

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

Crl.Rev.Pet.No. 1622 of 2013 ()

**AGAINST THE JUDGMENT IN CRL.A 127/2012 OF ADDITIONAL DISTRICT AND
SESSIONS COURT (AD-HOC) COURT-I, PATHANAMTHITTA DATED 07-05-2013**

**AGAINST THE JUDGMENT IN CC 854/2000 OF JUDICIAL FIRST CLASS MAGISTRATE-I,
ADOOR DATED 31.7.2012**

REVISION PETITIONERS/APPELLANTS 1,2,4 AND 5/ACCUSED 2,3,5 AND 6.:

- 1. PODIPENNU, AGED 85 YEARS
D/O.KURUMBA, CHARUVILA VEEDU, CHEEKANKALLU
ERATHU VILLAGE.**
- 2. SARASAMMA @ KUNJUPENNU, AGED 58 YEARS
D/O.KURUMBA, CHARUVILA VEEDU, CHEEKANKALLU
ERATHU VILLAGE.**
- 3. ANANDAN, AGED 38 YEARS
S/O.AYYAPPAN, CHARUVILA PUTHEN VEEDU
PUTHISSERY BHAGAM MURI, ERATHU VILLAGE.**
- 4. THULASI , AGED 44 YEARS
S/O.AYYAPPAN, SUMESH BHAVAN, CHEEKANKALLU
PUTHISSERY BHAGAM MURI, ERATHU VILLAGE.**

BY ADV. SRI.GEORGE SEBASTIAN

RESPONDENT/RESPONDENT/COMPLAINANT:

**STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.**

BY PUBLIC PROSECUTOR SRI. GITHESH R.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
01-04-2015 ALONG WITH CRL.R.P.NO.1638/2013 & CONNECTED CASES, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.R.P.Nos.1622, 1638, 1688 & 1916 of 2013

Dated this the 1st day of April, 2015

ORDER

Revision petitioners were accused Nos.2 to 8 in C.C. No.854/2000 on the file of the Judicial First Class Magistrate Court - I, Adoor. The 2nd accused is the mother, the 7th accused the wife and the 3rd accused an aunt of the 1st accused. The other accused, probably except the 8th accused, are their relatives. PW1, PW2, PW5 to PW7 are the victims in the case. PW2 is father, PW5 mother, PW6 sister and PW7 wife of PW1. These witnesses and the accused 1 to 7 are relatives. There was a dispute between them over a pathway. It is alleged that on 22.06.2000 at about 7.30 am on the pathway in front of the house of the 1st accused and others, the accused assaulted the victims. PW2 sustained fracture of the ribs when he was allegedly struck with a twig by the first accused. PW1 sustained an injury on the right eyebrow when he was allegedly struck with a chopper by the 1st accused. Some accused are said

to have assaulted the victims with hands. The specific allegation against the 5th accused is that he threw a stone at PW5 Kunjupennu causing an injury on her lower lip. As the first accused was absconding, only the other accused were tried. Learned Magistrate found them guilty of the offences under Sections 323, 324 and 326 IPC r/w. Section 34 of the Code. For the offence under Section 326 IPC, each of them was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/-. No sentence was imposed for the offences under Sections 323 and 324 IPC. The conviction and the sentence were challenged in Crl.Appeal No.127/2012. Learned Sessions Judge dismissed the appeal confirming the conviction and the sentence. Accused 2 to 8 questioned the legality of their conviction and sentence in these four revision petitions.

2. Heard the learned counsel for the revision petitioners and the learned Public Prosecutor.

3. Learned Public Prosecutor submits that there is a concurrent finding of fact by the trial court and the

appellate court and it is not proper for this Court to reappreciate the evidence as if it were an appeal. I have no doubt that the scope of enquiry in a revision petition is limited. In the decision in **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [(2015) CCR 267 (SC)]** relied on by the learned Public Prosecutor the Supreme Court has considered the powers of the revisional court. It is well settled that if the decision sought to be revised is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where decision is based on no material or where material facts are wholly ignored or where judicial discretion is exercised arbitrarily or capriciously the revisional court can interfere. I shall examine the facts of the case in the light of the said decision.

