

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

Crl.Rev.Pet.No. 2286 of 2009 ()

CRA 550/2007 of ADDL.DISTRICT COURT & SESSIONS (ADHOC), MAVELIKKARA
CC 991/2004 of J.M.F.C.-I, MAVELIKKARA

REVISION PETITIONER/3RD APPELLANT/3RD ACCUSED:

PADMA KUMAR
S/O.MADHAVAN, MUDUVANPUZHAETHU THEKKATHIL
KAITHA SOUTH, KUNNAMANGALAM.

BY ADV. SMT.ASHA ELIZABETH MATHEW

RESPONDENT/STATE:

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

BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
06-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.2286 of 2009

Dated this the 6th day of October 2015

ORDER

The revision petitioner is the third accused in C.C. No.991 of 2004 on the files of the Judicial Magistrate of First Class, Mavelikkara.

2. The trial court convicted the revision petitioner under Sections 323 and 326 I.P.C. and sentenced him to simple imprisonment for one year under Section 323 I.P.C. and rigorous imprisonment for two years and a fine of Rs.20,000/- with a default clause for simple imprisonment for four months under Section 326 I.P.C. The appeal filed against the said conviction and sentence was dismissed by

the appellate court. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that on 3.2.2004 at about 8.30 a.m., the revision petitioner and two other accused attacked PW2, causing injuries including the loss of his right eye sight. Accused Nos.1 and 2 threw ash and sand on the face of PW2 and at that time, the revision petitioner threw a piece of brick on the right eye of PW2.

5. Before the court below, PW1 to PW9 were examined and Exts.P1 to P7 were marked for the prosecution. DW1 was examined and Exts.D1 and D2 were marked for the defence.

6. PW2 is the injured in this case. PW2 stated that accused Nos.1 and 2 threw sand and ash on his face and at

that time third accused threw a piece of brick on his right eye. PW3 is the wife of PW2, who gave evidence corroborating with the evidence of PW1 in all material aspects. PW4 is another independent witness, who also supported the evidence of PW1 and PW2 in all material aspects. The evidence of PW2 to PW4 is supported by the medical evidence of PW5 and PW8 coupled with Exts.P3, P6 and P7.

7. DW1 had a different version with regard to the occurrence. However, in the light of the evidence of PW2 to PW4, the courts below did not believe the evidence of DW1 with regard to the incident.

8. The courts below, after evaluating the evidence adduced by the parties, concurrently found that the revision petitioner committed the offences under Sections 323 and

326 I.P.C. Since there is concurrent finding on facts, this court will not be justified in interfering with the same unless the finding is perverse or incorrect. No circumstance has been brought to my notice to indicate that the appreciation of evidence by the courts below was perverse or incorrect. There is only one victim in this case. Therefore, the revision petitioner cannot be convicted both under Sections 323 I.P.C. and 326 I.P.C. In the said circumstances, the finding of the courts below that the revision petitioner committed the offence under Section 326 I.P.C. does not call for any interference by this Court.

9. As regards the sentence, it appears that PW2 sustained fracture of maxilla. PW2 also lost orbital floor vision of right eye in the incident. The revision petitioner is a first time offender. The revision petitioner attacked

PW2 only once. The act of the revision petitioner cannot be said to be a pre-meditated act. In the said circumstances, I am of the view that leniency can be taken in the matter of sentence. Accordingly, the sentence awarded by the courts below under Section 326 I.P.C. can be modified and reduced to imprisonment till the rising of the court and a compensation of Rs.1,00,000/- to secure the ends of justice.

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

- (i) confirming the verdict of guilty and conviction passed by the courts below under Section 326 I.P.C.,
- (ii) the sentence awarded by the courts below under Section 326 I.P.C. stands modified and reduced to imprisonment

till the rising of the court and a compensation of Rs.1,00,000/- (Rs. One lakh only),

(iii) in default of payment of compensation, the revision petitioner shall undergo simple imprisonment for three months,

(iv) in the event of realisation of the compensation amount, the entire amount shall be given to PW2 as compensation under Section 357(3) Cr.P.C.

sd/

**B.SUDHEENDRA KUMAR,
JUDGE**

dl

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PA to Judge