

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

Crl.Rev.Pet.No. 1817 of 2009 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 326/2008 COURT OF THE ADDITIONAL
SESSIONS JUDGE (ADHOC) -I, KOTTAYAM DATED 09-02-2009

AGAINST THE JUDGMENT IN CC 706/2005 of COURT OF JUDICIAL MAGISTRATE
OF FIRST CLASS-III, KOTTAYAM DATED 29-04-2008

REVISION PETITIONER/APPELLANT/ACCUSED:

PAKASANAN
MANJAPPALLYKKUNNEL HOUSE,
VAZHAPPADY BHAGOM,
AYARKUNNAM VILLAGE.

BY ADVS.SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENT/RESPONDENT/COMPLAINANT:

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

BY ADV. PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 05-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1817 of 2009

Dated this the 5th day of October, 2015

ORDER

The revision petitioner is the accused in CC 706/2005, on the files of the Court of the Judicial Magistrate of First Class-III, Kottayam.

2. The revision petitioner was convicted by the trial court under Sections 452 and 354 IPC and sentenced to simple imprisonment for six months and a fine of Rs.1,000/- under Section 452 IPC and simple imprisonment for three months and a fine of Rs.1,000/- under Section 354 IPC. The appeal filed against the said conviction and sentence was dismissed by the appellate court as per judgment in Crl. Appeal 326/2008. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that on 02.09.2005,

at 8 a.m., the revision petitioner trespassed into the residential house of PW4 and uttered abusive words against her. The revision petitioner thereafter caught hold of the breast of PW4 over her nighty and caused pain to her.

5. Before the trial court, PW1 to PW6 were examined and Exts. P1 to P5 were marked for the prosecution, besides identifying MO1 and MO2. Ext.D1 was marked for the revision petitioner.

6. PW4 is the de-facto complainant in this case. According to PW4, on 02.09.2005, at about 8 a.m., the revision petitioner trespassed into her house and pulled her nighty by pressing her breast. The nighty and brassiere were torn in the said incident. PW6 is the son of PW4, who also supported the evidence of PW4. Even though PW1 was examined as an occurrence witness, he did not support the prosecution case. PW3 was the Assistant Surgeon of District Hospital, Kottayam, who examined PW4 on 02.09.2005, at 9 p.m. and issued Ext.P2 wound certificate. PW3 could not notice any sign of external injury on PW4.

7. The learned counsel for the revision petitioner has argued that even though there were close neighbours, none of the neighbours was examined before the court to support the evidence of PW4 with regard to the occurrence and in the said circumstances, the revision petitioner is entitled to be granted benefit of doubt, particularly when the revision petitioner had a consistent case that PW4 had only falsely raised the above said allegation against the revision petitioner on the sole reason that the revision petitioner demanded back the money borrowed by her husband, from the revision petitioner. In order to substantiate the contention of the revision petitioner, the counsel for the revision petitioner brought to my attention to Ext.D1 document. Ext.D1 would show that the husband of PW4 borrowed an amount of Rs.38,000/- from the revision petitioner on 01.08.2005. PW4 also admitted about the borrowing of the amount from the revision petitioner. Ext.D1 is the judgment whereby the revision petitioner was granted a decree, entitling him to realise an amount of

Rs.38,000/- with interest from the husband of PW4.

8. The evidence of PW6 would show that when he reached the house on hearing the cry of his mother, he saw a person inside the house. He also saw PW4 crying. Only when the learned Assistant Public Prosecutor put a leading question as to whether PW6 had seen the pulling of the nighty of PW4, PW6 answered in affirmative. However, PW6 did not identify the accused. Admittedly, the incident was at 8 a.m., at a place which is a residential area. The evidence of PW4 would show that there were houses very close to her house. Even then, none of the neighbours was examined by the prosecution to prove the occurrence. PW4 did not state that the neighbours reached the place of occurrence on hearing the cry of PW4. It is not discernible as to why the neighbours did not assemble there, on hearing the cry of PW4. In this context, the delay in reaching the FIR before the court assumes significance. PW5 was the Sub Inspector of Police who registered Ext.P4 FIR in this case. PW5 stated that he recorded Ext.P3

F.I. Statement of PW4, in the evening on 02.09.2005. However, Ext.P4 was received by the court only at 10.30 a.m. on 05.09.2005. No explanation has been given by PW5, as to why there was delay in reaching Ext.P4 before the court. A three Judge Bench of the Apex court in **Balram Singh and Another v. State of Punjab [AIR 2003 SC 2213]** held that while considering the delay in reaching the FIR before the jurisdictional Magistrate, it is necessary to bear in mind the creditworthiness of the ocular evidence adduced by the prosecution and if it is found that the ocular evidence is worthy of acceptance, the element of delay in sending the FIR to the Jurisdictional Magistrate by itself would not weaken the prosecution case.

9. In this case, no reason has been stated by the prosecution as to why there was delay in despatching of the first information report to the Court. The revision petitioner had a contention that PW4 used to raise similar allegations against other persons also to whom PW4 owed money, when they demanded the money back. The evidence of

PW3 would show that no sign of external injury was noted on the body of PW4. Apart from the interested testimony of PW4, there is absolutely no material before the court to support the prosecution case. Considering the facts and circumstance of the case, the inordinate and unexplained delay in reaching Ext.P4 FIR before the court assumes significance in this case. In the said circumstances, I am of the view that the evidence of PW4 and PW6 is not sufficient to prove the guilt of the revision petitioner. The courts below did not consider the above aspect while appreciating the evidence. Since there is no other material before the court to connect the revision petitioner with the commission of the offence, I am of the view that the verdict of guilty, conviction and sentence passed by the courts below cannot be sustained and consequently, I set aside the same.

In the result, this revision petition stands allowed, setting aside the conviction and sentence passed by the courts below under Section 452 and 354 IPC and the revision petitioner is acquitted for the said offences. The

bail bond of the revision petitioner stands cancelled and he is set at liberty.

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

//TRUE COPY//

P.A.TO JUDGE

sm/