

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

Crl.Rev.Pet.No. 1734 of 2009 ()

**AGAINST THE JUDGMENT IN Crl. APPEAL 111/2003 of ADDL.SESIONS COURT (ADHOC-II)
KASARAGOD, DATED 31-03-2009.**

&

**AGAINST THE JUDGMENT IN SC 533/1999 of ASSISTANT SESSIONS COURT,
KASARAGOD, DATED 28-02-2003.**

REVISION PETITIONER(S)/REVISION PETITIONERS:

- 1. P.MOIDU, AGED 49 YEARS,
S/O.MUHAMMED , ANIYADI, KARIBVEDAKAM VILLAGE,
KASARAGOD DISTRICT.**
- 2. P.ABDULLA, AGED 41 YEARS,
S/O.AHAMMED, PACHANKI, CHERUVATHUR VILLAGE,
KASARAGOD DISTRICT.**
- 3. P.KADEEJA, AGED 36 YEARS,
W/O. P.ABDULLA, ANIYADI, KARIVEDKAM VILLAGE,
KASARAGOD DISTRICT.**

BY ADV. SRI. M.SASINDRAN

RESPONDENT(S):

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

BY PUBLIC PROSECUTOR SMT. V.H. JASMINE.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
24-03-2015, ALONG WITH CRRC. 4/2009, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

K. RAMAKRISHNAN, J.

Crl.R.P.No.1734 of 2009
and Crl. R.C.No.4/2009

Dated this the 24th day of March, 2015

ORDER

Accused Nos. 1 to 3 in S.C.No.533/1999 on the file of the Assistant Sessions Judge, Kasaragod, are the revision petitioners herein. The revision petitioners were charge-sheeted by the Sub Inspector of Police, Badiadka police station, in Crime No.118/1998 of that police station for the offence under Section 341, 323 and 304 read with Section 34 of the Indian Penal Code.

2. The case of the prosecution in nut shell was that, on 24.09.1998 at about 06.00 p.m., the accused persons in furtherance of their common intention to commit culpable homicide, not amounting to murder, wrongfully restrained deceased Mohammedkunhi, in the house bearing door No.XIII, beaten and fisted him with hands and caused his death and thereby they have committed the offence

punishable under Section 341, 323 and 304 read with Section 34 of the Indian Penal Code.

3. After investigation, final report was filed and it was taken on file as C.P.58/1999 on the file of the Judicial First Class Magistrate Court, Kasaragod and thereafter the case was committed to the Sessions Court, where it was taken on file as S.C.533/1999 and made over to Assistant Sessions Court, Kasaragod, for disposal. When the revision petitioners appeared before the court below, after hearing both sides, charge under Section 341, 323 and 304 read with Section 34 of the Indian Penal Code was framed and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 12 were examined and Exts.P1 to P11 were marked on the side of the prosecution. After closure of the prosecution evidence, the revision petitioners were questioned under Section 313 of the Code of Criminal Procedure and they denied all the incriminating

circumstances brought against them in the prosecution evidence and they had further stated that, they had not committed any offence and they have been falsely implicated in the case. In fact the deceased came to their house and beaten, second accused and he was removed by other accused person and the prosecution witnesses and he died later due to some other reason. They have not committed any offence. Since the evidence in this case did not warrant any acquittal under Section 232 of the Code of Criminal Procedure, the accused were called upon to enter on their defence by the trial judge. The wife of the second accused was examined as DW1 and Exts.D1 and D2 contradictions were marked through PWs 2 and 3 respectively.

4. After considering the evidence on record, the court below found the revision petitioners guilty under Section 304, 323 and 341 read with Section 34 of the Indian Penal Code and convicted them thereunder and sentenced

them to undergo rigorous imprisonment for three years each for the offence under Section 304 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for six months each for the offence under Section 323 of the Indian Penal Code and further sentenced to undergo simple imprisonment for one month each for the offence under Section 341 of the Indian Penal Code and direct to run the sentence concurrently and the period of detention already undergone was given set off. Aggrieved by the same, they have filed Crl. Appeal No.111/2003 before the Sessions Court, Kasaragod, which was made over to Additional Sessions Court(Ad-hoc-II), Kasaragod, for disposal and the learned Additional Sessions Judge allowed the appeal in part, though confirmed the order of conviction under Section 341, 323 and 304 of the Indian Penal Code and modified the sentence by sentencing them to undergo imprisonment, till rising of the court and also to pay a fine of ₹25,000/- each under Section 304 of the Indian Penal

