

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.D.RAJAN**

**THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937**

**Crl.Rev.Pet.No. 1639 of 2008 ( )**  
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**AGAINST THE JUDGMENT IN C.C.No.15 of 2006 of JUDICIAL FIRST CLASS  
MAGISTRATE-II, ALAPPUZHA DATED 18-03-2008**

**REVISION PETITIONER/DE-FACTO COMPLAINANT:**  
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**VARGHESE.T.G., AGED 27 YEARS,  
S/O.GEORGE T.G., THEKKEPALAKKAL HOUSE,  
THUMBOLI P.O., ALLEPPEY**

**BY ADVS.SRI.C.S.MANU  
SRI.S.K.PREMRAJ  
SRI.ANOOP JOSEPH  
SRI.ABHILASH AKBAR**

**RESPONDENTS/ACCUSED AND COMPLAINANT:**  
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- 1. ANTONY @ BIJU, S/O.STEPHEN, KAKKARIYIL  
MANGALAM WARD, ALAPPUZHA**
- 2. YESUDAS@ BINU, S/O.STEPHEN,  
THEKKEPALAKKAL HOUSE, THUMBOLI PO., ALAPPUZHA**
- 3. PRINCE @ PAYAS, S/O.ALEXANDER, KANDATHILPARAMBIL,  
THUMBOLI WARD, ALAPPUZHA**
- 4. JULIAN @ STANLY, S/O.ELIAS, CHARANGATTU VEEDU,  
THUMBOLI WARD, ALAPPUZHA.**
- 5. DEVADAS @ JIMKICHEN, S/O.YOHANNAN  
KURISINGAL VEEDU, MANGALAM WARD, ALAPPUZHA**
- 6. STATE OF KERALA, REP. BY S.I. OF POLICE  
ALAPPUZHA NORTH POLICE STATION (THROUGH PUBLIC  
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM)**

**R6 BY PUBLIC PROSECUTOR : SRI. DHANESH MATHEW MANJOORAN.**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08-  
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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P. D. RAJAN, J.

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Crl.R.P.No. 1639 of 2008

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Dated this the 8<sup>th</sup> day of October, 2015

O R D E R

The revision petitioner is the complainant (injured) in C.C.No.15 of 2006 on the file of Judicial First Class Magistrate Court, Alappuzha, challenges the judgment of acquittal of the accused for offences punishable under Sections 143, 147, 148, 149, 452, 324, 326, 294(b) of IPC and under Section 10 and Section 27 of the Arms Act. The respondents 1 to 5 are the accused in the above case.

2. The prosecution allegation is that on 25.12.2004 at about 9.45 a.m., the accused formed themselves into an unlawful assembly with deadly weapons and in furtherance of their common object they trespassed into the house of PW1. A1 and A2 inflicted cut injuries with a sword stick and uttered obscene words and thereby they committed the offences punishable under Section 143, 147, 148, 149, 452, 324, 326, 294(b) of IPC. On the basis of information, Sub

Inspector of Police, Alappuzha North Police Station, registered Crime No.807 of 2004 and after completing investigation, they filed charge sheet before the Judicial First Class Magistrate, Allappuzha. During trial, prosecution examined PW1 to 9 and marked Exts.P1 to P8. Mos1 and 2 were marked as material objects. Exts.D1 to D4 were marked on the side of the defence. The trial court after analysing the evidence, found the accused not guilty and acquitted them. Being aggrieved by that, injured preferred this revision petition.

3. The learned counsel appearing for the revision petitioner contended that a wrong appreciation of evidence was made by the trial court. There are minor contradictions and infirmities in the evidence of Pws1 to 5 and that itself is not a ground to discard the evidence.

4. The object of conferring revisional power under Section 397 and 401 of the Code of Criminal Procedure

(hereinafter referred to as 'the Code') on the High Court is to afford a general superintendence in order to correct the grave failure of justice arising from defective orders. The defect may arise from the misconception of law, irregularity of procedure, misreading of evidence, or misconception about law or facts. This revisional power is discretionary one and there is no vested right of revision in the sense, mentioned in appeal. In an appeal, the appellant is given a statutory right to demand adjudication upon a question of law or question of fact or of both. But in a revisional jurisdiction, the petitioner has no such right, but it is for the court to interfere in exceptional cases.

5. Considering the allegations, I have gone through the findings of the court below. Prosecution examined PW1 as the injured. The evidence of PW1 shows that the incident was on 25.12.2004 at 9.45 a.m., inside the kitchen of his father's brother's house. He was sitting in the

varantha, A1 to A5 came there and tried to attack him. He ran away towards the house of his father's brother and entered inside the kitchen. He fell down in the kitchen, A5 and A3 caught hold of his leg. A2 cut on his right leg and A1 cut on the left leg. As a result, he sustained serious injury, immediately he was removed to hospital. He identified Mo1 and Mo2 sword stick. He identified the accused also. During cross examination, he denied the statement given in Ext.P1 which was marked as Ext.D1(a). Analysing the evidence of PW1, it is clear that there was nobody inside the kitchen to see the incident.

6. PW2 deposed that he saw the incident. One Jimmy and Pious deposed that A3 and A5 called PW1 and A2 and A1 cut on the right and left legs with sword sticks. PW2 deposed that PW4 was present in the kitchen. He was also standing near him. The evidence of PW1 is inconsistent with the evidence of PW2 and PW4. PW3 also stated that he

was proceeding through southern side and at that time he saw the accused. According to Pw3, A1 to A5 went to the house and assaulted him in his house. PW3 who is also an occurrence witness deposed that the incident occurred in the kitchen of PW1. PW4 also stated that the incident occurred in her kitchen. A close scrutiny of evidence shows that there is no consistent version with regard to the occurrence. On a perusal of the above incident, it is clear that the prosecution utterly failed to prove the case against the accused.

7. The medical certificate, Ext.P3 reads as follows:

1. Incised wound anterior aspect ankle (lt), within the tender cut and ankle(Jt) open anteriorly extensor
2. Incised wound 7x3 cm anterior aspect middle1/3; bone deep within fracture fibula with unicortical fracture tibia .

The medical evidence is not corroborated in the prosecution case and if an attack was made by A1 and A2 with Mo1 and Mo2, the nature of injury will be different.

Mo1 and Mo2 were recovered by the police during investigation, but they were not sent for examination for ascertaining human blood. The trial court while appreciating the evidence observed that PW2 to PW4 are planted witnesses and there was no chance to see the incident and no credibility in their version and acquitted the accused.

8. 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.

The trial court after analysing the evidence concluded that prosecution utterly failed to prove the case against accused prima facie no materials are available for invoking revisional jurisdiction to set aside the order of acquittal. There is no merit in this revision petition, it is dismissed as accordingly.

P. D. RAJAN  
JUDGE