

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

Crl.Rev.Pet.No. 1461 of 2007 ()

**AGAINST THE JUDGMENT IN CRL.A.NO.618/2006 of II ADDL.SESIONS
COURT,ERNAKULAM DATED 09-11-2006**

**AGAINST THE JUDGMENT IN C.C.NO.1035/2005 of JUDICIAL FIRST CLASS
MAGISTRATE COURT, KOLENCHERRY DATED 20-07-2006**

REVISION PETITIONER(S)/PETITIONER/APPELLANT/ACCUSED:

**GEO JAMES, AGED 34 YEARS, S/O. JAMES,
POOKATTU VEEDU, MADAKKATHANAM P.O., MANJALLUR VILLAGE.**

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT.M. MADHU BEN.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08-
01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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K. Ramakrishnan, J.

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Crl.R.P.No.1461 of 2007

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Dated this, the 08th day of January, 2015.

O R D E R

Accused in C.C.No.1035/2005 on the file of the Judicial First Class Magistrate Court, Kolencherry is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Sub Inspector of Police, Vazhakulam in Crime No.27/2005 of Vazhakulam Police Station under Sections 341 and 323 of Indian Penal Code.

3. The case of the prosecution in nutshell was that, on 13.12.2005 at about 2 p.m., while PW1 was walking through Madakkathanam - Maniyanthram road and when he reached in front of the house of Akkapadikkal Babichan, the revision petitioner wrongfully restrained him and beaten with his hands on his cheek and caused voluntary hurt to him and pain to him and thereby, he had committed the offence punishable under Sections 341 and 323 of Indian Penal Code. After investigation, final report was filed and it was taken on file as C.C.No.1035/2005 on the file of the Judicial First Class Magistrate Court, Kolencherry.

4. When the revision petitioner appeared before the court below, the particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 7 were examined and Exts.P1 to P4 were marked on their side. After closure of the prosecution evidence, the revision petitioner was questioned under Section 313 of Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that on that day, when he reached the place of occurrence, in fact, he was attacked by the de facto complainant and influencing the police, a false case has been foisted against him. No evidence except marking Ext.D1 contradiction in the evidence of PW1 was adduced on the side of defence. After considering the evidence on record, the trial court found the revision petitioner guilty under Sections 341 and 323 of Indian Penal Code and convicted him thereunder and sentenced him to pay a fine of Rs.500/- under Section 341 of Indian Penal Code in default to undergo simple imprisonment for one month and further sentenced to undergo simple imprisonment for one month and also to pay a fine of Rs.1,000/- in default to undergo simple

imprisonment for one month and directed the sentences to run concurrently. Set off was allowed for the period of detention undergone by him. Aggrieved by the same, he filed Crl.Appeal No.618/2006 before the Sessions Court, Ernakulam which was made over to IInd Additional Sessions Court, Ernakulam for disposal and the learned Additional Sessions Judge allowed the appeal in part confirming the order of conviction and modified the sentence by directing him to pay a fine of Rs.500/- under Section 341 of Indian Penal Code and Rs.1,000/- under Section 323 of Indian Penal Code and in default to undergo simple imprisonment for one month each. Aggrieved by the same, the present revision has been filed by the revision petitioner-accused before the court below.

5. Heard the Counsel for the revision petitioner and the Public Prosecutor.

6. Counsel for the revision petitioner submitted that PWs 1, 3 and 5 belong to same political party and they are interested witnesses. Further, there was counter case registered in respect of the same incident in which, the present de facto complainant was the accused. Further, the witnesses have improved their case at the time when they were

examined before the court. Even PW1 had given a go by to his statement in Ext.P1 and given a new version before the court. The evidence of PW5 before police will go to show that the de facto complainant was the aggressor and that fact has not been properly appreciated by the court below. So, under the circumstances, the appreciation of evidence made by the court below for arriving at the finding of conviction under Sections 341 and 323 of Indian Penal Code is unsustainable in law and he is entitled to get acquittal.

7. On the other hand, the learned Public Prosecutor submitted that the contradictions or omissions or improvements alleged to have been made by the witnesses are natural instances and it cannot be said to be a willful embellishment so as to disbelieve their case. Further, the Doctor's evidence will go to show that the case of the revision petitioner is not probable and the case of the prosecution is probable. The concurrent findings of the court below do not call for any interference.

8. The case of the prosecution as emerged from the prosecution witnesses is as follows:

According to PW1, he had mediated in the property

dispute between one Chacko and the revision petitioner and he had mediated in favour of the said Chacko and that enraged the revision petitioner and that was the motive for attacking him. According to him, on 13.12.2005, while he was walking along the road Madakkathanam - Maniyanthram road, the revision petitioner came from the opposite direction and wrongfully restrained him and beat him with hands and thereafter, PW5 and others came there and removed them and when PW5 asked what happened, he described the same to him. Thereafter, he went to a private hospital from where he was seen by PW2 Doctor who issued Ext.P2 wound certificate. On getting intimation from the hospital, PW6 went to the hospital and recorded Ext.P1 statement of PW1 and came back to police station and registered Ext.P3 First Information Report as Crime No.27/2005 of Vazhakkulam police station against the revision petitioner under Sections 341 and 323 of Indian Penal Code. Thereafter, the investigation was conducted by PW7 - the Sub Inspector of Police, Vazhakkulam. He went to the place of occurrence and prepared Ext.P4 scene mahazar of the place of occurrence in the presence of PW4 and another. He questioned the witnesses and recorded their statements

and he completed the investigation and filed final report.