Code, in default to undergo simple imprisonment for one year and further sentenced to pay a fine of ₹1,000/- each under Section 341 of the Indian Penal Code and default to undergo simple imprisonment for three months each for the offence under Section 323 of the Indian Penal Code and directed the entire fine amount if realized to be paid to the legal heirs of the deceased as compensation under Section 357(1)(b) of the Code of Criminal Procedure. Aggrieved by the same, the present revision has been filed by the revision petitioners/accused Nos. 1 to 3 before the court below. Since this court felt that, the sentence imposed for the offence under Section 304 of the Indian Penal Code is less, registered suo-moto revision as Crl.R.C.No.4/2009 and notice was issued to the revision petitioners for hearing on the question of sentence, if ultimately found guilty for the offence alleged and they appeared through counsel in that suo-moto revision as well.

5. Heard the counsel for the revision

petitioners and learned Public Prosecutor.

6. The counsel for the revision petitioners submitted that, evidence of the doctor coupled with the postmortem report will go to show that, the death was due to coronary artery disease and it was not due to the injury sustained. Further there is no evidence to show that the accused persons were having knowledge about the illness of the deceased and they have done with a knowledge that their act is likely to cause death of the deceased as well. The presence of PW1 at the place of occurrence is doubtful as the evidence of PWs 2 to 4 will go to show that he reached the place only after the incident. So his evidence regarding the manner in which the injuries were inflicted is unbelievable. So under the circumstances, courts below were not justified in convicting the revision petitioners for the offence under Section 304 of the Indian Penal Code. Further the place of occurrence is in the house of the accused and the evidence will go to show that the deceased

was the aggressor. So the courts below were not justified in convicting the revision petitioners for any of the offences alleged. Further he had submitted that, the appellate court had appreciated the circumstances and reduced the punishment and that does not call for any interference.

7. On the other hand, learned Public Prosecutor Smt. V.H.Jasmine, vehemently argued that, the evidence of DW1 will go to show that they were knowing about the disease of the deceased and with that knowledge they have inflicted injuries and so the courts below were perfectly justified in convicting the revision petitioners for the offence alleged. Further the sentence imposed by the court below is justifiable, which should not have been interfered by the appellate court and the sentence will have to be restored.

8. The case of the prosecution as emerged from the prosecution witnesses was that, on the date of incident, namely, 24.09.1998 at about 6.00 p.m., the deceased

Mohammedkunhi was in his house and PW2 Karukappa Gowda, an employee came there for getting his wages and he was not having money and he asked PW3 to go to the house of the second accused / Abdulla, who has to pay ₹1,000/- to him and accordingly PW3 went to the house and came back stating that, Abdulla told that he would come later. After some time, since Abdulla did not come, the deceased went to the house of the accused persons accompanied by PW3 and there was some quarrel occurred between them and at that time, accused persons caught hold of the deceased and pressed him on the wall and beat him. Thereafter, PW3 came to the house and informed about the same to PW4 and she went there and at that time she saw the accused persons beating the deceased and she could not remove them, by the time PW2 also reached the courtyard and all of them have removed him from the clutches, by the time PWs 1 and 5 also came there and they took him to their house and after sometime he omitted

blood and so he was taken to hospital from where his death was declared by the doctor. PW1 went to the hospital and gave Ext.P1 statement which was recorded by PW10 and registered Ext.P8 first information report as Crime No.118/1998 under Section 302 read with Section 34 of the Indian Penal Code. Thereafter the investigation was undertaken by PW11, Circle Inspector of Police, Hosdurg, who was in charge of the Badiadka Police station also went to the hospital and conducted inquest on the body of the deceased and prepared Ext.P5 inquest report in the presence of PW7 and others and prepared Ext.P3 scene mahazar and thereafter he seized the dress of the deceased as produced by PW4 as per Ext.P4 mahazar in the presence of PW6 and another. Further investigation was conducted by PW12, the regular Circle Inspector. He questioned the witnesses and he arrested the accused persons and gave Ext.P9 report deleting Section 302 of the Indian Penal Code and adding Section 341, 323 and 304 read with Section 34

of the Indian Penal Code. He completed the investigation and submitted final report.

