

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. 2584 of 2004 (C)

AGAINST THE JUDGMENT IN Crl.Appeal 216/2002 of ADDITIONAL DISTRICT &
SESSIONS COURT, THODUPUZHA DATED 16-08-2004

AGAINST THE JUDGMENT IN CC 111/1998 of CHIEF JUDICIAL
MAGISTRATE, THODUPUZHA DATED 31-10-2002

REVISION PETITIONER(S)/APPELLANTS/ACCUSED 1 TO 4::

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1. MANI @ BIJU, S/O. JOSEPH, PATTUPARAYIL HOUSE,
KANJIRAMPARA BHAGOM, MUTHALAKODAM KARA
THODUPUZHA VILLAGE, THODUPUZHA TALUK.
 2. JOSEPH, S/O.MANI, PATTUPURAYIL HOUSE,
KANJIRAMPARA BHAGOM, MUTHALAKODAM KARA
THODUPUZHA VILLAGE, THODUPUZHA TALUK.
 3. XAVIER @ KUNJU, S/O.JOSEPH,
PATTUPARAYIL HOUSE, KANJIRAMPARA BHAGAM
MUTHALAKODAM KARA, THODUPUZHA VILLAGE,
THODUPUZHA TALUK.
 4. JOSE, S/O.MATHAI, THOTTASSERI HOUSE,
KANJIRAMPARA BHAGAM, MUTHALAKODAM KARA
THODUPUZHA VILLAGE, THODUPUZHA TALUK.

BY ADVS.SRI.BENOY K.KADAVAN
SRI.JOY C. PAUL
SRI.DINNY THOMAS
SRI.JAISHANKAR V.NAIR

RESPONDENT(S)/RESPONDENT/COMPLAINANT::

STATE OF KERALA, REP. BY THE SUB INSPECTOR OF POLICE,
ADIMALI, THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 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.2584 of 2004

Dated this the 4th day of December, 2015

ORDER

This revision petition has been instituted against the judgment in Crl.Appeal No.216/2002 of the Additional Sessions Judge, Thodupuzha by the accused. They were charge sheeted in C.C.No.111/1998 of the Chief Judicial Magistrate, Thodupuzha for having committed offences punishable u/s.447, 452, 323, 324, 326 r/w.34 IPC. The charge is that on 10.2.1998 at 8 p.m., A1 to A4 in furtherance of their common intention trespassed into the courtyard of PW1 and A1 hit on the left side of the head of PW1 with a stone. When PW2 intervened, A2 assaulted PW2 with a stick and A3 hit with a stone on the left side cheek of PW1. A4

threw a stone on the forehead of PW2, which resulted serious injury to him, at that time A5 hit on the right shoulder of PW1, as a result they sustained serious injuries and they were admitted in the Government Hospital. In this incident, Thodupuzha Police registered a crime and after completing investigation, they laid charge in the Chief Judicial Magistrate Court, Thodupuzha.

2. During trial, prosecution examined 9 witnesses and marked Exts.P1 to P6 as documentary evidence, the learned Magistrate admitted MO1 and MO2 as material objects. The incriminating circumstances brought out in evidence were denied by the accused while questioning them. They did not adduce any defence evidence. The learned Chief Judicial Magistrate convicted A1 to A4 u/s.324, 323, 447 r/w.34 IPC and sentenced to imprisonment for two months u/s.324 IPC and no separate

sentence under section 447, 323 IPC. A5 was acquitted by the trial Court. Against that conviction, accused preferred criminal appeal No.216/2002 before Additional Sessions Court, Thodupuzha. Being aggrieved by that, they preferred this revision petition.

3. In an offence for voluntarily causing hurt, prosecution has to prove that accused voluntarily caused hurt, by means of any instrument for shooting, stabbing or cutting or any instrument which used as a weapon of offence. The evidence of PW1 shows that on 10.2.1998 at 8 p.m he was sitting in front of his house, at that time, the accused called abusive words and pelted stones towards him. When he came out of the house, the accused pelted stones on his house. PW1 questioned about this act and A1 told that he would be done away and hit on the left portion of his head with stone, resulting in injury. Hearing

this, the wife of PW1 came out of the house, A2 beat her with a stick and A3 hit below her left eye, thereby sustained injury. A5 beat him on the shoulder with MO1 stick. The evidence of PW1 shows that the accused were present at the place of occurrence and they assaulted him due to their previous enmity. The motive alleged is that the accused thought that PW1 had added salt in the river sand which was stored for construction of the house of A4.

4. The accused assaulted PW4 who is the wife of PW1. She deposed that A2 beat her with MO2 stick and PW1 sustained injury with MO1. A4 also pelted stone on her head. PW6 also supported the evidence of PW4. Analysing the oral testimony of PW1, PW4 and PW6, it is found that PW1 and PW4 sustained injury due to the attack from the revision petitioners.

5. The Doctor, who treated PW1 and PW4 was examined as PW3 in the trial Court. Exts.P3 and P4 are wound certificates issued by PW3. He deposed that the injury noted in Exts.P3 and P4 would have been caused as alleged. Therefore, the medical evidence is corroborating the prosecution story. Analysing the evidence of PW1 and PW4 with medical evidence, it is found that their evidence is corroborating and reliable. PW7 recorded Ext.P1 statement, on the basis of that, he registered Ext.P5 FIR. PW8 conducted investigation and laid charge before Court.

6. 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. A close scrutiny of the evidence shows that the trial Court rightly appreciated the evidence and convicted A1 to A4 and acquitted A5 which was upheld by the appellate court. I do not find any illegality in the above sentence.

7. The main contention raised by the learned counsel appearing for the revision petitioner is that no criminal antecedents were reported against the revision petitioners. The revision petitioners and the injured are neighbours and they are leading a peaceful life and he seeks leniency in sentence. In the light of the above submission, I obtained a report from the District

Probation Officer, Idukki about the general behaviour and antecedents of A1 to A4. The District Probation Officer reported that the conduct of A4 is not satisfactory to show any leniency. He is reported an irresponsible person and not concerned about his family, even after repeated intimation, he did not report the office and not ready to give an intake session. Moreover, locals and neighbours have very bad opinion about him and hence, in view of the report of the Probation Officer, he is not a fit person to be treated with any of the benevolent provisions of the Probation of the Offenders Act, 1958. Considering the nature of injury and the character of A1 to A3, instead of sentencing them to any imprisonment, I sentence them as follows:

A1 to A3 are sentenced to pay fine of ₹3,000/- each u/s.324 IPC, in default of payment of fine, simple

imprisonment for three months. If the fine amount is realized, a sum of ₹5,000/- shall be disbursed to PW1 as compensation u/s.357(1) (a) Cr.P.C. The sentence against A4 is confirmed and no interference is necessary in that findings. The Court below had not given any separate sentence u/s.447, 323 IPC and I am not making any modification in the said findings.

The Crl.R.P. is disposed of as above.

P.D. RAJAN, JUDGE.

acd