

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Crl.Rev.Pet.No. 1015 of 2015

CRA 223/2014 of SESSIONS COURT, ,KASARAGOD
CC 710/2009 of C.J.M.,KASARAGOD
CRIME NO. 295/2009 OF MANJESWAR POLICE STATION , KASARGOD

REVISION PETITIONER/APPELLANT NO. 1 /ACCUSED NO.1:

KIRAN AGED 25 YEARS
S/O RAGHAVA , RESIDING AT PANIYOOR HOUSE
SANNADAKA KUNJATHUR VILLAGE, KASARAGOD

BY ADV. SRI.CIBI THOMAS

RESPONDENTS/COMPLAINANT& STATE:

1. S.I. OF POLICE, MANJESHWAR POLICE STATION
KASARAGOD-671 121
2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA , ERNAKULAM-682031

BY PUBLIC PROSECUTOR, SRI.JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 03-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1015 of 2015 A

Dated this the 3rd day of September 2015

ORDER

The revision petitioner is the first accused in C.C. No.710 of 2009 on the files of the Chief Judicial Magistrate Court, Kasaragod.

2. The trial court convicted the revision petitioner and the other accused under Sections 143, 147, 148, 341, 323 and 324 read with Section 149 of the Indian Penal Code (for short 'I.P.C.'). The trial court sentenced the revision petitioner and the other accused to simple imprisonment

for one month each under Section 143 I.P.C., simple imprisonment for three months each under Section 147 I.P.C., simple imprisonment for one month each under Section 341 I.P.C., simple imprisonment for two months each under Section 323 I.P.C. and simple imprisonment for six months each and a fine of Rs.2,000/- each under Section 324 I.P.C. In the appeal filed against the said conviction and sentence, the conviction and sentence against the first accused, who is the revision petitioner, was confirmed by the appellate court. However, the appellate court acquitted the other accused. Aggrieved by the said conviction and sentence, the first accused before the trial court has come up with this revision petition.

2. Heard.

3. The prosecution allegation is that on 10.11.2009 at 8.15 a.m., while PW1 was working as the conductor of a bus, the revision petitioner and the other accused pulled PW1 down from the bus and thereafter, they assaulted PW1. The revision petitioner hit on the head of PW1 with a stone. The other accused fisted and kicked PW1.

4. The prosecution relies on the evidence of PW1 and PW6 to bring home the guilt of the revision petitioner. PW1 is the injured. He has spoken about the incident. PW2 was examined as a witness to prove the occurrence. But he did not support the prosecution case. PW6 was the driver of the bus in which PW1 was the conductor. PW6 also deposed about the incident corroborating with the evidence of PW1. PW6 had acquaintance with the revision

petitioner as the revision petitioner used to travel in the said bus regularly. Since PW6 stated that PW6 did not have prior acquaintance with accused Nos.2 to 6, the appellate court acquitted accused Nos.2 to 6, stating that there was no proper identification of the said accused. PW1 also did not have prior acquaintance with accused Nos.2 to 6. However, PW1 had sufficient opportunity to note the features of the revision petitioner. Therefore, there was proper identification of the revision petitioner by PW1. PW6 also identified the revision petitioner. The evidence of PW1 is supported by the medical evidence of PW3, who examined PW1 and issued Ext.P2 wound certificate. Both the courts below concurrently found the revision petitioner guilty under Sections 143, 147, 148, 341, 323 and 324 read

with Section 149 I.P.C. Since there is concurrent finding on facts by the courts below, this court will not be justified in re-appreciating the evidence, unless the finding is perverse or incorrect. Since there is concurrent finding on guilt and conviction of the revision petitioner under Sections 143, 148, 341 and 324 read with Section 149 I.P.C., I am not inclined to interfere with the same. The other accused persons were acquitted by the appellate court granting them the benefit of doubt, for want of proper identification. Therefore, the argument of the learned counsel for the revision petitioner that since the other accused persons had been acquitted by the appellate court, the revision petitioner cannot be convicted with the aid of Section 149 I.P.C., cannot be accepted. Since there was

only one injured person, the revision petitioner cannot be convicted under Section 323 I.P.C. as well as under Section 324 I.P.C. Since there is conviction under Section 148 I.P.C., there is no need to have separate conviction under Section 147 I.P.C.

5. Now the question to be decided is the quantum of sentence to be awarded to the revision petitioner. It is borne out from the records that PW1 did not sustain any serious injury. There is also no evidence with regard to the previous conviction of the revision petitioner. Considering the facts and circumstances, including the nature of injuries sustained by PW1, I am of the view that the sentence awarded by the courts below can be modified and reduced to a fine of Rs.1,000/- each under each of Sections 143 and

148 read with Section 149 I.P.C., a fine of Rs.500/- under Section 341 read with Section 149 I.P.C., a fine of Rs.5,000/- under Section 324 read with Section 149 I.P.C., to secure the ends of justice. Accordingly, I order so.

In the result, the Crl. Revision Petition stands allowed in part,

(i) confirming the verdict of guilty and conviction passed by the courts below under Sections 143, 148, 341 and 324 read with Section 149 I.P.C.,

(ii) the sentence awarded by the courts below stands modified and reduced to a fine of Rs.1,000/- each and in default to simple imprisonment for 10 days each, under each of Sections 143 and 148 read with Section 149 I.P.C., a fine of Rs.500/- and in

default to simple imprisonment for 10 days under Section 341 read with Section 149 I.P.C. and a fine of Rs.5,000/- and in default to simple imprisonment for two months under Section 324 read with Section 149 I.P.C.

(iii) 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.P.C.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

dl

/ True copy /

PA to Judge