

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

Crl.Rev.Pet.No.1657 of 2002 ()

**AGAINST THE JUDGMENT IN CRL.A 5/1998 of SESSIONS COURT,
MANJERI DATED 28-10-2002**

**AGAINST THE JUDGMENT IN CC 102/1991 of J.F.M.C.,
TIRUR DATED 12-01-1998**

REVISION PETITIONER/APPELLANT/ACCUSED :

**K.JAYARAMAN, S/O KOTHA,
KUMBAKONAM, THANJAVOOR DISTRICT,
TAMIL NADU.**

**BY ADVS.SRI.P.VIJAYA BHANU(SR.)
SRI.P.M.RAFIQ**

RESPONDENT(S)/RESPONDENT/COMPLAINANT :

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

PUBLIC PROSECUTOR SMT.BINDU GOPINATH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 24-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

K.HARILAL, J

Crl.R.P.No.1657 of 2002

Dated this the 24th day of February, 2015

ORDER

The revision petitioner is the accused in C.C.No.102/91 on the files of Judicial First Class Magistrate Court, Tirur, as well as appellant in Crl.Appeal.No.5/98 on the files of Sessions Court, Manjeri. He faced trial for the charge alleging the offence punishable under Sections 326, 324 and 447 of the Indian Penal Code. Originally, the charge was filed under Sections 324 and 447 only but later, the offence under Section 326 was also added in the charge. The prosecution case in brief is that, on 24.8.1988, at about 6.30 a.m. the accused criminally trespassed into the property of CW1 and beat her with a spade on her head and shoulder and when CW2 and 3 arrived at the place of occurrence by hearing hue and cry of CW1, the accused inflicted some injury on the head of CW2 with the above dangerous weapon and stamped on her abdomen and at the same time the accused beat CW3 on his right wrist and chest with the spade and thereby,

the accused is alleged to have committed the above offences charged against him.

2. Going by the impugned judgment passed by the trial court, it is seen that, PWs.1 to 10 were examined, Ext.P1 to P7 and MO1 were marked for the prosecution, but no evidence had been adduced in defence. When the accused was questioned under Section 313 of the Cr.P.C., he pleaded not guilty and thereafter he faced trial. After considering the evidence on record, the learned Magistrate found the accused guilty of the offence under Sections 324 and 326 of the I.P.C., but acquitted of the offence under Section 447 of the I.P.C. He was sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- and in default, rigorous imprisonment for 6 months for the offence punishable under Section 326 of the I.P.C. He was again sentenced to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- and in default, to undergo rigorous imprisonment for 6 months for the offence under Section 324 of the I.P.C. The sentence shall run consecutively, if the fine amount is realised Rs.5,000/- shall be given to PW1 as compensation

under Section 357 of the Cr.P.C.

3. Aggrieved by the conviction entered and sentence imposed on the accused, though he preferred the above appeal after re-appreciating the evidence on record, the learned Sessions Judge also confirmed the conviction entered by the learned Magistrate but, reduced and modified the sentence. The rigorous imprisonment for 3 years for the offence under Section 326 was reduced and modified to 18 months and the rigorous imprisonment for 2 years for the offence under Section 324 of the IPC was reduced and modified to 6 months. The rest of the sentence relating to the fine imposed by the court below was confirmed as such. It was further directed that the imprisonment will run concurrently. The default sentence was also maintained as such without interference. The legality, propriety and correctness of the concurrent findings of conviction and modified sentence are under challenge in this revision petition.

4. The learned counsel for the petitioner advanced arguments challenging the concurrent findings of conviction and sentence. Accordingly, the learned

counsel for the courts below miserably failed to appreciate the facts and evidence in its correct perspective. The appreciation of evidence by the court below has been perverse and it has resulted in gross miscarriage of justice. Though, this revision petition has been filed on various grounds. The learned counsel for the petitioner mainly focused on three points. Firstly, according to the learned counsel, the charge framed by the trial court is not specific. Secondly, the investigation had been conducted by a Head Constable, who was not competent to conduct investigation under law. Thirdly, the independent witnesses had been declared hostile and they have not supported the prosecution case. But the conviction is based on the solitary evidence of PW1 and PW3, who are the injured.

