

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

Crl.Rev.Pet.No. 883 of 2014 ()

AGAINST THE JUDGMENT IN CRA 31/2013 OF THE SESSIONS JUDGE,
KASARAGOD DATED 28-03-2014
AGAINST THE JUDGMENT IN CC 495/2007 of J.M.F.C.,KASARAGOD DATED
31-01-2013

REVISION PETITIONER(S)/ACCUSED:

1. ASLAM AGED 31 YEARS
S/O.MARIYUMMA, R/AT KOTTA HOUSE, CHEROOR
CHENGALA VILLAGE, KASARAGOD DISTRICT.
2. MOHAMMED SALAM AGED 35 YEARS
S/O.ABDULLA, R/AT KOTTA HOUSE, CHEROOR
CHENGALA VILLAGE, KASARAGOD DISTRICT.
3. A.R.C.ABDUL RAHIMAN AGED 56 YEARS
S/O.MOHAMMED, R/AT BERKA HOUSE, CHEROOR
CHENGALA VILLAGE, KASARAGOD DISTRICT.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.

R BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 22-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 22nd September, 2015

ORDER

The revision petitioners were accused Nos. 7 to 9 in C.C. No. 4956 of 2007 on the files of the Court of the Judicial Magistrate of First Class – I, Kasaragod.

2. The revision petitioners were convicted by the trial Court under Sections 143, 147, 341, 323 and 427 read with Section 149 IPC and sentenced them thereunder to simple imprisonment for three months each under Sections 143 and 147 read with Section 149 IPC and simple imprisonment for one month each under Section 341 read with Section 149 IPC, simple imprisonment for six months each under Section 427 read with Section 149 IPC and six months each and a fine of Rs. 500 under

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Section 323 read with Sec. 149 IPC.

3. The prosecution allegation is that on 3-4-2007 at about 6.30 p.m., the accused persons wrongfully restrained the car in which PW1 was travelling and attacked PW1 with hands. The car also sustained damage in the incident.

4. Before the court below, PW1 to PW9 were examined and Exts. P1 to P5 were marked for the prosecution. Exts. D1 and D2 were marked for the defence.

5. PW1 is the injured who stated about the incident in tune with the prosecution case. PW2 is an occurrence witness who corroborated the evidence of PW1 in all material aspects. PW3 was also examined before the Court to prove the occurrence. However, PW3 could not be cross-examined and hence the evidence of PW3 is of no use to the prosecution. PW4 was the doctor who examined PW1 and issued Ext. P3 wound certificate. The evidence of PW1 and PW2 with regard to the occurrence is

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supported by the medical evidence of PW4 and Ext. P3 wound certificate.

6. The learned counsel for the revision petitioners has argued that PW1 and PW2 did not attribute any overt act against the revision petitioners and in the said circumstances, the courts below was not correct in convicting the revision petitioners with the aid of Section 149 IPC, particularly when there was case and counter case in respect of the same incident. The evidence of PW1 and PW2 would show that they did not attribute any overt act against the revision petitioners. The evidence of PW8 coupled with Exts. D1 and D2 would show that there was a counter case in connection with the incident in this case. In view of the above reasons, I am of the view that it may not be proper and correct to convict the revision petitioners with the aid of Section 149 IPC, merely because the revision petitioners were present at the scene, particularly when there is no material

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before the Court to prove that there was common object and the revision petitioners shared the common object. In the said circumstances, I am inclined to grant benefit of doubt to the revision petitioners. Consequently, the conviction and sentence passed by the courts below under Sections 143, 147, 341, 323 and 427 read with Section 149 IPC cannot be sustained.

In the result, this revision petition stands allowed setting aside the conviction and sentence passed by the courts below under Sections 143, 147, 341, 323 and 427 read with Sec. 149 IPC and the revision petitioners are acquitted for the said offences. The bail bonds of the revisions petitioners stand cancelled and they are set at liberty.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge