

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

Cr1.Rev.Pet.No. 1200 of 2005 ()

AGAINST THE ORDER/JUDGMENT IN CRA 136/2001 of SESSIONS COURT,
KOTTAYAM DATED 01-02-2005
AGAINST THE ORDER/JUDGMENT IN SC 76/1997 of ADDL.ASST. SESSIONS
COURT, KOTTAYAM DATED 17-03-2001

REVISION PETITIONER(S)/APPELLANTS/ACCUSED 2 & 3:

1. BINU S/O. SASIDHARAN,
PUTHENPARAMBIL, NATTASSERI KARA, PERUMBAIKKADU VILLAGE
KOTTAYAM.
2. SHINU S/O. SASIDHARAN OF DO. DO.

BY ADV. SRI.V.K.SUNIL

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

PUBLIC PROSECUTOR ADV. SMT. MADHUBEN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 06-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No. 1200 of 2005

Dated this the 6th day of April, 2015

ORDER

The 2nd and 3rd accused in S.C.No.76/1997 on the file of of Addl.Asst. Sessions Court, Kottayam, who have been convicted for offence punishable u/s.341 and 307 r/w.34 IPC and sentenced to undergo imprisonment for 3 years, are the revision petitioners. Against that, they preferred Crl.Appeal No.136/2001 before Sessions Court, Kottayam, where the conviction was confirmed, but sentence was modified.

2. The prosecution allegation was that on 21.4.1996 at about 6.30 p.m., the 1st accused, with the intention to murder PW7, wrongfully restrained him near Puthenparambil Veedu in Ward No.IX of Kumaranalloor Panchayat while proceeding through the pathway and the 3rd accused shouted to kill and

the 2nd accused took out a knife and stabbed PW7 on his stomach causing deep injuries. The 3rd accused took out a sword stick and hacked PW7, which caused injuries on both his palms and thereby committed the offence punishable u/s.341, 307 r/w.34 IPC.

3. To prove the allegation, the prosecution examined PWs 1 to 9 and marked Exts.P1 to P8 and admitted Mos 1 to 7 in evidence. Exts.D1 and D2 were marked by the defence. The trial Court after analysing the evidence acquitted A1 and convicted A2 and A3. .

4. The revision petitioners contended that there was suppression of facts in the trial Court. The evidence of PW8 is not admissible. The physical features noticed at the alleged place of occurrence were not considered by the Court below. The parties have settled their disputes and arrived at a compromise, which was not considered by the

Court below.

5. The learned Public Prosecutor strongly opposed the contentions advanced by the learned counsel for the revision petitioners. She contended that no reasons are stated by the revision petitioners for any interference.

6. In order to ascertain the illegality and irregularity, if any, committed by the Court below, I have perused the oral and documentary evidence in this case. The injured was examined as PW7. His evidence shows that he lost his marble cutter worth ₹6200/-in the Autorickshaw of the 2nd revision petitioner and inspite of repeated requests, there was no response from his side. According to him, on 21.4.1996 at 6.30 p.m., he again requested the 2nd accused to return the marble cutter and the said request was made in the pathway in between the residence of himself and the 2nd accused. He deposed that

when he reached at the place of occurrence, the 1st accused caught hold of his shirt and the 3rd accused shouted to stab him and the 2nd accused stabbed him on his stomach. He further deposed that the 3rd accused also hacked him with a sword stick on his right and left palm and he sustained injury. After the incident, the accused persons ran away from there. PW7 identified MO1 knife and MO2 sword stick before Court which were used for assaulting him. This witness was cross examined by the defence counsel. Nothing has been brought out to discredit his evidence.

7. PW8, who is the brother of the injured, supported the evidence of PW7. He deposed that while he was sitting inside his house, he heard the cry of PW7 and he rushed to the place of occurrence, at that time he saw the 1st accused caught hold of PW7 by his collar and the 3rd

accused shouted to stab PW7, immediately, the 2nd accused stabbed on the stomach of PW7.

8. The medical evidence supports the occurrence evidence of PW7. Ext.P5 is the wound certificate, in which two injuries are noted by PW6 Doctor. He opined that MO1 weapon is sufficient to make injuries noted in Ext.P5. Considering the nature of injury, it is clear that the intention was to cause death.

9. The trial Court observed that the injuries were inflicted with the intention as well as with the knowledge to cause death, thereby attracting Sec.307 IPC. In order to constitute offence under 307 IPC two elements are necessary. First thing is the intention or knowledge to commit murder and secondly the act of trying to commit murder. Thus both mens rea and actus reus are necessary. In other words, under this Section, all elements of murder

exist, except the fact that the death had not occurred. However the intention can be gathered from the circumstance like nature of weapon, the words used by the accused at the time of act, the motive of the accused and the part of the body where injuries are caused. The trial Court itself acquitted the 1st accused and convicted the 2nd and 3rd accused and sentenced to undergo rigorous imprisonment for a period of 3 years u/s.307 r/w.34 IPC, which was modified by the appellate Court and the 2nd and 3rd accused were sentenced to undergo rigorous imprisonment for one year.

10. Awarding appropriate sentence is the discretion of the trial Court. In Deo Narain Mandal V. State of U.P. [AIR 2004 SC 5150], Apex Court held that awarding of sentence is not a mere formality. Where the statute has given the Court a choice of sentence with maximum and

minimum limit presented than element of discretion is vested with Court. The discretion cannot be exercised arbitrarily. Considering the nature of injury in Ext.P5 wound certificate, the victim is entitled to get some amount as compensation, which was not considered by the Courts below. Hence, I modify the sentence and accordingly, the revision petitioners are sentenced to undergo imprisonment for 10 months u/s.307 r/w.34 IPC and directed to pay a fine of ₹75,000/- each, in default of payment of fine imprisonment for six months. If fine amount is realised, ₹1,00,000/- shall be given to PW7 as compensation, who is injured in this case.

This criminal revision petition is disposed of as above.

P.D. RAJAN, JUDGE.

acd

