

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 872 of 2007 ()

AGAINST THE JUDGMENT IN SC 539/2003 of ADDL.SESIONS COURT
FAST TRACK(ADHOC-1), ALAPPUZHA DATED 21-03-2006

REVISION PETITIONER(S)/DEFACTO COMPLAINANT:

SHINIL, S/O.DAMODHARAN,
UTHAMABHAVANAM, MAHADEVIKAD MURI
KARTHIKAPPILLY VILLAGE, ALAPPUZHA DT.

BY ADV. SRI.G.BENO

RESPONDENT(S)/ACCUSED:

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1. STATE OF KERALA, REPRESENTED BY THE
DIRECTOR OF PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 2. UTHAMAN, S/O.DHAMODHARAN,
UTHAMABHAVANAM, MAHADEVIKAD MURI
KARTHIKAPPILLY VILLAGE, ALAPPUZHA DT. NOW, RESIDING
AT KOTTIYATTIL HOUSE, ELTHURUTHU P.O., KARIATTU KARA
TRISSUR DT.

BY PUBLIC PROSECUTOR SRI. N. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 04-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.872 of 2007

Dated this the 4th day of December, 2015

ORDER

The revision petitioner, who is the defacto complainant in S.C.No.539/2003 of Additional Sessions Judge, Fast Track (Adhoc-I), Alappuzha, challenges the acquittal of the accused for offence u/s.452, 324, 308 IPC. The 1st respondent is the accused in the above case. The prosecution charge is that on 8.9.2001 at 6.30 p.m., the accused due to his previous enmity, trespassed into the stationary shop of the revision petitioner and attacked him with a knife, as a result, he sustained serious injury, immediately he was removed to hospital. On the basis of information, Thrikkunnapuzha Police registered Crime No.135/2001 and after completing investigation laid

charge before Judicial First Class Magistrate Court-I, Haripad, from there it was committed to the Sessions Court.

2. During trial, Prosecution examined PW1 to PW7 and marked Exts.P1 to P6. MO1, MO2 series were marked in the trial Court as material objects. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He did not adduce any defence evidence. The trial Court acquitted him. Being aggrieved by that, the injured, defacto complainant preferred this revision petition.

3. After filing this petition, there was no representation from the side of the revision petitioner on several occasions. In the circumstances, this Court issued notice to the 2nd respondent through Sub Inspector of Police, Haripad. Even after notice to R2, no

representation to the revision petitioner.

4. Heard the learned Public Prosecutor.

5. The revisional power conferred under Section 397 and 401 of the Code of Criminal Procedure on the High Court is a jurisdiction to correct the miscarriage of justice arising from the erroneous orders, which may arise from the misconception of law, irregularity of procedure or order and misreading of evidence. 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.

6. PW1 and PW2 are the occurrence witnesses of which PW1 is the injured. The evidence of PW1 shows that on the date of incident at 6.30 p.m., the accused and PW2 came to the shop and demanded money and gold. Again he hit on the left palm and repeated the demand, then PW1 told him not to touch his body. Immediately, the accused took a knife and stabbed on his right leg, right cheek, PW1 cried loudly and tried to escape from the shop, at that time, PW2 intervened and accused had thrown the knife outside the room. Subsequently, PW1 was removed to Government Hospital, Haripad and from there to Medical College Hospital, Alappuzha. The occurrence was supported by PW2, who is the nephew of the injured. PW2 also stated that the accused demanded money and caught hold on the hands of PW1. When PW1 obstructed, the accused

took a knife and inflicted a stab injury on the chest. When PW1 tried to escape from there, the accused again gave another cut and threw the knife outside. PW2 identified MO1.

7. The Doctor, who treated PW1 was examined as PW3. His evidence shows that he treated the injured and issued Ext.P2 wound certificate. In Ext.P2, he noted the stab injury on the left side of the abdomen. Analysing the evidence of PW3, it is clear that medical evidence is not corroborating the oral testimony of PW1 and PW2. PW5 is another occurrence witness, who was declared hostile. PW4 attested Ext.P3 scene mahazar. PW6 Asst. Sub Inspector of Police, Thrikkunnappuzha recorded Ext.P1 statement. On the basis of that, he registered a crime. Ext.P1(a) is the FIR. Ext.P5 is the scene mahazar. On 9.9.2001, he recovered MO1 and MO2 series from the

place of occurrence, after preparing Ext.P5 mahazar. PW7 verified the investigation and laid charge in the trial Court.

8. On a close scrutiny of the evidence in this case, in my opinion, it is found that the trial Court appreciated the evidence in the correct perspective. The depositions of PW1 to PW3 were considered and opined that the prosecution utterly failed to prove the case beyond reasonable doubt. Therefore, this is not a fit case to invoke the revisional jurisdiction.

9. The fundamental rule 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 about the guilt of the accused. Therefore, there is no merit in this revision petition and it is dismissed accordingly.

P.D. RAJAN, JUDGE.

acd

