

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

Cr1.Rev.Pet.No. 1879 of 2004 ()

AGAINST THE JUDGMENT IN CC 502/2002 of JUDICIAL FIRST CLASS
MAGISTRATE-I, THAMARASSERY DATED 25-03-2004

REVISION PETITIONER(S)/DEFACTO COMPLAINANT::

SULAIMAN, AGED 43 YEARS, S/O. ALIKUTTY,
VAVOTHUCHALIL HOUSE, PANNIKOTTOOR P.O., KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/ACCUSED/STATE::

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1. MUHAMMED RAFI, S/O. PARIEY,
RANDAMKUNNUMMAL VEEDU, NEDIYANADU AMSOM DESOM.
 2. SHOUKATHALI, S/O. PARIEY,
RANDAMKUNNUMMAL VEEDU, NEDIYANADU AMSOM DESOM.
 3. PARIYEYI, S/O. ALIKUTTY,
RANDAMKUNNUMMAL VEEDU, NEDIYANADU AMSOM DESOM.
 4. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

R,R2 & R3 BY ADV. SRI.P.K.BEHANAN

R,R2 & R3 BY ADV. SRI.BIJOY.K.ALIAS

R4 BY PUBLIC PROSECUTOR SRI. N. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 01-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.1879 of 2004

Dated this the 1st day of December, 2015

ORDER

The revisional power conferred under Section 397 and 401 of the Code of Criminal Procedure on the High Court is a supervisory jurisdiction to correct the miscarriage of justice arising from the erroneous orders, which may arise from the illegality or irregularity of any order or procedure. This revisional power is discretionary one and one cannot claim it as a vested right, when there is vested right in appeal. In an appeal, the appellant has a statutory right to demand adjudication upon a question of law or question of fact or of both. While exercising revisional jurisdiction, the petitioner has no such right, but he has the right to bring the case to

the notice of the court and it is for the court to interfere in exceptional cases when it feels that substantial injustice has been done.

2. The accused were charge sheeted in C.C.No.502/2002 of Judicial First Class Magistrate-I, Thamarassery for having committed offence punishable u/s.341, 326 r/w.34 IPC and after trial, learned Magistrate acquitted the accused u/s.248(1) Cr.P.C. The charge is that on 16.10.2002 at 21.30 hours, PW1 was walking towards his house, at that time, A1 to A3 in furtherance of their common intention wrongfully restrained him and A2 beat over the face of PW1 with an iron rod, as a result, he sustained fracture to his nasal bone, thereby committed the offence.

3. During trial, prosecution examined PW1 to PW6 and marked Exts.P1 to P6 as documentary evidence. While

cross examination of PW1, Exts.D1 to D3 were marked by the accused. The learned Magistrate acquitted the accused. Being aggrieved by that, the complainant preferred this revision petition.

4. I have heard both sides and perused the oral and documentary evidence adduced in this case. The revision petitioner contended that both the courts below did not appreciate the evidence of prosecution witnesses properly. The non-explanation of delay in reporting the matter before Police was taken as a serious infirmity while analysing the prosecution evidence. The wound certificate itself is sufficient to prove the alleged offence of grievous hurt. The misreading of evidence resulted in miscarriage of justice, which has to be rectified by invoking the revisional jurisdiction.

5. PW1 to PW3 are the occurrence witnesses in this

case. PW1 is the injured, who deposed that on 16.10.2002 at 9.30 p.m., while he was proceeding through the Vattoli, Manhalampoyil, Angamaly road, his brother and his children wrongfully restrained him and his daughter. A1 beat with an iron rod on the face which hit on the nose, as a result, he sustained fracture. Hearing cry, her wife and children arrived at the place of occurrence, from there he was removed to Medical College Hospital, Kozhikode and thereafter, he gave Ext.P1 statement to the Police. The weapon used for assaulting PW1 was marked as MO1. At the time of cross examination of PW1, Exts.D1 to D3 were marked in the trial Court.

6. PW2, who is the wife of PW1 supported the evidence. Her evidence shows that when she arrived at the place of occurrence, A1 beat her husband with MO1 iron rod on the face and he sustained an injury to the nose.

She also attested Ext.P2 seizure mahazar. PW3 is the daughter of PW1 and her evidence shows that when accused proceeded near to PW1, she ran towards her house and informed the incident to her mother and they reached at the place of occurrence. Analysing the evidence of PW1 to PW3, it is clear that inconsistent versions have been given by these witnesses with regard to the occurrence. If the evidence of PW1 is believed, it is difficult to believe the oral evidence of PW2 and PW3. According to PW1, the accused beat him two times, one on his face and another on the nose. The evidence of PW2 shows that when she arrived at the place on the basis of information given by PW3, A1 beat with MO1 on the face. That statement itself shows that PW2 had not seen the incident. Therefore, her evidence is not believable.

7. In this context, I have perused Ext.P5 wound

certificate, in which it is stated that PW1 sustained injury. When he was admitted at Medical College Hospital, Calicut, there was pain and bleeding from the nose, depressed fracture nasal bone, lacerated wound of nose, abrasion right shoulder. X-ray investigation shows that there was fracture on the nasal bone. But, no documentary evidences were produced in the trial Court to show that PW1 was admitted in the hospital or he was treated in the O.P., Medical College Hospital, Calicut. The doctor, who treated PW1, was also not examined.

8. There is also delay in registering the case. The incident had occurred on 16.10.2004. The crime was registered on 24.10.2002 and Ext.P6 is the F.I.R. Thereafter, he arrived at the place of occurrence and prepared Ext.P3 scene mahazar. MO1 was seized as per Ext.P2 seizure mahazar and PW5 attested Ext.P2 recovery

mahazar. The accused were arrested and released as per Ext.P4 bail bond. During investigation, he obtained Ext.P5 wound certificate. PW4 attested Ext.P3 scene mahazar. Analysing the above evidence, it is clear that no explanation was offered by the revision petitioner for the delay in registering the FIR in time, which was considered by the trial Court. The incident had occurred on 16.10.2002, the case was registered on 23.10.2002 and there was no explanation for the delay. FIR is not a substantive details of evidence, but it can use only to contradict or corroborate the maker thereof (AIR 2010 SCC 3330). When there is contradictory version with regard to the occurrence and medical evidence is not corroborating the prosecution, delay offered in registering FIR is relevant, which was considered by the trial Court. In my opinion, the trial Court considered the relevant legal

infirmity in connection with registering of the case and the fundamental rules with regard to appreciation of evidence.

The fundamental principle in a criminal case is that one person is presumed as innocent till he is proved to be guilty. This rule actually means that a person accused of a crime is not bound to make a statement or offer any explanation about the circumstances which throws suspicion upon him. It is the duty of the prosecution to prove the guilt beyond reasonable doubt. There may be exception where the rules of presumption applies in certain cases. In such case, a statutory presumption with regard to the proved facts and circumstances may arise which will help in reaching a conclusion. Here the depositions of PW1 to PW3 are not fully reliable for proving the alleged offence. In the light of the legal infirmity, the trial Court concluded that the evidence is

not sufficient to warrant a conviction and the accused were acquitted. I do not find any illegality in the above judgment. Therefore, there is no merit in this revision petition and it is dismissed accordingly.

P.D. RAJAN, JUDGE.

acd

