

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

Crl.Rev.Pet.No. 2265 of 2004 (C)

**AGAINST THE JUDGMENT IN CRL. APPEAL 30/1998 of ADDL. SESSIONS COURT
(ADHOC), WAYANAD, KALPETTA**

AGAINST THE ORDER/JUDGMENT IN C.C. 631/1992 of J.M.F.C.,SULTHANBATHERY

REVISION PETITIONER(S)/APPELLANTS.ACCUSED.:

- 1. VIJAYAN, AGED 40 YEARS, S/o.ACHUTHAN,
INCHIPPALLIYIL HOUSE, MADAPPALLYKUNNU COLONY,
PULPALLY, S.BATHERY TALUK, WAYANAD DISTRICT.**
- 2. REEJA, W/O.VIJAYAN, AGED 34 YEARS,
INCHIPPALLIYIL HOUSE, MADAPPALLYKUNNU COLONY,
PULPALLY, S.BATHERY TALUK, WAYANAD DISTRICT.**

BY ADV. SRI.ESM.KABEER

RESPONDENT(S)/COMPLAINANT.:

- 1. THE STATE, REPRESENTED BY THE
S.I. OF POLICE, PULPALLY.**
- 2. THE STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.2265 of 2004

Dated this the 6th of October, 2015

ORDER

The revision petitioners are the appellants in Criminal Appeal 30/98 of the Additional Sessions Judge, (Adhoc) Kalpetta challenges the concurrent findings of conviction under Section 324 and 326 IPC. They were accused in C.C.631/92 on the file of Judicial First Class Magistrate-1, Sulthan Bathery and A1 was convicted under Section 326 IPC and A2 under Section 324 IPC. A1 was acquitted under Section 341, 324 read with 34 IPC and A2 was acquitted with 341, 326 read with 34 IPC. A1 was sentenced to rigorous imprisonment for 3 years under Section 326 IPC and pay a compensation of Rs.5000/- under Section 357(3) Cr.P.C. A2 was sentenced to pay a fine of Rs.2000/- under Section 324 IPC, in default of payment of fine, simple imprisonment for three months.

2. The prosecution case is that, on 29.7.92 at 7.30

am, while PW1 was proceeding to fetch water from a well in Madappilly Colony, A1 to A3 came there, A2 inflicted injury with a chopper on the head and left collar bone and A3 caught PW1 and A3 hit her with a glass piece. As a result, she sustained injury on the left collar bone. On hearing the cry one Kunhumon and Raveendran came there and intercepted them. A2 assaulted them with a glass piece. As a result, they sustained injury and thereby committed the offence. On the basis of information, Pulpally police registered a Crime 113/92 and after investigation, laid charge before Judicial First Class Magistrate, Sulthan Bathery.

2. During trial, A3 was absconding, therefore his case was split up and refiled as CC 764/98. To prove the offence prosecution examined PW1 to PW10 and marked Exts.P1 to P5 and P1(A) and MO1 and MO2 were marked as material objects. The incriminating circumstances brought out in evidence were denied by the accused. They examined DW1 to DW3 and marked Exts.D1 and D2. The trial court after analyzing the evidence convicted the

accused 1 and 2. Against that they preferred an Appeal, where the conviction was confirmed and sentence was modified. Being aggrieved by that, the accused 1 and 2 preferred this revision.

3. The learned counsel appearing for the revision petitioner contended that the place of occurrence is not specifically identified by the prosecution. There is a delay of 9 days in forwarding the FIR to the court. The chopper used for assaulting was not recovered by the investigating officer. The court below failed to appreciate the material evidence and the revisional jurisdiction has to be exercised to rectify the error.

4. The prosecution case is that, the accused attacked PW1 and PW2 and inflicted injuries with dangerous weapon and they sustained serious injuries. The evidence of PW1 shows that on 29.07.92 at 7.30 am, she reached near the well in the Madappilly Colony, at that time, accused were found there, PW1 asked why A2 and A3 assaulted her daughter Vincy, A1 gave a blow on her forehead and on the collar bone with a chopper. A2

assaulted with a glass piece on her back, as a result, PW1 sustained serious injuries and she was removed to Pulpally Hospital and thereafter to Medical College Hospital, Kozhikode. She gave Ext.P1 statement to the police. PW2 deposed that when he reached at the place of occurrence A1 was holding a chopper and A2 was holding a glass piece. He intervened and separated them from further assault. PW2 also sustained injury with the glass piece in the possession of A2. Immediately PW1 was removed to the hospital by him. Analysing the oral evidence of PW1 and PW2 it is clear that, PW1 sustained injury in the incident due to the attack of the accused.

