

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 2513 of 2007 ()

**AGAINST THE JUDGMENT IN SC 6/2004 of ADDITIONAL
SESSIONS COURT (ADHOC-1), MANJERI**

REVISION PETITIONER(S)/REVISION PETITIONER/DEFACTO COMPLAINANT:

**HAMZAKOYA, S/O KUNHUMHAMMED,
THANNOOR AMSOM, DESOM, TIRUR
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SMT.M.T.SHEEBA**

RESPONDENT(S)/STATE & ACCUSED:

- 1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
KOCHI-31.**
- 2. C.P.MUSTAFFA, S/O HASSAINAR,
CHEEMBALIYENTE PURAKKAL, CHEERAL, KADAPPURAM
TANUR, TIRUR, MALAPPURAM DISTRICT.**
- 3. P. MAJEED, S/O KASSIM,
SEETHINTEPURAKKAL, CHEERAL KADAPPURAM, TANUR
TIRUR, MALAPPURAM DISTRICT.**
- 4. KUNHIKKADAR, S/O KOIDEEN,
CHEEMBALIYENTE PURAKKAL, CHEERAL, KADAPPURAM
TANUR, TIRUR, MALAPPURAM DISTRICT.**
- 5. K.V.SAIDALAVI, S/O ALAVI,
KUTTIKKANTEVEETIL HOUSE, CHEERAL, KADAPPURAM
TANUR, TIRUR, MALAPPURAM DISTRICT.**
- 6. SAIDALAVI, S/O SAIDALIKUTTY,
TANUR, TIRUR, SEETHINTEPURAKKAL
RAYIRIMANGALAM, MALAPPURAM DISTRICT.**
- 7. S.P.KOYAMON, S/O KUNHIMUHAMMED,
SEETHINTEPURAKKAL, RAYIRIMANGALAM, TANUR
TIRUR, MALAPPURAM DISTRICT.**

**8. K.V.MOHAMMED RAFI ALIAS RAFEEQU,
S/O MOSSANKUTTY, CHEERAL KADAPPURAM, TANUR
TIRUR, MALAPPURAM DISTRICT.**

**R1 BY PUBLIC PROSECUTOR SRI. N. SURESH
R2,R3,R6,R7,R8 BY ADV. SRI.K.P.SUDHEER
R2,R3,R6,R7,R8 BY ADV. SRI.ARUN MATHEW VADAKKAN**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17-
12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.2513 of 2007

Dated this the 17th of December 2015

ORDER

This revision petition is preferred against the judgment in S.C.6/04 of the Additional Sessions Court, Adhoc-1, Manjeri by the defacto complainant. The accused were charge-sheeted by the Additional Sessions Court-I for having committed offence punishable under Section 143, 147, 148, 323, 324 and 307 r/w 149 IPC. The charge against the accused is that on 13.12.99 at 11.00 am, the accused formed themselves into an unlawful assembly and in furtherance of their common object, they attacked the revision petitioner with deadly weapons like stone on various parts of his body, as a result, he sustained serious injuries, thereby they committed the offence. After completing investigation, Circle Inspector, Tanur laid charge before Judicial First Class Magistrate, Parappanangadi. From there, it was committed to Sessions Court, Manjeri and subsequently made over to Addl. Sessions Judge, Adhoc-1, Manjeri.

2. During trial, prosecution examined PW1 to PW8 and marked Exts.P1 to P10 and admitted MO1 to MO8 in evidence. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. The trial court acquitted the accused. Being aggrieved by that, the injured PW1 preferred this revision. During the pendency of this revision petition, respondents 4 and 5 were expired.

3. I heard the revision petitioner and counsel appearing for the respondents. The learned counsel appearing for the revision petitioner contended that re-appreciation of the evidence is necessary in the light of the evidence of PW1.

4. Revision Petitioner contended that the accused attempted to murder the accused with intention and knowledge under the circumstance attempted to caused death. There was allegation of assembly of five or more persons designated with a common object for committing any offence and they used force and violence with a common object. I have examined the oral evidence of

PW1, who is the injured in this case. His evidence shows that he sustained injury on 13.12.99 at 11.00 am. When he returned from his Lawyer's office and walked 12 mts. with other witnesses, the accused were found in front of the Advocate's office. They approached PW1 and A2 took a laterate stone and on seeing this, he ran away from there and after running a few distance A2 hit on the right side of the head, as a result, he fell down and A1 pushed him into the drainage. Subsequently all the accused attacked him with laterate pieces and kicked him on various parts of his body. The accused also pelted stone when he closed his face with his hands, which hit over his hands, forehead and right shoulder. The other witness standing there came near and accused ran away. He gave Ext.P1 statement to the police. He identified the accused before court.

5. But the evidence of PW2 shows that A2 hit on the back side of the head of PW1 and he fell down, thereafter PW1 was rolled into a trench dug for laying telephone cables. PW2 also stated that the other accused never

attacked PW1. He took PW1 to hospital. PW2 also stated that when A2 attacked PW1, he fell down and when he tried to interfere one of the accused hit on his chest. Analyzing the oral evidence of PW1 and PW2, it seems that they are giving inconsistent version with regard to the occurrence.

6. In this context, I have considered the medical evidence, which was marked as Ext.P4. PW4 is the Doctor who examined PW1 and issued Ext.P4 certificate. According to PW4, on 13.12.99 at 12.10 pm he examined PW1 and issued Ext.P4 certificate, in which he noticed the following injuries.

“Alleged assault by a group of people at Parappanangadi today about half an hour ago.

കല്ലുകൊണ്ട് ഇടിച്ചത്

C/O pain-back

O/E – Conxious, oriented, dress soiled with mud
PEARL.

Lacerated wound forehead (Rt) 1 x 0.5 cm.

Lacerated would occipital region of scalp about 4
x 0.5 cm – V shaped.

Lacerated wound 0.5 x 0.5 cm upper lip (lf)

Multiple cantened abrasion back, both shoulders
and both hands on dorsal aspect.”

The medical evidence is not corroborating the oral evidence of PW1 and PW2. When PW1 gave an exaggerated version with regard to the occurrence, the learned Magistrate acquitted the accused.

7. The fundamental rule in a criminal case is that one person is presumed to be innocent till he is proved as guilty. This rule actually means that a person accused of a crime is not bound to make a statement or offer any explanation about the circumstances which throws suspicion upon him. In an offence under unlawful assembly and mischief, prosecution has to prove the membership of unlawful assembly and that in furtherance of the common object they have committed an offence of mischief. It is the duty of the prosecution to prove the guilt beyond reasonable doubt. There may be exception where the rules of presumption applies in certain cases. In such case, a statutory presumption with regard to the proved facts and circumstances may arise which will help in reaching a conclusion. It appears that trial court

appreciated the evidence and acquitted the accused on the ground of benefit of doubt. There is no misreading and misinterpretation of the evidence. The trial court rightly appreciated and analysed evidence and acquitted the accused.

Simply because of an incident happened at Thrissur in front of the Lawyer's office is not sufficient to convict the accused on the inference that they had committed the offence as alleged. When prosecution failed to prove the case beyond reasonable doubt, the accused are entitled to get the benefit of doubt. I find no illegality in the judgment of the trial court. There is no merit in this revision petition and it is dismissed accordingly.

STK

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P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE