

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Cr1.Rev.Pet.No. 3032 of 2004 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 104/1998 of ADDITIONAL DISTRICT &
SESSIONS JUDGE (AD-HOC), FAST TRACK COURT-I, PATHANAMTHITTA DATED
23-09-2004

AGAINST THE JUDGMENT IN CC 302/1994 of JUDICIAL MAGISTRATE OF FIRST
CLASS, THIRUVALLA DATED 31-07-1998

REVISION PETITIONER/APPELLANT/ACCUSED:

VINOD @ NELSON, S/O THOMAS,
MALAYIL HOUSE, VALIYATHURUTHU, MUNDIYAPPALLY MURI
KAVIYOOR VILLAGE.

BY ADV. SRI.M.P.PRAKASH

RESPONDENT/RESPONDENT/COMPLAINANT::

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

BY ADV. PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 03-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 3032 of 2004

Dated this the 3rd day of September, 2015

ORDER

The revision petitioner is the accused in CC 302/1994 on the files of the Court of the Judicial Magistrate of First Class, Thiruvalla.

2. The revision petitioner was convicted by the trial court under Sections 452, 393 and 394 IPC and sentenced him to rigorous imprisonment for one year under Section 452 IPC, rigorous imprisonment for two years under Section 393 IPC and rigorous imprisonment for three years under section 394 IPC. The above conviction and sentence were challenged in appeal. The Additional Sessions Court, Pathanamthitta as per judgment in Crl. Appeal No.104/98, confirmed the conviction and sentence passed by the trial court.

3. Heard.

4. The prosecution allegation is that on 17.09.1993,

at about 6 a.m., the revision petitioner trespassed into the house of CW1(not examined as he was no more), and attacked CW1 with a firewood causing injuries on him. On seeing this, PW1 and PW2 cried aloud. At that time, the revision petitioner left the place.

5. The courts below relying on the evidence of PW1 and PW2, found the revision petitioner guilty under Sections 452, 393 and 394 of IPC.

6. The learned counsel for the revision petitioner argued that even though there is police charge and court charge incorporating Sections 393 and 394 IPC, there is no material before the court to substantiate the said charges. I have gone through the evidence of PW1 and PW2, who are the ocular witnesses in this case. PW1 and PW2 did not state anything about the attempt to commit theft. There is no material before the court to hold that the revision petitioner committed the offences under section 393 and 394 IPC. Having gone through the evidence of PW1 and PW2, I have no hesitation to hold that the courts below appreciated

the evidence in a casual and perverse manner and came to the conclusion that the revision petitioner committed the offences under Sections 393 and 394 IPC. I am unable to see any material in the evidence of PW1 and PW2 to show that the revision petitioner committed the offences under Sections 393 and 394 IPC. However the evidence of PW1 and PW2 would clearly show that the revision petitioner attacked CW1 (not examined as he was no more at that time) with a firewood causing injuries on him. Having gone through the evidence of PW1 and PW2, I do not find any reason to disbelieve them. There is no allegation that PW1 or PW2 had any enmity towards the revision petitioner so as to falsely implicate him in a case like this.

7. The learned counsel for the revision petitioner has submitted that there is no proper identification of the revision petitioner by PW1 and PW2 and in the said circumstances, the revision petitioner is entitled to be granted benefit of doubt. Having gone through the evidence of PW1 and PW2, I am fully convinced that the revision

petitioner was correctly identified by PW1 and PW2 before the court. The evidence of PW1 and PW2 would show that they had sufficient opportunity to get the feature of the revision petitioner imprinted in their mind. In the said circumstances, I am not inclined to accept the argument of the learned counsel for the revision petitioner that the identification of the revision petitioner by PW1 and PW2 cannot be correct.

8. The evidence on record as discussed above would show that the conviction and sentence passed by the courts below under Sections 393 and 394 IPC cannot be sustained. However, the evidence on record would show that the revision petitioner trespassed into the house and attacked CW1. Therefore the offence under Sections 452 and 324 will be attracted. The evidence of PW1 and PW2 clearly shows that the revision petitioner attacked CW1 with a firewood. However, there is no medical evidence to prove the injury sustained by CW1. No wound certificate was also marked before the court to prove the same. To constitute the

offence under Section 324 IPC, it is only necessary to show that the victim sustained hurt with a dangerous weapon. The hurt is defined in Section 319 IPC. As per Section 319 IPC, causing even bodily pain is hurt. The evidence of PW1 and PW2 would show that firewood was used by the revision petitioner to inflict injuries on CW1. Therefore, from the evidence of record, it can be safely held that the revision petitioner committed offence under Section 324 IPC as well.

9. Now the next question to be considered is the quantum of sentence to be awarded to the revision petitioner. At the time of committing the offence, the revision petitioner had just crossed 18 years. The incident was in the year 1993. Now the revision petitioner has settled in life. There is no material before the court to hold that the revision petitioner was involved in any other offence subsequent to the incident in this case. Considering the facts and circumstances of the case, including the age of the revision petitioner at the time of commission of the offence, I am of the view that a lenient view can be taken in the

matter of sentence. It is born out from the lower court judgement that the revision petitioner had already undergone detention from 13.10.1993 to 22.11.1993 in connection with this case. In the said circumstances, the sentence can be modified and reduced to imprisonment for the period of detention already undergone by the revision petitioner in connection with this case for the offence under Section 452 IPC and a fine of Rs.3,000/- for the offence under Section 324 IPC, to secure the ends of justice and accordingly I order so.

In the result, this revision petition stands allowed in part,

- 1) confirming the verdict of guilty and conviction passed by the courts below under Sections 452 and 324 IPC,
- 2) the sentence awarded by the courts below under Sections 452 IPC stands modified and reduced to imprisonment already undergone by the revision petitioner in connection with this case,

3) the revision petitioner is sentenced to a fine of Rs.3,000/-(Rupees three thousand only) under Section 324 IPC,

4) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for one month.

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

sm/