5. In this context, I have perused the wound certificate. Ext.P3 wound certificate was issued by PW5, Dr.Velayudhan, Civil Surgent Grade II, District Hospital, Mananthavady. He noticed the following injuries;

1. Cut injury left side of forehead, 5 cm long 2 cms wide bone deep with clear cut edges. Piece of bone clipped off, would placed vertically from the eye brow to hair line.
2. Penetrating injury left side of chest, just below lateral end of collar bone.
3. Cut injury on the back aspect of chest

right side 5 cms long 1 cm wide and ½ cm deep. Curved would placed vertically with a convexity towards the left side.

4. Contusion left side of neck.
5. Abrasion left shoulder
6. Suspected fracture left clavicle.

The Doctor who treated at District Hospital supported the evidence PW1 and stated that injuries could be possible due to the assault as stated by PW1. The injuries noted in Ext.P3 can be possible by MO1 weapon.

6. The evidence of PW9 shows that he admitted PW1 on 29.7.92 and discharged on 5.8.92. X-ray investigation shows fracture on clavical left. Therefore, the medical evidence is supporting the evidence of PW1. Even though PW1 was cross-examined by the defence counsel, nothing has been brought out to discredit her evidence. PW2, who is the husband of PW1's sister also supported the evidence of PW1. PW4 attested Ext.P2 seen mahazar. PW3 is not an eye witness, he arrived at the place of occurrence after the incident. PW6 recorded Ext.P1 statement of PW1. Ext.P1 (a) is the F.I.R. PW8 conducted investigation in this case. On the basis of getting Ext.P1

statement, he registered Crime 113/92 under Section 341, 324, 326 read with 34 IPC. He arrived at the place of occurrence and prepared Ext.P2 mahazar. MO1 was seized from the place of occurrence as per Ext.P4. The accused 1 and 2 were arrested and produced before court. PW8 completed investigation and laid charge before court.

7. In this context, I have considered the delay in forwarding FIR. Ext.P1 statement was recorded on 1.8.92 from Medical College Hospital, Kozhikode. PW8, Assistant Sub Inspector of Police conducted investigation on 2.8.92, immediately after getting Ext.P1. The date of occurrence was on 29.7.92, the reason for the delay was not explained by PW8. The incident had occurred on 29.7.92 and FI statement was recorded on 1.8.92 and FIR was registered on 2.8.92, it reached before court on 10.8.92. The delay was caused at the hands of the police. There is no allegation of creation of evidence by the police or by the witness. If that be the position, it will not harm the prosecution case and the accused are not entitled to get the benefit of doubt on that ground.

8. In this backdrop, I have considered the defence put forward by the accused. They examined DW1 to DW3 and marked Exts.D1 and D2. Exts.D1 and D2 are the wound certificates issued by DW1. It is clear from Exts.D1 and D2 that one Vijayan and Reeja sustained injury on 29.7.92 at Parakkadavu. He sustained, 1.Laceration of about 1 cm size over the left frontal area of the scalp 2. Linear abrasion 3 cm size on the lower part of the left thigh 3. Linear abrasion 3 cm size on the middle of left leg - minor simple injuries. DW2 also sustained minor injuries on 29.7.92, at Parakkadavu, 1. Contusion of about 2 cm size on the forehead 2. Abrasion of about 1 cm size on the root of the nose. The trial court analyzed the defence evidence. The evidence in Exts.D1 and D2 corroborate their presence at the place of occurrence as stated by prosecution. The trial court and appellate court analysed that aspect and convicted the accused. Therefore, the conviction under Section 324 and 326 IPC is only to be confirmed. Section 34 of IPC was not found in this case and they were acquitted by the trial

court under Section 341 read with 34 IPC. I find no illegality in the above conviction.

9. The learned counsel appearing for the revision petitioner submitted that the imprisonment imposed by the trial court is too harsh. The trial court sentenced A1 to rigorous imprisonment for 6 months and pay fine of Rs.5000/- and A2 was sentenced to a fine of Rs.2000/- under Section 324 IPC. The fine imposed against the second accused is confirmed. But the sentence imposed against the first accused needs some modification.

In the circumstance, the sentence is modified and A1 is sentenced to imprisonment for 3 months under Section 326 IPC and fine of Rs.15,000/-, in default of payment of fine, simple imprisonment for six months. If the compensation amount is realized, a sum of Rs.12,000/- shall be paid to the victim, PW1 under Section 357(1)(a) Cr.P.C. as compensation. The revision petitioners are directed to surrender before trial court within 30 days from today to undergo the modified sentence, failing which, Judicial First Class Magistrate,

Sulthan Bathery shall issue non-bailable warrant against the accused.

STK

//TRUE COPY//

PA. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE