

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

Crl.Rev.Pet.No. 2672 of 2010 ()

**(AGAINST THE JUDGMENT IN CRL.A.NO. 298/2006 OF ADDL. DISTRICT AND
SESSIONS COURT (ADHOC)-III, PATHANAMTHITTA DATED 24-07-2010)**

**(AGAINST THE JUDGMENT IN CC.NO. 520/2005 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT -I,PATHANAMTHITTA DATED 28-07-2006)**

REVISION PETITIONER/APPELLANT/ACCUSED:

**GEORGE CHACKO @ BIJU, S/O.GEORGE CHACKO,
THELLIRETHU HOUSE, CHEENIKALA PADI,
NARANGANAM, PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.LIJU.V.STEPHEN
SRI.EBY AUGUSTINE
SMT.JINDU SUSAN JACOB**

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

***ADDL.R2 IMPEADED**

***ADDL.R2: C.A.THOMAS @ KUNJAPPY,
PALAKUNNATHU CHUTTIPARACKAL HOUSE,
CHEENIKALAPADI, NARANGANAM,
PATHANAMTHITTA DISTRICT.**

***IS IMPEADED AS THE ADDITIONAL RESPONENT NO.2 AS PER ORDER
DATED 11/09/2015 IN CRL.M.A.NO.4970/2015 IN CRL.R.P.NO.2672/2010.**

**R1 BY PUBLIC PROSECUTOR SRI.R.GITHESH
ADDL.R2 BY ADV. SMT.SONIA GEORGE**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 15-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 2672 of 2010

Dated this the 15th day of September, 2015

ORDER

The revision petitioner is the accused in CC 520/2005 on the files of the court of Judicial Magistrate of First Class-I, Pathanamthitta.

2. The trial court convicted the revision petitioner under Sections 324 and 326 IPC and sentenced him to simple imprisonment for six months under Section 324 IPC and simple imprisonment for one year and a fine of Rs.5,000/- under Section 326 IPC. The appeal filed against the said conviction and sentence was dismissed by the sessions court as per judgment in Crl.Appeal 298/2006. Aggrieved by the said conviction and sentence, the accused before the trial court has filed this revision petition.

3. Heard.

4. The prosecution allegation is that on 05.03.2005

at about 5.30 p.m., the revision petitioner stabbed on the chest of PW1 with a tapping knife, causing injuries on him. The revision petitioner also beat on the left wrist of PW1 with the handle of the above knife and consequently PW1 sustained fracture on his left wrist.

5. Before the trial court, PW1 to PW9 were examined and Exts. P1 to P7 were marked for the prosecution, besides identifying MO1 knife. PW1 was the injured, who had given Ext.P1 F.I. statement in connection with the incident of this case. PW1 had given evidence before the court fully in consonance with Ext.P1 F.I. statement. PW2 also witnessed the occurrence. PW2 had given evidence corroborating the evidence of PW1 in all material aspects. PW3 is an independent witness who also supported the evidence of PW1 and PW2 in all material aspects. The evidence of PW1 to PW3 regarding the incident is fully corroborated by the medical evidence of PW7 and Ext.P3 wound certificate. The courts below after considering the oral and documentary evidence adduced by the prosecution concurrently found

the revision petitioner guilty under Sections 324 and 326 IPC.

6. The learned counsel for the revision petitioner has argued that since the revision petitioner caused the fracture on PW1 with the handle of a knife, it cannot be said that the revision petitioner used any deadly weapon to cause fracture on PW1 and consequently, the revision petitioner is not liable to be convicted under 326 IPC. However, the learned counsel for the revision petitioner has no dispute that the handle of the knife is a deadly weapon, if used as a weapon of offence. That apart, the revision petitioner initially used a knife to stab injury on PW1. However, during the course on attack , the blade portion fell down and in the said circumstances, he used the handle to attack PW1 again. PW1 sustained injuries including fracture of ulna over his left forearm . Considering the relevant inputs, I am not able to accept the contention of the revision petitioner that the offence under Section 326 IPC is not attracted. However, in this case, there is only one victim. In the said

circumstances, the revision petitioner cannot be convicted for both the offences under Section 324 IPC as well as 326 IPC. Having gone through the relevant inputs, I do not find any reason to interfere with the concurrent finding of the courts below that the revision petitioner committed the offence under Section 326 IPC. No circumstance has been brought to my notice to interfere with the finding of the courts below that the revision petitioner committed the offence under Section 326 IPC. In the said circumstances, I do not find any reason to interfere with the verdict of guilty and conviction passed by the courts below under Section 326 IPC.

7. As regards the sentence, the learned counsel for the revision petitioner has submitted that the matter has been already settled between the revision petitioner and PW1 and in the said circumstances, PW1 has no further grievance in the matter. An affidavit sworn in by PW1 has been also produced before the court to show that PW1 has no further grievance in the matter. The fracture sustained

by PW1 is on his left ulna. The revision petitioner has been in custody from 11.08.2015 onwards. The revision petitioner was in custody during the pre-trial stage also. Considering the facts and circumstances of the case, including the nature of injuries sustained by PW1 and also taking into consideration of the fact that the complainant has no further grievance in the matter as the matter has been settled between the parties, I am of the view that the sentence awarded under Section 326 IPC can be modified and reduced to the period already undergone by the revision petitioner and a fine of Rs.10,000/- to secure the ends of justice and accordingly I order so.

In the result, this revision petition allowed in part,

- 1)confirming the verdict of guilty and conviction passed by the courts below under Section 326 IPC and
- 2)setting aside the verdict of guilty, conviction and sentence passed by the courts below under Section 324 IPC.
- 3)the sentence awarded by the courts below

stands modified and reduced to imprisonment already undergone by the revision petitioner and a fine of Rs.10,000/-(Rupees ten thousand only), under Section 326 IPC.

4) in default of payment of fine amount, the revision petitioner shall undergo simple imprisonment for three months.

5) in the event of realisation of fine amount, the entire amount shall be given to PW1 as compensation, under Section 357(1)(b) Cr.PC.

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

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P.A.TO JUDGE

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