

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

Crl.Rev.Pet.No. 64 of 2015 ()

AGAINST THE JUDGMENT IN CRA 146/2012 of ADDL. SESSIONS COURT - V,
PALAKKAD DATED 30-08-2013

AGAINST THE JUDGMENT IN CC 339/2008 of J.M.F.C., OTTAPPALAM
DATED 29-02-2012

REVISION PETITIONER(S)/APPELLANTS/ACCUSED:

1.RAMATHARAKAN, AGED 72 YEARS
S/O. KOUNTA THARAKAN, NENTRAMKUNNATHU VEEDU, MANGOD
MILLUMPADI, OTTAPALAM TALUK, PALAKKAD DISTRICT.

2.SURESHKUMAR, AGED 26 YEARS
S/O. RAMATHARAKAN, NENTRAMKUNNATHU VEEDU, MANGOD
MILLUMPADI, OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.-682031.

2. SUB INSPECTOR OF POLICE,
CHERPULASSERY POLICE STATION
PALAKKAD DISTRICT.

BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
23-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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Crl.R.P. No.64 OF 2015

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Dated this the 23rd day of March, 2015

ORDER

The first revision petitioner is the father of the second revision petitioner and they were respectively accused Nos.1 and 2 in C.C.339 of 2008 on the files of the Court of Judicial First Class Magistrate, Ottapalam. They were tried for offences punishable under sections 341 and 324 read with 34 of the Indian Penal Code and on being found guilty, they were convicted and sentenced to undergo simple imprisonment for one month for the offence under section 341 read with 34 IPC and to undergo simple imprisonment for three months for the offence under section 324 read with 34 IPC. The sentences were ordered to be run concurrently. Aggrieved by the said judgment, the petitioners filed Crl.A.No.146 of 2012 and the appellate court set aside their conviction under section 341 read with 34 IPC and

acquitted them of the said charge. At the same time, the appellate court confirmed the conviction as also the sentence imposed on the petitioners for the offence under section 324, IPC. This revision petition is filed against the said judgment in the appeal.

2. I have heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. It is evident from the facts expatiated above that concurrent conviction has been entered against the petitioners under section 324, IPC by the courts below. True that as per the judgment in C.C.No.339 of 2008, the learned Magistrate convicted the revision petitioners under section 324 read with 34 IPC besides the conviction under section 341 read with 34, IPC. Admittedly, the conviction of the revision petitioners under section 341 read with 34 IPC was set aside by the appellate court and the appellate court maintained only the conviction of the revision petitioners under

section 324 IPC against them. The sentence imposed for the offence under section 324 was also confirmed by the appellate court. In such circumstances, the question to be considered is whether the conviction concurrently entered against the revision petitioners under section 324 IPC calls for any interference in this proceedings invoking the revisional jurisdiction.

4. True that common intention was attributed against the revision petitioners and the trial court convicted the revision petitioners under section 324 with the aid of section 34, IPC. However, there was no discussion whatsoever with respect to the existence of common intention by the trial court. It is also true that the said fact was not at all taken into consideration and specifically dealt with by the appellate court. At the same time, it is to be noted that the appellate court after re-appreciating the evidence, confirmed the conviction of the revision petitioners under section 324 not with the aid of section 34. Section 34 does not create any substantive

offence and its applicability depends upon the facts and circumstances of each case. Since the appellate court convicted the revision petitioners under section 324 without the aid of section 34 and as there was absence of any specific finding with respect to the existence of common intention among the revision petitioners in the judgment in C.C.No.339 of 2008 of the trial court, I do not think it necessary to consider such aspects in detail and according to me, in such circumstances, what is to be looked into in this proceedings is whether the appellate court went wrong in confirming the conviction of the revision petitioners under section 324 IPC and maintaining the sentence imposed therefor. Since section 34 IPC does not create any substantive offence the conviction of the revision petitioners by the trial court is only for the substantive offence under section 324 IPC. In the matter of conviction under section 324 IPC, evidently, it was entered into concurrently by the courts below based on the evidence on record. Section 324 IPC covers cases of causing of hurt voluntarily by dangerous weapons. In other words, even where the

