

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

Crl.Rev.Pet.No. 1883 of 2011 ()

AGAINST THE JUDGMENT IN CRA 513/2010 of ADDL.SESIONS COURT (ADHOC-
III), NORTH PARAVUR DATED 20.06.2011 CONFIRMING THE JUDGMENT AND
CONVICTION DATED 04.08.2010 IN CC 273/2005 of JUDICIAL FIRST CLASS
MAGISTRATE COURT, ALUVA

REVISION PETITIONER/APPELLANT/ACCUSED:

RAMESAN, S/O. SREEDHARAN, PLAKKOTTATHIL
HOUSE, KEEZHMADU, ALUVA.

BY ADVS. SRI. V. S. CHANDRASEKHARAN
SMT. LEKSHMI SWAMINATHAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, ERNAKULAM.

R BY PUBLIC PROSECUTOR: ADV. SMT. M T SHEEBA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
07-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.R.P.No.1883 of 2011

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Dated this the 7th day of September, 2015

ORDER

The revision petitioner is the first accused who stands convicted by judgment dated 04.08.2010 in C.C.No.273 of 2005 of the Judicial First Class Magistrate-I, Aluva for offences punishable under Sections 447, 323 and 326 of the Indian Penal Code. The prosecution allegation is that on 08.05.2004 at about 10 a.m., while both the accused, who were the husband and wife, were carrying on some activity near the boundary separating their property from that of de facto complainant, a verbal exchange took place with the de facto complainant and getting provoked, the accused trespassed into the compound of the de facto complainant. The first accused who was armed with an iron rod hit on the left hand of the de facto complainant and thereafter, kicked on her left stomach. She was immediately rushed to the hospital, and it was found that she had sustained fracture of the left arm. She was treated and was discharged on the same day. At the hospital, she lodged the FIS, marked as Ext.P1 and Ext.P6 FIR was recorded. The accused faced trial before the learned magistrate. On the side of the prosecution, PW1 to 7 were examined and Exts.P1 to P8 were marked. The

weapon used was identified as MO1. The court below, on an evaluation of the available materials found the first accused guilty, convicted and sentenced him to undergo simple imprisonment for one month for the offence punishable under Section 447 of the IPC and to undergo simple imprisonment for two years and to pay a fine of Rs.5,000/- for offence punishable under Section 326 of the IPC, in default, he was to undergo simple imprisonment for three months. The Court also held that there was no evidence to find the wife guilty and acquitted the second accused. This was challenged in Crl.Appeal. No.513 of 2010 before the Sessions Court, N.Paravur by the first accused. The lower appellate court by its judgment dated 20.06.2011 confirmed the conviction as well as the sentence. Aggrieved by the above, the revision petitioner has preferred this revision contending that the courts below have erred materially in finding the accused guilty.

2. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor. Perused the records.

3. The prosecution essentially relied on the oral testimony of the injured, de facto complainant as PW1 and that of PW2 her husband. Both were claimed to be eye witness to the incident. The prosecution also relied on the oral testimony of PWs.3 and 4 who

are neighbours and whom the prosecution claimed to have rushed to the spot on hearing the cries of PW1. Both PWs.3 and 4 turned hostile and did not support the prosecution case in any manner.

4. Learned counsel for the revision petitioner challenged the findings of the courts below on the ground that the benefit of evidence tendered by PWs.3 and 4 disowning the prosecution case should have outweighed the evidence tendered by PWs.1 and 2. Learned counsel also contended that both PWs.1 and 2 were interested witnesses and the anxiety of PW2 husband to support the wife's version was patent on record. It is true that for reasons best known to them, PWs.3 and 4 turned hostile and did not support the prosecution case in any manner.

5. At the out set, I am not inclined to brush aside the evidence of PWs.1 and 2 as interested testimony. PW1, being the injured witness, was the most competent witness to depose. Even according to the version of prosecution, when the dispute arose with the accused, the husband/PW2 was also available at the scene. Hence, PW2 is a natural witness. Merely because PWs.3 and 4 have turned hostile, that by itself not likely to cast any doubt on the version of PWs.1 and 2. Hence, what remains to be considered is whether the version spoken by PWs.1 and 2 are consistent, reliable,

trustworthy and whether the substratum of the prosecution case is proved from their evidence. Evidently, no omission or contradiction have been brought out in the testimony of PWs.1 and 2. There is no inconsistency among the evidence of PWs.1 and 2 either. The oral testimony of PWs.1 and 2 on essential aspects are consistent and mutually support each other.

6. The incident happened at around 10 a.m. PW1 was immediately rushed to the hospital and was seen by the doctor at 11 a.m. which shows that the doctor had seen her within one hour. Ext.P7 is the wound certificate issued by the concerned hospital. In the wound certificate itself, it is referred that, she was attacked by a known person. The doctor suspected fracture, and she was referred for x-ray and other conservative treatment. Ext.P8 is the discharge summary dated 18.10.2004 which shows that the de facto complainant had sustained a fracture of the lower 1/3rd of the radius and there was a dislocation of the bone also. Ext.P8 also shows that surgical procedures were done. Hence, the fact that PW1 had sustained injury is proved by the documentary evidence of Exts.P7 and P8. This is corroborated by the oral testimony of PW7. There is nothing to show that the weapon like MO1 cannot cause an injury in the nature as mentioned in Exts.P7 and P8. The version of PW1 also

rules out the defence set up by the accused that the injury might have happened due to fall. The doctor has completely ruled out any fracture of this nature as consequent to fall.

7. The appreciation of entire evidence lead to a definite conclusion that the prosecution has succeeded in proving that the accused had injured PW1 using MO1 weapon. This finding arrived at by the trial court on the basis of available material was evaluated from all angle by the appellate court. The appellate court also could not find anything to arrive at different conclusion. In exercising powers of the revision, this Court also cannot find any material to conclude that the finding arrived at by the court below was perverse or that there was material irregularity in the exercise of jurisdiction. Hence, the conviction arrived at by the court below is liable to be sustained.

8. The court below has imposed a sentence of one month simple imprisonment for the offence punishable under Section 447 and two years simple imprisonment for the offence punishable under Section 326 along with a fine of Rs.5,000/- with a default clause. It is on record that the parties are related to each other and are neighbours. It also brought on record that there was another case against the complainant herein in relation to causing of

damages to the television. However, the de facto complainant herein was acquitted. There is nothing to show that any previous conspiracy, since the sequence of events indicated that the incident happened on the spur of the moment and there is nothing on record to show that the accused is involved in any other crime. It is also brought on record that he is leading a family life. The incident happened in 2004 and that too a sequel to a property dispute. Considering these facts, accused is entitled to the maximum leniency, especially when, in a case of this nature, the concept of deterrent punishment is not involved. Hence, I feel that simple imprisonment for a period of two months will serve the interest of justice for offence punishable under Section 326. With respect to the offence punishable under Section 447, a sentence of 15 days simple imprisonment will serve the interest of justice. I am not inclined to interfere with the fine imposed except with a modification that the fine, if remitted, shall be paid to the de facto complainant for the injury caused to her.

In the result, the revision is allowed in part. While confirming the conviction passed under Sections 447 and 326 of the IPC, the sentence is modified as 15 days simple imprisonment for the offence punishable under Section 447 and two months simple

imprisonment for the offence punishable under Section 326 with a fine of Rs.5,000/-. In default of the fine, accused shall undergo simple imprisonment for 15 days. The fine, if remitted, shall be paid to the de facto complainant as compensation under Section 357(1) of the Cr.P.C. Set off is granted. Both sentences shall run concurrently.

Sd/-

SUNIL THOMAS
Judge

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