

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1402 of 2015 ()

AGAINST THE JUDGMENT IN CRA 191/2013 of I ADDL. SESSIONS
COURT - I, TRIVANDRUM DATED 28-02-2015

AGAINST THE JUDGMENT IN CC 336/2008 of J.M.F.C., VARKALA
DATED 30-01-2013
CRIME NO. 41/2008 OF VARKALA POLICE STATION ,
THIRUVANANDAPURAM

REVISION PETITIONER(S):

1. PRASANNARAM, S/O. SIVADASAN, RAJU BHAVAN,
NEAR FACTORY JUNCTION, PALAYAMKUNNU,
ELAKAMON DDESOM, AYIROOR VILLAGE
2. PREMJIITH, S/O. SIVADASAN, RAJU BHAVAN,
NEAR FACTORY JUNCTION, PALAYAMKUNNU,
ELAKAMON DESOM, AYIROOR VILLAGE

BY ADV. SRI.K.P.SUJESH KUMAR

RESPONDENT(S):

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI. R. GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 03-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Crl.R.P. No. 1402 of 2015
.....

Dated this the 3rd day of November, 2015

ORDER

The revision petitioners are accused Nos. 1 and 3 in C.C. No. 336 of 2008 on the files of the Court of the Judicial Magistrate of First Class-I, Varkala.

2. The trial Court convicted the revision petitioners under Sections 323 and 324 read with Sec. 34 IPC and convicted them thereunder to simple imprisonment for one month each under Sec. 323 IPC and simple imprisonment for six months each and a fine of of Rs. 2500/- each under Section 324 IPC with a default clause for simple imprisonment for two months each. The appeal filed against the said conviction and sentence was dismissed. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard the learned counsel for the revision petitioners

and the learned Public Prosecutor.

4. The prosecution case is that on 17-1-2008 at about 1 p.m., the revision petitioners along with other accused persons in furtherance of their common intention attacked the de facto complainant, causing injuries on him.

5. Before the trial court, PW1 to PW6 were examined and Exts. P1 to P6 were marked for the complainant. Exts. D1 and D2 were marked on the side of the revision petitioners.

6. The de facto complainant was no more during the period of examination of witnesses before the trial court. However, PW1 and PW4 narrated the incident in tune with the prosecution case. The evidence of PW1 and PW4 is supported by the medical evidence of PW3 coupled with Ext. P2 wound certificate.

7. The courts below, after evaluating the oral and documentary evidence adduced by the parties, concurrently found that the revision petitioners committed the offence under

Sections 323 and 324 read with Sec. 34 IPC. The defence set up by the revision petitioners was also repelled by the courts below. 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. No circumstance has been brought to my notice to indicate that the appreciation of evidence by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by the courts below that the revision petitioners committed the offence under Secs. 323 and 324 read with Sec. 34 IPC., does not warrant any interference by this Court.

8. As regards the sentence, the learned counsel for the revision petitioners pleaded for leniency. The first accused used a stick to inflict injury on the back of the de facto complainant. The third accused did not use any weapon to inflict injury on the de facto complainant. There is no allegation that the revision

petitioners were ever convicted in any other offence. The de facto complainant did not sustain any serious injury in the incident. Considering the facts and circumstances of the case, I am of the view that the sentence awarded by the courts below can be modified and reduced to imprisonment till the rising of the court and a fine of Rs. 10,000/- (Rupees ten thousand only) each under Section 324 IPC and a fine of Rs. 1000/- (Rupees one thousand only) each, under Section 323 IPC, to secure the ends of justice and accordingly, I order so.

In the result, this revision petition stands allowed in part;

- i) confirming the verdict of guilty and conviction passed by the courts below under Sections 323 and 324 read with Section 34 IPC;
- ii) the sentence awarded by the courts below stands modified and reduced to imprisonment till the rising of the court and a fine of Rs. 10,000/- each (Rupees ten thousand only) and in default to simple imprisonment for one month each under Section 324 IPC and a fine of

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CrI.R.P. No. 1393 of 2015

Rs. 1000/- each, and in default to simple imprisonment for 15 days each under Sec. 323 IPC.

iv) in the event of realisation of the fine amount, an amount of Rs. 10,000/- (Rupees ten thousand only) shall be given to the legal heirs of the de facto complainant as compensation under Section 357 (1)(b) Cr.P.C.

Dated this the 3rd day of November, 2015.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

Ani/3/11/2015

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P.S. ToJudge