9. The case of PW1 in Ext.P1 First Information Statement was that while he was walking along the road, the revision petitioner also came from the opposite direction and suddenly asked him "¿¿¿R·¿LaL Af]sV WLq|U?" and then, beat him and caught hold of his dhoti and beat him on his face with his hands and it is mentioned in Ext.P1 that when PW5 Sunil came there asking as to what happened, he narrated the incident to him. But, at the time when he was examined before the court, his case was that, he was walking along the road and at that time, the revision petitioner came in his motor cycle and stopped the motor cycle and came towards him and then beat him on his face and thereafter, he kicked on his stomach and people gathered there, removed them and thereafter, he went to hospital. The fact that the revision petitioner came in a motor cycle and stopped and then came towards him was not mentioned in Ext.P1. Futher, in Ext.P1, he had no case that he had caught hold of his shirt collar and then restrained him. Further, he had not mentioned about kicking on his stomach at that time. His explanation was that, whatever statements given by him were not properly recorded

by the Sub Inspector who recorded the statement and whenever he interfered, he scolded him. But, he had not made any complaint to the higher authorities regarding the same. So, whatever stated by him before the court of what not stated in Ext.P1 can only be treated as an improvement made by him when he was examined before the court. It was admitted by him that there was a counter case registered in respect of the same incident against him, but, he pretended ignorance about the allegations made against him in that case. He had also admitted that on the basis of a complaint given by the revision petitioner, he was called to the police station, but, he did not remember the allegations in the complaint as well and what was the purpose for which he was called to the police station also.

10. Further, the evidence of PW3 will go to show that he did not hear any conversation between PW1 and the revision petitioner before the incident occurred. Further, he had stated that he had seen the incident for a distance of 40 feet and it was also admitted by him that he is a relative of PW1 and they were working as co-workers in the same political party. Though he is a close friend of PW1, he did not accompany him

to the hospital as well. He had also made improvements from the statement given by him to the police when he was examined before the court. PW5 whose name was mentioned in Ext.P1 had stated that he had seen the incident from a distance of 20 meters. He had denied having stated in Ext.D1 when he was questioned by the police. In Ext.D1, he had stated that, when the revision petitioner came in the motor cycle, PW1 had stopped him and caught hold of him and beaten him and it was thereafter, that the revision petitioner had beaten PW1. But, he had denied having stated so. But, the investigating officer had stated that, he had stated so when he was questioned. He had also admitted that he is a close associate of PW1 and they were working in the same political party as co-workers. Though it was stated by these witnesses that others were also come there, no independent witnesses have been questioned or cited as witnesses in the case. Further, it will be seen from the evidence that they are trying to suppress the genesis of the incident before the court as well, especially, when there was a counter case registered in respect of the same incident on the basis of the statement given by the revision petitioner against the de facto

complainant in this case, they pretended ignorance about the same. These aspects have not been properly appreciated by the court below before coming to the conclusion that the contradictions or omissions are natural contradictions and that they are not sufficient to disbelieve the case of the prosecution itself.

11. If an attempt has been made by PW1 and the witnesses to deviate from the statement given by them before the police and improved their case when they were examined before the court, especially when they were friends and working in the same political party, it is not safe to rely on their evidence without corroboration from independent witnesses to prove the case of the prosecution and under such circumstances, it cannot be said that prosecution has proved their case beyond reasonable doubt to connect the accused. When there is doubt regarding the genesis as to how the incident started and culminated and if there is a possibility of a different way in which the incident occurred as seen from the prosecution witnesses itself, then, that benefit must be given to the accused. That has not been done by the court below in this case. So, under the circumstances and in view of the

discussions made above, it cannot be said that the prosecution has proved reasonable doubt that the incident had happened in the manner in which the witnesses have deposed before the court so as to convict the revision petitioner for the offence under Sections 341 and 323 of Indian Penal Code. If the version mentioned in Ext.D1 is believable and if that be the genesis of the incident, then, it cannot be said that the revision petitioner was the aggressor. But, on the other hand, the de facto complainant was the aggressor who started the incident. So, under the circumstances, courts below were not justified in convicting the revision petitioner for the offence under Sections 341 and 323 of Indian Penal Code and the same is liable to be set aside and the revision petitioner is entitled to get acquittal of the charge levelled against him giving him the benefit of doubt. In view of the finding that the revision petitioner is entitled to get acquittal, the sentence imposed by the court below and modified by the appellate court is also liable to be set aside.

In the result, the revision petitioner succeeds and the revision is allowed. The order of conviction and sentence passed by the court below and modified by the appellate court

are hereby set aside and the revision petitioner is acquitted of the charge levelled against him giving him the benefit of doubt. The bail bond bond if any executed by him will stand cancelled. The fine amount if any remitted by the revision petitioner is directed to be refunded to him on making an application for that purpose before the court below.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge