

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

Crl.Rev.Pet.No. 3175 of 2006 ()

**AGAINST THE JUDGMENT IN CRL.A 654/2005 SESSIONS COURT, KOTTAYAM
DATED 03-06-2006**

**AGAINST THE JUDGMENT IN CC 704/2003 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, ERATTUPETTA DATED 09-11-2005**

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

**IJAS, S/O. KAREEM,
ARAYASSERIL HOUSE, KEERIYATHOTTAM BHAGAM, NADACKAL
ERATTUPETTA.**

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENT(S)/(RESPONDENT/COMPLAINANT)::

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

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
27-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

R.AV

K.RAMAKRISHNAN, J

CRL.R.P.NO.3175 OF 2006

Dated this the 27th day of January 2015

ORDER

Accused in CC.704/2003 on the file of the Judicial First Class Magistrate Court, Erattupetta is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Sub Inspector of Police, Erattupetta police station in Crime No.348/2003 under section 324 of the Indian Penal Code.

3. The case of the prosecution in nutshell was that on 25.8.2003, at about 7.15 pm, the revision petitioner with an intention to cause voluntarily hurt to PW1, stabbed PW1 with a knife a dangerous weapon just below the chest at a place appearing like as a slab fixed with cement situated adjacent to the steps starting from the Nadakkal Mullapra road towards the Aryasseril house on the north of the road at Keeriyathottam bagom of Nadakkal kara of Erattupetta village and thereby he had committed the above said offence.

4. After investigation, final report was filed and it was taken on file as CC.704/2003 on the file of the Judicial First Class Magistrate Court, Erattupetta. When the revision petitioner appeared before the court below, after hearing both

sides, charge under section 324 of the Indian Penal Code was framed, and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 9 were examined and Exts.P1 to P6 were marked on their side. After closure of the prosecution evidence, the revision petitioner was questioned under section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution's evidence. He had further stated that at about 8.00 p.m on the same day, PW1 trespassed into the front yard of the residence of the revision petitioner abused him and hit him with the torch on his head and cheek and when the mother of the revision petitioner tried to resist the acts of PW1, she was also manhandled by PW1 and there was some scuffle occurred between them in which both of them fell down and rolled down through the steps and sustained injuries and he never inflicted any injury on the injured. Except marking Ext.D1, no other evidence was adduced on his side in defence. After considering the evidence on record, the trial court found the revision petitioner guilty under section 324 of Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for four months and also to pay a fine of Rs.3000/- in default to undergo simple imprisonment for one

month. It is further ordered that if the fine amount is realised, an amount of Rs.2000/- to be paid to PW1 as compensation under section 357(1) (b) of the Code of Criminal Procedure. Aggrieved by the same he filed Crl.Appeal No.654/2005 before the Sessions Court, Kottayam, which was made over to Additional Sessions Court, Kottayam for disposal. The learned Additional Sessions Judge, by the impugned judgement allowed the appeal in part, confirming the order of conviction, but modified the sentence to simple imprisonment for three months and also to pay a fine of Rs.2000/- in default to undergo simple imprisonment for one month. 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 learned Public Prosecutor.

6. The counsel for the revision petitioner submitted that there was a counter case registered as Crime No.353/2003 of Erattupetta police station, which was also pending before the same court as CC.No.740/2003 in respect of the same incident. But both the cases were not tried together and the same Assistant Public Prosecutor had conducted the other case also and thereby serious prejudice has been caused to the revision petitioner. These aspects have not been considered by the

courts below properly. Further, the weapon of offence alleged to have been used for the commission of the offence has not been recovered. The possibility of causing injury to PW1, by falling on a granite stone was in away probabalised by the evidence of the doctor and that has not been properly appreciated by the court below. Since, the weapon of offence has not been recovered, the court has no opportunity to see the weapon, so as to come to a conclusion that as to whether it is a dangerous weapon or not for convicting the revision petitioner for the offence under section 324 of the Indian Penal Code and the appreciation evidence made by the court below is not proper. So he prayed for acquittal of the accused. He had also submitted that in case this court found that the conviction is proper, he prayed for leniency as the revision petitioner was suffering from some heart problem from the age of 15th year and the treatment still continues.

