

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 527 of 2009 ( )

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Crl.A 264/2005 of II ADDL. SESSIONS COURT,PALAKKAD  
SC 351/2002 of ASSISTANT SESSIONS COURT (PRL.), PALAKKAD

REVISION PETITIONERS/APPELLANTS/ACCUSED:

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1. KUMARAN, S/O.KUPPELAN,PUTHANKALAM,  
CHITHALI, COYALMANNAM, ALATHUR TALUK.
2. PONNUSWAMY,S/O.VELAN,PUTHANKALAM,  
CHITHALI, COYALMANNAM, ALATHUR TALUK.

BY ADVS.SRI.P.VIJAYA BHANU  
SRI.M.REVIKRISHNAN

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 26-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**B.SUDHEENDRA KUMAR, J.**

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Crl.R.P. No.527 of 2009  
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Dated this the 26<sup>th</sup> day of November 2015

**ORDER**

The accused persons in S.C.No.351 of 2002 on the files of the Assistant Sessions Court, Palakkad have filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 436 read with Section 34 I.P.C.

2. Heard.

3. The prosecution allegation is that on 16.10.2010 at 12 night, the revision petitioners, in furtherance of their common intention, set fire to the thatched shed attached to the residential house of PW1 causing a loss to the tune of Rs.10,000/- to PW1.

4. Before the trial court, PW1 to PW5 were examined and Exts.P1 to P5 were marked for the prosecution, besides identifying MO1 series. No evidence was adduced from the side of the revision petitioners.

5. PW1 is the *de-facto complainant* who had given Ext.P1 F.I. Statement before the police in connection with the incident in this case. PW1 had given evidence before the trial court in tune with the prosecution case. However, no other witness supported the prosecution case. Therefore, the solitary evidence available before the court to support the prosecution case is the evidence of PW1.

6. Now the question to be considered is as to whether the evidence of PW1 can be relied on. According to PW1, he had seen the occurrence when he came out from his

house at 12 night for passing urine. PW1 had given Ext.P1 F.I. Statement before the police stating the names of all the accused. It appears that Ext.P1 F.I. Statement was given by PW1 at 1.30 p.m. on 17.10.2000. Ext.P1 F.I. Statement was received by the court on 18.10.2000 at 10.30 a.m. However, PW1 stated before the court that PW1 had given statement before the police at about 9.30 a.m. on 17.10.2000. Admittedly, PW1 was having enmity towards the revision petitioners due to political reasons. It is not discernible as to why PW1 did not give Ext.P1 F.I. Statement before the police immediately after the incident, eventhough the Police Station was situated just 8 k.m. away from the place of occurrence. Considering the facts and circumstances of the case, I am of the view that the evidence of PW1 alone is not sufficient to convict the

accused, particularly when PW1 had given the statement before the police only at 1.30 p.m. on the next day. Having gone through the evidence of PW1, I am of the view that PW1 can only be a chance witness to the incident. The other persons, who rushed to the place immediately after the incident, did not see the revision petitioners. Having gone through the relevant inputs, I am of the view that it is not safe to convict the revision petitioners on the basis of the evidence of PW1 alone, particularly when PW1 is admittedly having enmity towards the revision petitioners in connection with political reasons. There is no other evidence to connect the revision petitioners with the commission of the offence. In the said circumstances, the appreciation of evidence by the courts below cannot be correct and consequently, the

conviction and sentence passed by the courts below cannot be sustained.

In the result, this revision petition stands allowed, setting aside the conviction and sentence passed by the courts below under Section 436 read with Section 34 I.P.C. and the revision petitioners are acquitted for the said offence. The bail bonds of revision petitioners stand cancelled and they are set at liberty.

**Sd/-**

**B.SUDHEENDRA KUMAR,  
JUDGE**

*dl/27.11.2015*

*// True Copy //*

*PA to Judge*