

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Crl.Rev.Pet.No. 1107 of 2010 ()

CRL.A 695/2007 of ADDL. SESSIONS COURT (ADHOC)-II, THIRUVANANTHAPURAM
CC 243/2002 of J.M.F.C.-III, THIRUVANANTHAPURAM

REVISION PETITIONER/APPELLANT/IST ACCUSED:

DEVIDAS, SWATHI HOUSE,
T.C.42/33, KILIKODE LANE, SREEVARAHAM
THIRUVANANTHAPURAM.

BY ADVS.SRI.G.P.SHINOD
SRI.RAM MOHAN.G.

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
15-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.1107 of 2010

Dated this the 15th day of October 2015

ORDER

The revision petitioner is the first accused in C.C. No.243 of 2002 on the files of the Court of the Judicial Magistrate of First Class - III, Thiruvananthapuram.

2. The trial court convicted the revision petitioner under Section 353 of I.P.C. and sentenced him thereunder to a fine of Rs.3,000/-. 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 the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that on 08.02.2001 PW1 and party reached near to the Law College junction at Vanchiyoor village, on getting information that a lady was attempted to be annoyed by the revision petitioner and other accused. At about 10.15 a.m., they reached the place. Thereafter, PW2 and others attempted to take the revision petitioner into custody. Then the revision petitioner caught hold of the uniform shirt of PW1 and asked him who he was to take him into the police jeep. Thereafter, the revision petitioner pushed him down. At that time, the 2nd accused threatened PW1 that he would be beaten.

5. Before the trial court, PW1 to PW8 were examined

and Exts.P1 to P4 were marked for the complainant. No evidence was adduced on the side of the defence.

6. PW1, PW2 and PW5 are the occurrence witnesses, who supported the prosecution case. However, PW2 stated that he did not know the name of the accused persons. PW2 specifically stated that the accused, namely, Devi Das caught hold of the collar of the uniform shirt of PW1 and pushed him. However, he could not identify Devi Das. Only one accused was present in the box on the date of examination of PW2. PW2 stated that he could not identify the accused by name. Even though he stated that the accused Devi Das had assaulted him, he stated in cross-examination that it was not possible for him to identify both the accused. PW5 stated that he was not in a position

to identify the accused even though he stated about the incident. PW1 also stated about the incident. PW1 stated that the accused, namely, Devi Das caught hold of his shirt. However, he could not also identify who Devi Das was, even though Devi Das and the other accused were present before the Court on that day. Thus, it is born out from the records that PW1, PW2 and PW5 could not identify the accused. There is no other evidence before the court to identify the accused.

7. The woman, who was stated to have been annoyed by the revision petitioner, was not examined before the Court. CW9 was the Police Officer, who arrested the revision petitioner. However, CW1 was not examined before the court to prove the arrest of the revision

petitioner. The arrest memo was also not produced or marked before the Court. There is no material before the court to connect the revision petitioner with the commission of the offence. For the above said reasons, I am of the view that the evidence available before the court is not sufficient to bring home the guilt of the revision petitioner.

8. In the said circumstances, the appreciation of the evidence by the courts below cannot be said to be correct. The courts below did not consider the manner of identification of the revision petitioner by the witnesses while appreciating the evidence. Having gone through the relevant inputs, I am satisfied that the prosecution failed to establish that the revision petitioner committed the offence

alleged. In the said circumstances, the revision petitioner is entitled to the benefit of doubt. Accordingly, I order so.

In the result, this revision petition stands allowed setting aside the conviction and sentence passed by the courts below under Section 353 I.P.C., and the revision petitioner is acquitted for the said offence. The bail bond of the revision petitioner stands cancelled and he is set at liberty.

Sd/
B.SUDHEENDRA KUMAR,
JUDGE

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PA to Judge