injury caused is simple, if it was caused with a dangerous weapon, it would make the section applicable. In the case of MO1 chopper, there cannot be any doubt that it is a dangerous weapon. MO2 is a wooden stick. Though it may be contended that a wooden stick is not a dangerous weapon, a scanning of the provisions under section 324, IPC would reveal that causing bodily pain, disease or infirmity intentionally or with knowledge that it would cause pain etc. by means of an instrument for shooting, stabbing or cutting; or by an instrument, which used as a weapon is likely to cause death; or by means of fire; etc.; or by means of any poison etc.; or by means of any substance which it is deleterious to the human body to inhale etc. or by means of any animal would attract the said section. How can it be said that a wooden stick cannot be characterised as an instrument within the meaning of section 324, IPC? One of the instruments used in the instant case, was a wooden stick (MO2) and obviously, it was used as a weapon of offences. To attract section 324, IPC, it is not necessary that the manner of use of the weapon concerned must be

such that it is likely to cause death. If hurt was caused voluntarily, with a wooden stick, this section would apply. Section 321, IPC defines 'hurt' as causing bodily pain, disease, or infirmity and section 321, IPC makes voluntary causing of hurt an offence punishable under section 323, IPC and at the same time, if it was caused with a dangerous weapon, it would attract section 324, IPC. A careful scrutiny of section 324 IPC would reveal that it did not enjoin that the manner of use of the weapon must be such that it is likely to cause death. With this prelude I will consider the question whether the judgment of the appellate court invites interference in exercise of the revisional jurisdiction? In this case, the injured himself was examined as PW1 and he had narrated the incident in tune with the case of the prosecution and it is to be noted that the first and second revision petitioners are respectively the father and brother of PW1. PW1 would depose that the first accused/first revision petitioner(A1) slashed at his scalp with MO1 chopper and the second revision petitioner (A2) struck him with MO2 wooden stick on his scalp and body. In this

context, it is also to be noted that PW5 is the daughter of the first petitioner and the sister of the second petitioner. PW5 corroborated the version of PW1 as regards the attack on PW1 by the second revision petitioner with MO2 wooden stick. She also identified MO2 wooden stick. These aspects were duly taken note of by the courts below to arrive at the finding of commission of offence under section 324, IPC by the revision petitioners/accused. It is evident from the grounds raised in the revision petition as also the arguments advanced by the learned counsel for the revision petitioners that though they attributed enmity owing to the pendency of a civil suit between them and PW1, the fact that PW1 and PW5 gave evidence on the attack on PW1 by the revision petitioners respectively with MO1 and MO2 has not been disputed. In fact, the contention is that the courts below have seriously erred in placing reliance on the testimony of PW1 and PW5 to come to the conclusion that they were guilty of the offence. PW1 is the injured witness. The mere fact that a civil case was pending between them, by itself, is no reason to disbelieve or discredit the

evidence of PW1. Normally, the evidence of an injured witness is having higher degree of credibility if it is not shown that he is untrustworthy. In this case, nothing was brought out to render his oral testimony unreliable. It is to be noted that the courts below concurrently found that the evidence of PW5 corroborates the version of PW1. The evidence of PW9 with Ext.P5 wound certificate was also relied on by the courts below in coming to the finding of guilt on the revision petitioners. In this case, appreciation of evidence by the courts below could not be said to be done perfunctorily and in fact, the judgment of the appellate court would reveal that the evidence was properly analysed by the appellate court while confirming the conviction under section 324 and also for interfering with and setting aside the conviction and the sentence upon the revision petitioners for the offence under section 341 read with 34 IPC. In fact, a careful scanning of the judgment of the trial court would reveal that the learned Magistrate had not found existence of common intention and virtually, as held by the appellate court, the learned Magistrate arrived

at the finding of only an offence under section 324, IPC. In other words, evidently, the error committed by the trial court was corrected by the appellate court. In such circumstances, it can only be said that the revision petitioners were concurrently convicted under section 324 by the courts below.