9. The case of the prosecution as seen from the evidence is that, the deceased died on account of coronary artery decease, which is evident from the evidence of PW8/doctor, who conducted the postmortem and issued Ext.P6 certificate. Further no question was put to PW6 regarding the cause of death and the nexus between the overt act committed by the accused persons so as to infer that they have knowledge that their act is likely to cause death of the deceased. Further no question was put to the witnesses that the deceased was having heart decease and that was known to the accused persons as well and with that knowledge they have inflicted injuries. It is true that, DW1 had stated something about the disease of the deceased and she had admitted in the cross examination that she did not come across any document before to show that the deceased was having any heart disease. Probably

she might have told about the cause of death on the basis of the information collected by her later from others on the basis of the postmortem report. So that, the evidence of DW1 is not sufficient to come to the conclusion that the accused persons were having knowledge about the illness of the deceased and with that knowledge they have inflicted injuries so as to infer knowledge that their act is likely to cause the death of the deceased. So under the circumstances, the finding arrived at by the courts below on the basis of evidence that, the death was caused on account of the injuries inflicted by the accused persons and the overt act was committed by the accused persons with a knowledge that their act is likely to cause death of the deceased so as to convict them for the offence under Section 304 of the Indian Penal Code and the concurrent findings of the court below on this aspect is unsustainable in law and the same is liable to be set aside and the accused persons are entitled to get acquittal of the charge under

Section 304 of the Indian Penal Code in view of the discussions made above.

10. As regards the other offences are concerned, the evidence of PWs 2, 3 and 4 will go to show that, the accused persons have restrained him from moving in any direction by pressing him on the wall and thereafter beaten him with hands. Though they were cross examined at length, nothing was brought out to discredit their evidence on this aspect. The evidence of PW1 regarding the manner in which the incident occurred appears to be not believable, as the evidence of PWs 2, 3 and 4 will go to show that, he reached there only at the time when they were bringing the deceased out side the house of the accused persons. Further, none of these witnesses have a case that, when the deceased fell down, the accused persons have kicked on his abdomen as deposed by PW1 as well. So under the circumstances, the courts below were not justified in relying on the evidence of PW1 as an eye witness to the

incident. When evaluated the evidence of PWs 2 to 4 will go to show that, the accused persons had wrongfully restrained the deceased and beaten him with hand and caused simple injuries. So the finding of the court below that, the accused persons have committed the offence punishable under Section 341, 323 read with Section 34 of the Indian Penal Code is perfectly justifiable and that finding does not call for any interference

11. As regards the sentence is concerned, since this court has found that, the revision petitioners were entitled to get acquittal of the charge under Section 304 of the Indian Penal Code, the sentence imposed by the court below as modified by the appellate court on that count is also improper and the same is liable to be set aside. So under the circumstances, there is no necessity to enhance the sentence as well for the offence under Section 304 of the Indian Penal Code. Further it is seen from the proceedings paper that, after the incident, they were

arrested on the same date and they were in jail from 29.09.1998 till 24.10.1998 and 28.10.1998 respectively. So considering the circumstances, this court feels that, the period of detention already undergone by them will be sufficient for the offences under Section 341, 323 read with Section 34 of the Indian Penal Code and with that modification alone the revision as well as the suo-moto revision registered by this court can be disposed of. So Crl.R.P.No.1734/2009 and Crl.R.C.No.4/2009 are allowed in part. The order of conviction and sentence passed by the court below against the revision petitioners under Section 304 of the Indian Penal Code is set aside and they were found not guilty of the said offence and acquitted them of the charge giving them the benefit of doubt. But the order of conviction passed by the court below against accused Nos. 1 to 3, who are the revision petitioners in Criminal R.P. No.1734/2009 for the offence under Section 341, 323 read with Section 34 of the Indian Penal Code are confirmed and

the period of detention already undergone by them, namely; 29.09.1998 till 24.10.1998 of accused Nos. 1 and 2 and the third accused from 29.09.1998 till 28.10.1998 can be imposed as sentence against accused Nos. 1 to 3 and that will be sufficient and that will meet the ends of justice.

With the above observations, both the revisions are disposed of accordingly. The fine amount if any deposited by them is directed to be returned to them. Office is directed to communicate this order to the concerned court, immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE

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P.A. to Judge

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