5. Per contra, the Public Prosecutor advanced arguments to justify the concurrent findings of conviction and sentence. According to the Public Prosecutor, even though initially the charge was registered for the offence punishable under Section 324 of the IPC later, on further investigation, it was found that the accused caused

grievous hurt on the injured and whereby the offence under Section 326 of the I.P.C. was also added with the other charge.

6. The question to be considered is, whether there is any illegality, impropriety or incorrectness in the findings whereby the petitioner was convicted and sentenced.

7. First of all, this Court must remember the limited scope and extent of jurisdiction under Section 401 of the Code of Criminal Procedure. The jurisdiction is confined to legality, propriety and correctness of the findings of the court below only. The revisional court is not expected to reappreciate the entire evidence. Even if an alternative view is also possible on any of the factual finding, revisional court cannot substitute its view, instead of the concurrent findings of the courts below.

8. Bearing the said proposition, let us examine the finding of the court below. Going by the judgment passed in appeal, it is seen that the conviction was entered on the basis of the evidence given by PWs.1 to 4. PWs.1 to 3 are the injured and Exts.P2 to P4 are the

respective wound certificates which prove the injuries sustained by them as alleged by the prosecution. These wound certificates are proved by PW4, the Doctor who treated them. He deposed in terms with the wound certificates. PW1 is the injured who sustained fracture and he has given Ext.P1 FIS. The trial court, after reappreciating the evidence of PWs.1 to 3 held that PW1 had deposed in terms with Ext.P1 F.I.Statement, and the said evidence is further corroborated by the evidence of PWs.2 and 3. I do not find any kind of perversity in the appreciation of evidence of PWs.1 to 4.

9. Coming to the challenge against charge, it is seen that the charge is framed in conformity with the statutory mandate under Sections 211, 112 and 213 of the Cr.P.C. The charges are specifically framed so as to constitute offences under Sections 326 and 324 IPC, with reference to each injured. There is no error in stating either required to be stated in the charge. The learned counsel could not point out any legal infirmity in framing the charge, which could mislead the accused or has occasioned a failure of justice.

10. Coming to the second point, it could be seen that the final report is filed by the officer in charge of the Police Station and the investigation was conducted under his supervision. According to Section 157 of the Cr.P.C., the officer in charge of the Police Station can depute one of his subordinate officers to make investigation under his supervision. This competent officer has investigated the crime and filed final report after investigation. Hence, the second point would stand rejected *in limine*.

11. As regards the third point, I have already held that there is no perversity in the appreciation of evidence of PWs.1 to 4. The fact that independent witness turned hostile is not of consequences at all, when the evidence of injured is trustworthy and corroborated by the evidence of Investigating Officer. Value, weight and quality of evidence is important rather than quantity, multiplicity or plurality of witness. Evidence must be weighted, not counted. It is the quality, not quantity, which determines the adequacy of evidence as has been provided under Section 134 of the Indian Evidence Act.

Therefore, at all points, the challenge against the concurrent findings of conviction would stand rejected and I affirm the conviction entered by the trial court and confirmed by the appellate court.

12. Lastly, the learned counsel submitted that the sentence imposed on the accused is harsh and disproportionate with the nature and gravity of the offence.

13. Prison term can be imposed to secure the interest of deterrence. But, deterrence always does not depend upon the length of the term that the offender spends behind the bars. At the same time, misplaced sympathy cannot have any place in the criminal adjudicatory process. On a proper balancing of entire facts, circumstances and law, I find that the modified sentence imposed by the court below is also a little excessive and harsh. An unduly long term of substantive sentence may be counter productive also.

14. Consequently, in supersession of the modified sentence imposed by the appellate court, the accused/revision petitioner is sentenced to undergo

simple imprisonment for 3 months and to pay a compensation of Rs.25,000/- under Section 357(3) of the Cr.P.C. to PW1 for the offence punishable under Section 326 of the IPC. He is further sentenced to undergo simple imprisonment for one month under Section 324 of the I.P.C. Sentence shall run concurrently. The revision petitioner shall deposit the said amount before the trial court and in that event, PW1 is allowed to realise the said amount from the trial court. In default, the revision petitioner shall undergo simple imprisonment for three more months.

The revision petition is allowed in part.

**K.HARILAL
JUDGE**

VS