.P2 to P4 will go to show that some of them did not even sustain any external injuries and other injuries mentioned are only superficial injuries.

12. Further the evidence of PWs 4 was disbelieved by court below, on the basis that, he had later admitted in the cross examination that he did not know as to how PWs 2 and 3 had sustained injuries. Further, First Information Report in this case was registered after three days of the incident. They have not sustained any grave injuries. So

nothing prevented them from informing the police and getting the case registered immediately. The delay in registering the case was not explained as well. So it is quite probable that when they came to know that a case has been registered against them on the basis of the statement given by the 3rd accused for causing grave injuries to 2nd and 3rd accused and 1st accused and his wife and daughter as a counter blast for the same as an after thought, they would have went to police station and registered the crime as well.

13. Further from the evidence of PW5 doctor, it is clear that it is not necessary that these injuries could have been caused by any attack as claimed by the prosecution witnesses. Further the case of the prosecution witnesses was that the accused person came with dangerous weapon like cycle chain, iron rod etc. and they have beaten them with these weapons and none of the injuries entered in Exts.P2 to P4 could have been caused by such an attack as claimed by them. So under the circumstances, the court below was perfectly justified in coming to the conclusion that the prosecution witnesses were aggressors and it was

they who had started the incident, inflicted injuries on accused Nos.1 to 3 and wife and daughter of fourth and second accused in the case had sustained grievous injuries as well and as such they are not entitled to get the benefit of private defence and they have exceeded the private defence and rightly acquitted the accused persons giving them the benefit of doubt.

14. Being a revisional court, it cannot re-appreciate the evidence and substitute its findings, even though a different finding could be arrived at on the basis of the evidence. If the court is satisfied that the view taken by the court below is probable, then the revisional court should not interfere with the order of acquittal passed by the court below. The case was also tried along with SC 62/2001 the main case and simultaneously disposed of by the court below. In this case, the view taken by the court below cannot be said to be perverse, so as to invoke the revisional jurisdiction of this court to upset the order of acquittal passed by the court below. So the revision fails and the same is hereby dismissed.

In the result revision is dismissed confirming the order of acquittal passed by this court below against respondents 2 to 5 in SC 61/2001 on the file of the Additional Sessions Court (Adhoc-1), Manjeri.

Office is directed to communicate this order to the concerned court immediately.

K.RAMAKRISHNAN, JUDGE

SKV