4. There was a dispute between the parties concerned over a pathway. There was a civil suit in which admittedly there was an order of injunction against PW1 and others. In spite of the order of the civil court PW1 and

PW2 claimed to have used the pathway, which led to the incident.

5. According to the prosecution, when the incident happened at 7.30 in the morning, PW2 along with his son PW1 was walking along the way. Accused 1 to 3 came to PW1 and PW2 and the 1st accused struck PW2 with MO2 twig causing fracture of his ribs on the left side. The first accused went back to his house, came back with MO1 chopper and struck PW1 with it causing an injury on his right eye-brow. These facts have been deposed to by PW2.

6. In his examination-in-chief, PW1 also deposed to the above facts. But in the cross-examination, he made a somersault. It was brought out that he was sitting in his sister's house, when the 1st accused allegedly assaulted his father PW2 with MO2 twig. This knocks the bottom out of the prosecution case. In the cross-examination, PW2 disowned his statement in the examination-in-chief that accused 2 and 3 assaulted him. He said that only the 1st accused assaulted him. In the cross-examination, he

deposed that he did not know whether accused 2 and 3 were at the place of occurrence when the incident took place.

7. The allegation against the 4th accused is that he assaulted PW6 with his hands. This witness and PW1 deposed to it. But the version of PW2 and PW5 is that it was accused 1, 2, and 4 to 6 who assaulted PW6. Neither PW7 nor PW8 has a case that PW6 was assaulted.

8. The accusation against the 5th accused is that he threw a stone at PW5 causing an injury on her lower lip. But this witness as well as PW1, PW2, PW6 and PW8 stated that it was the 6th accused who threw stone at PW5.

9. The prosecution case against the 7th accused is that she pushed down PW7. This witness, PW2 and PW5 deposed to this fact; but PW1, PW6 or PW8 has no such case.

10. The evidence discussed above makes it clear that no two statements of any of the injured or the occurrence witness are consistent. Their evidence is full of

contradictions, inconsistencies and discrepancies.

11. The court charge is not available in the case records. I have perused the final report. There is no specific allegation against the 8th accused. It is not known why he was arrayed as an accused. The evidence of PW6 and PW7 that the 8th accused hit on the back of PW5 is without any foundation. Even PW5 has no such case.

12. MO1 and MO2 are said to be the chopper and the twig used by the 1st accused to assault PW1 and PW2. PW2 testified that it was he who handed over these weapons to the police. But the prosecution case is that these weapons were seized by PW10 A.S.I. of Police in a search conducted of the house of the 1st accused. I have no doubt that the evidence of the witnesses in this case is absolutely false. It came out in the evidence of PW1 that a scuffle took place between the two groups. The probability of PW2 sustaining injuries in the course of the scuffle cannot be ruled out. The nature of the injury sustained by PW1 also inclines me to believe that he sustained the injury not in an attack with a

heavy weapon like MO1.

13. It is true that PW1 and PW2 sustained injuries. The prosecution had a duty to place the unvarnished truth before the court. But the facts placed before the court are far removed from the truth. It is very difficult to separate the truth and the falsehood. The finding of the trial court is grossly erroneous. Without properly appreciating the evidence the learned Sessions Judge set his seal of approval to the judgment passed by the trial court. It has resulted in miscarriage of justice. It is only just and proper that this Court set aside the order of conviction and sentence.

14. Mention has already been made that the revision petitioners have been convicted of the offences under Sections 323, 324 and 326 I.P.C. But sentence was imposed only for the offence under Section 326 IPC. This is clearly illegal. For every conviction, there shall be a sentence. The trial court should have imposed separate sentence for each offence.

In the result, these revision petitions are allowed. The

order of conviction and sentence passed by the trial court and confirmed by the appellate court are set aside. The revision petitioners are acquitted of the offences and they are set at liberty.

Sd/-
K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/