

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

Crl.Rev.Pet.No. 972 of 2013 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 621/2012 of COURT OF THE III
ADDITIONAL SESSIONS JUDGE, ERNAKULAM

AGAINST THE JUDGMENT IN CC 352/2007 of J.M.F.C.I, PERUMBAVOOR

REVISION PETITIONER/APPELLANT/ACCUSED:

BABY PETER, AGED 56
S/O.PATHROSE, PAREMAN HOUSE, NEDUNGAPRA KARA
NEDUNGAPA P.O 683545

BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENTS/RESPONDENTS/STATE & COMPLAINAT:

1. STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM 682 301
2. SUB INSPECTOR OF POLICE
KURUPPAMPADY POLICE STATION, KURUPPAMPADY P.O 683 545

BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 28-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.972 of 2013

Dated this the 28th day of September, 2015

ORDER

The revision petitioner is the accused in CC No.352/2007 on the files of the Court of the Judicial Magistrate of First Class-I, Perumbavoor.

2. The trial court convicted the revision petitioner under Sections 447 and 326 IPC and sentenced him to simple imprisonment for three months under Section 447 IPC and to rigorous imprisonment for one year and a fine of Rs.10,000/- under Section 326 IPC. The appeal filed against the said conviction and sentence was dismissed by the IIIrd Additional Sessions court, Ernakulam as per judgment in Crl.Appeal.621/2012. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that on 06.08.2005,

at about 9 a.m., the revision petitioner due to his previous enmity to PW1, trespassed into the property of the brother of PW1 and attacked PW1 with MO1 chopper, causing grievance injuries on him.

5. Before the trial court, PW1 to PW12 were examined and Exts.P1 to P9 were marked for the prosecution, besides identifying MO1 and MO2. PW1 is the injured in this case. PW1 had given evidence in accordance with the prosecution case. PW1 had given Ext.P1 statement before the Police in connection with the incident in this case. According to PW1, on 06.08.2005, at about 9 a.m., the revision petitioner trespassed into the property of his brother, which was being managed by PW1 and attacked him with MO1 chopper, causing injuries including fracture on his right forearm. PW2 and PW3 were occurrence witnesses who also corroborated the evidence of PW1 in all material aspects. The evidence of PW1 to PW3 with regard to the occurrence is corroborated by the medical evidence of PW9 and PW12 coupled with Ext.P5 discharge certificate and Ext.P9 wound certificate. Ext.P5

would show that PW1 sustained an open fracture of ulna. He also sustained incised wound 3x2 c.m. over right forearm besides sustaining a blunt injury on the right parotid region.

6. The courts below after evaluating the evidence of PW1 to PW3 and the medical evidence adduced, found the revision petitioner guilty under Sections 447 and 326 IPC. 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. In this case, no circumstance has been brought to my notice to indicate that the concurrent finding of the courts below is perverse or incorrect. Having gone through the records, I am satisfied that the courts below correctly appreciated the evidence and came to the conclusion that the revision petitioner committed the offence under Sections 447 and 326 of IPC. In the said circumstances, I find no reason to interfere with the concurrent finding of the courts below that the revision petitioner committed the offence under Sections 447 and 326 of IPC.

7. As regards the sentence, the learned counsel has

pleaded for leniency. It has been submitted by the learned counsel for the revision petitioner that PW1 and the revision petitioner are very close relatives and they have settled the matter. The revision petitioner is presently aged 60 years. The offence under Section 326 IPC is not a compoundable offence. However, taking into consideration of the facts and circumstances of the case, including the fact that the revision petitioner had already undergone detention from 09.01.2006 to 25.01.2006 in connection with the incident in this case and also taking into consideration of the fact that the parties have settled the matter and they are presently living in harmony, I am inclined to take a lenient view in the matter of sentence. Accordingly, I modify and reduce the sentence awarded by the courts below to imprisonment already undergone by the revision petitioner and a fine of Rs.20,000/- under Section 326 IPC and a fine of Rs.500/- under Section 447 IPC, to meet the ends of justice and accordingly I order so.

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

1) confirming the verdict of guilty and conviction passed by the courts below under Sections 447 and 326 IPC.

2) the sentence awarded by the courts below stands modified and reduced to imprisonment already undergone by the revision petitioner and a fine of Rs.20,000/-(Rupees twenty thousand only) with a default clause for simple imprisonment for three months under Section 326 IPC and a fine of Rs.500/- (Rupees five hundred only) with a default clause for simple imprisonment for 10 days under Section 447 IPC.

In the event of realisation of the fine amount, the entire amount shall be given to PW1 as compensation under Section 357(1) (b) Cr.PC.

sm/

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

//TRUE COPY//

P.ATO JUDGE