7. On the other hand, the learned Public Prosecutor supported the concurrent findings of the courts below.

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

On 25.08.2003, at about 7.15 p.m, while PW1 was returning to his home after his job through the Panchayath road, PWs 2 and 3 his mother and father came along the same

road in front of him enquiring about his brother Ajman and they told that he would be in the house of the revision petitioner. So they called Ajman from there, and at that time the revision petitioner came there, and abused him with obscene language and when he told not to use obscene language he came near him and stabbed with knife on his right chest. When PWs 2 and 3 intervened he threw away the knife and ran away from there. PW1 was taken to hospital by PW4 and others who reached there and he was seen by PW6 the doctor who issued Ext.P3 wound certificate. Thereafter he was taken to Matha hospital and treated from there by PW7 who issued Ext.P4 certificate. On getting intimation from the hospital, PW9 came to the hospital and recorded Ext.P1 statement of PW1 and returned to the police station and gave the same to PW8 , who registered Ext.P5 First Information Report as Crime No.348/2003 of Erattupetta police station originally under section 308 of Indian Penal Code against the revision petitioner. Thereafter, the investigation was conducted by PW8 who went to the place of occurrence, and prepared Ext.P2 scene mahazar in the presence of PW5 and another. He questioned the witnesses and recorded their statement. During investigation it was revealed that no offence under section 308 of Indian Penal Code was committed but only offence under section 324 of Indian Penal Code was

committed. So, he filed Ext.P6 report to delete section 308 of Indian Penal Code and to add section 324 of Indian Penal Code and also showing the name and address of the revision petitioner. He completed the investigation and submitted final report.

9. PW4 was a neighbour of PW1, and according to him at about 7.30 p.m on that day he heard some crying sound from the road and immediately he rushed there and found PW1 lying on the road with bleeding injury. He took him to the hospital in an autorickshaw. He had stated that he had not seen the actual incident. So, he was declared hostile by the prosecution. PWs 1 to 3 are the other witnesses who deposed about the incident. PW1 is the injured and PWs 2 and 3 are the father and mother of the injured. PW1 had categorically stated that on that day at about 7.15 p.m while he was coming through the road after his work and when he reached near the place of occurrence, he saw his father and mother, PWs 2 and 3 coming from the opposite direction and enquired about his brother Ajman and they told that he would be in the house of the revision petitioner. So, they stopped in front of the house of revision petitioner and called his brother's name and at that time revision petitioner came and abused him with obscene language thereafter when PW1 told that why he was abusing

them. He came near PW1 and took a knife from his waist and stabbed him on his chest. When PWs 2 and 3 intervened, he threw away the knife and ran away from there. PWs 2 and 3 corroborated the evidence of PW1 on this aspect. Though, they were cross-examined at length, nothing was brought out to discredit their evidence on this aspect.

10. It is true that there was another case registered as Crime No.353/2003 of Erattupetta police station against PWs 1 to 3, on the basis of the statement given by the revision petitioner and after investigation final report was filed and it was taken on file as CC.No.740/2003 and pending before the same court. The case of the revision petitioner was that it was a counter case to the case in question. But it will be seen from Ext.D1 the final report in that case that at the time of occurrence was mentioned as 8.00 p.m whereas the time of occurrence in this case is 7.30 p.m. The courts below have rightly relied on the decision reported in **Augusthy V.State [1982 KLT 351 (FB)]**, wherein it has been observed that unless the incident occurred at the same place, at the same time, it cannot be treated as case and counter and if it is a case and counter, it is always better that both the cases will have to be tried together by the same court but dispose of simultaneously by separate judgment and the prosecution will