5. The contention of the revision petitioners that the evidence of PW9 with Ext.P5 should not have been taken as a piece of evidence against them also merits no consideration. Such a contention was taken on the ground that Ext.P5 was issued by Dr.Vinod Kumar (CW8) and it was not marked through CW8. In fact, it was identified as evidence through PW9. No objection for marking Ext.P5 through PW9 was made by the revision petitioners. Such a contention was not taken up before the appellate court as well, as is obvious from the judgments of the courts below. In such circumstances, it cannot be permitted to be taken up for the first time before this Court. Had any objection be taken up against the

admissibility of Ext.P5, owing to the failure to examine CW8, the prosecution would have and could have explained the situation as to why it was got marked though PW9 Dr.Ali. That apart, there is no inviolable position that wound certificate issued by a particular doctor could not be got marked through another doctor attached to that hospital. Evidently, PW9 Dr.Ali would depose that he could identify the signature of Dr.Vinod Kumar in Ext.P5 and admittedly, PW1 the injured was initially taken to and admitted in the said hospital. In such circumstances, the revision petitioners are not justified in mounting challenge against the conviction and the consequential sentence on the aforesaid ground. Ext.P5 would reveal that PW1 had sustained a cut injury on the right parietal area having 4 cm deep and on the left parietal area a wound having size of 6 cm. The appellate court found that the length and width of injury was not specifically mentioned in Ext.P5. However, the depth of the injury has been specifically mentioned in Ext.P5. Though the revision petitioners during the examination of PW9 suggested that such injuries could be

caused by a fall of palm leaves on the head of PW1, the evidence of PW9 and PW6, a worker engaged by the revision petitioner to cut palm leaves and who climbed on the palm tree for that purpose, did not lend any support to the same. Though PW6 had not fully supported the prosecution case, he deposed that while he was dismounting from the palm tree, he had seen PW1 with a bleeding injury. No case was brought out through PW6 by the revision petitioners to gain support for their version. PW9 also ruled out the chance of sustainment of injuries noted in Ext.P5 in such a manner. These aspects were considered by the courts below. In such circumstances, there is no reason to hold that it was in an utterly perverse manner that the courts below have appreciated the evidence on record. No legal infirmity causing prejudice to the revision petitioner was also brought out. The instruments viz., MO1 and MO2 used as weapons of offence could only be described as dangerous weapons in the circumstances obtained in this case. Evidently, the evidence of PW1, PW5 and PW9 with Ext.P5 would reveal that PW1

has sustained injuries on his head and that those instruments were used as weapons of offence against PW1 by the revision petitioners for causing hurt, voluntarily. I have already noted the injuries sustained by PW1. The discussions made hereinbefore relating section 324, IPC with the evidence on record, would reveal that the courts below committed no errors in finding the revision petitioners guilty under section 324, IPC. In short, the said finding and consequential conviction thereunder suffer no illegality warranting an interference in invocation of the revisional jurisdiction.

6. Evidently, the injuries noted in Ext.P5 with regard to the injury on PW1 are on his head in fact, on the parietal area. In fact, he sustained a cut injury on the right parietal area having a depth of 4 cms. and a wound on the left parietal area having a depth of 6 cms. Taking into account the nature of the injuries as noted above, it cannot be said that the imposition of the simple imprisonment for three months for the offence under section 324, IPC is excessive and

warranting interference in exercise of the revisional jurisdiction. I am of the view that the sentence imposed on the revision petitioners for offence under section 324 IPC in the circumstances can only be said to be the condign punishment for the said conviction.

In the result, this revision petition is liable to fail and accordingly it is dismissed.

Sd/-

**C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