have to be conducted by different prosecutors so as to avoid prejudice. Since, in this case, the time of occurrence was shown as different, courts below have to come to the conclusion that it cannot be treated as case and counter and no prejudice has been caused to the revision petitioner on account of investigation being conducted by the same investigating officer and trial being conducted by the same Assistant Public Prosecutor. I don't find any reason to interfere with that finding as in the case of different incident, there is nothing wrong for the same Assistant Public Prosecutor conducting the trial and that alone cannot be treated as a reason for prejudice also. Further in the decision reported in **2004 Cri.L.J.3834**, in a case where detection was made by the particular detecting officer who conducted the investigation and filed a final report, it has been held that that alone is not sufficient to the doubt the genuineness of the prosecution case unless prejudice has been established by the accused on account of the same. So, under the circumstances, there is no merit in the submission made by the counsel for the revision petitioner that conduct of the case by the same Assistant Public Prosecutor and non conducting the case simultaneously with this case by the court below has caused prejudice to him and that cannot be a ground for acquittal.

11. As regards the cause of injuries was concerned, PW6 and 7 the doctors who issued Ext.P3 and P4 wound certificate and the discharge certificate categorically stated that there is an incised wound of 5.c.m on the right lower chest and it is a penetrating wound and it could be possible by using a knife and an alternative suggestion given that this could be possible by falling on a granite stone alone is not sufficient to come to the conclusion that that is a possible way of causing injury unless some corroborative evidence has been adduced on the side of the revision petitioner to prove this fact regarding the manner in which the injured had sustained injuries. It is not always fatal, if the recovery of weapon alleged to have been used for the commission of the offence has not been recovered and that cannot be a ground for acquittal if the prosecution is able to prove that injury could be caused by using weapon like knife and it was so reported in **2014 (1) KLT SN.19, (Case No.26) Jaison Vs State of Kerala = 2013(4) KHC 501**. So, non recovery of the weapon by the investigating officer is not a ground for acquittal in this case, especially when the medical evidence corroborated the cause of injury alleged by the prosecution. So, under the circumstances, courts below were perfectly justified in coming to the conclusion that the prosecution has proved beyond reasonable doubt that the

revision petitioner had caused voluntarily hurt to PW1 with a dangerous weapon and committed the offence punishable under section 324 of Indian Penal Code and rightly convicted him for the said offence and the concurrent findings of the courts below on this aspect do not call for any interference at the hands of this court.

12. As regards the sentence is concerned, the court below had sentenced the revision petitioner to undergo simple imprisonment for four months and also to pay a fine of Rs.3000/- in default to undergo simple imprisonment for one month. It is further ordered that if the fine amount is realised, an amount of Rs.2000/- be paid as compensation to PW1 under section 357(1) (b) of the Code of Criminal Procedure. But the appellate court had reduced the sentence to three months simple imprisonment and fine to Rs.2000/- with default sentence of one month.

13. It is true that the revision petitioner had produced certain documents to show that he is suffering from some cardiac problem from his 15th year and he is still undergoing treatment. The nature of disability suffered from him on account of the illness is not clear from the documents produced. However, considering the fact that the injuries sustained is on the chest, showing too much of leniency will affect the criminal

delivery system itself. But at the same time, this court feels that reducing the substantive sentence and awarding compensation to the victim will to some extent will meet the ends of justice. So, under the circumstances, this court feels that reducing substantive sentence to imprisonment for one month and also to pay a compensation of Rs.10,000/- to the injured in default to undergo simple imprisonment for one month more under section 357(3) of Code of Criminal Procedure will be sufficient and that will meet the ends of justice. So, the sentence imposed by the court below and modified by the appellate court are set aside and the same is modified as follows:-

The revision petitioner is sentenced to undergo simple imprisonment for one month and also to pay a compensation of Rs.10,000/- in default to undergo simple imprisonment for one month under section 357(3) of Code of Criminal Procedure. If the compensation amount is recovered, the lower court is directed to pay the same to PW1. Two months time is granted to the revision petitioner to pay the amount and to serve the sentence. Till then the execution of sentence is directed to be kept in abeyance.

With the above modification of the sentence alone, the revision petition is disposed of accordingly. Office is directed to

communicate this order to the concerned court immediately.

**Sd/-
K.RAMAKRISHNAN, JUDGE**

R.AV

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PA to Judge