

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

Crl.Rev.Pet.No. 2594 of 2008 (D)

AGAINST THE JUDGMENT IN CC 336/2005 of J.F.C.M-I, KOCHI

REVISION PETITIONER(S)/DEFACTO COMPLAINANT:

**P.S. SUNEER, AGED 29, S/O. SASI,
PULICKAL HOUSE, NEAR ST. SEBASTIAN CHURCH,
BEECH ROAD, PUTHU VYPE VILLAGE, VYPIN, ERNAKULAM.**

BY ADV. SRI.K.V.SABU

RESPONDENT(S)/ACCUSED NO. 1 TO 4 AND 6 AND STATE:

- 1. SANOJ, S/O. RAJU, CHIRACKAPPILLY
VEEDU, BEECH ROAD, PUTHU VYPE KARA
PUTHU VYPE VILLAGE.**
- 2. MAJEESH, S/O. MUHAMMED,
CHETTIYATTU BHAGOM, BEECH ROAD, PUTHU VYPE.**
- 3. MANOJ, S/O. RAJAN,
CHIRACKAPPILLY HOUSE, BEECH ROAD, PUTHU VYPE.**
- 4. ANISH, S/O. ACHUTHAN,
KADUVANGASSERY HOUSE, BEECH ROAD, PUTHU VYPE.**
- 5. KAMAL VYAS, S/O. RAMUNNI,
MARUKOTH HOUSE, BEECH ROAD, PUTHU VYPE.**
- 6. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

R6 BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl.R.P.2594 of 2008

Dated this the 5th of October, 2015

ORDER

The revision petitioner, who is the complainant in C.C.336/2005 on the file of Judicial First Class Magistrate-1, Kochi, challenges the judgment of acquittal of A1 to A4 and A6 under Section 143, 147, 148, 323, 326 read with 149 IPC. The prosecution case is that on 25.01.2004 at night 12'O'Clock the accused formed themselves into an unlawful assembly adjacent to the Death Relief Fund Office of the St.Sebastian Church, Puthuvype. They attacked Gireesh (CW2) at that time, one Suneer (CW1) intervened, the first accused beat with a marble piece on the face of CW1, as a result, he lost 2 of his teeth and the other accused beat with hand on several part of the body and they committed the offence in furtherance of their common object of the unlawful assembly. Narakkal Police registered a crime and after investigation, Sub Inspector of Police, Narakkal laid charge before Judicial First Class Magistrate, Kochi.

2. A1, A2, A3, A4 and A6 appeared in the trial court. The 5th accused is absconding and his case was split up and refiled. During trial, prosecution examined PW1 to PW11 and marked documentary evidence of Exts.P1 to P4. MO1 was marked as material object. The incriminating circumstances brought out in evidence were denied by the accused while questioning them. They examined DW1 and marked Exts.D1 to D6 in the trial court. The learned Magistrate, after analyzing the evidence, acquitted A1 to A4 and A6, being aggrieved by that, the complainant preferred this revision petition.

3. The learned counsel appearing for the revision petitioner contended that, the incident was specifically mentioned in the FI Statement, which is clear from the oral testimony of PW1 and PW2. Their evidence is corroborating the medical evidence. Hence, the illegality committed by the trial court is to be rectified invoking revision jurisdiction.

4. In this context, I have verified whether there is any illegality or irregularity in the findings of the court

below. The object of conferring revisional power to the High Court is to correct grave miscarriage or failure of justice arising from erroneous or defective orders. While exercising this power, it is justified only when it corrects the failure of justice and not to rectify every error. The fact that the lower court has taken a wrong view of law or misunderstood the evidence on record cannot be a reason to interfere unless it has resulted in miscarriage of justice. The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below.

5. To prove the offence, prosecution examined PW1 as occurrence witness. The oral evidence of PW1 shows that on 25.01.04, during ganamela at St. Sebastian Church, Puthuvype the accused in the above case assaulted him, for that he gave Ext.P1 statement to Narakkal police. After ganamela, when he reached in front of death relief fund office, in front of the church, A1 beat with MO1 marble piece on his face, as a result, he fell down. A2 to A6 standing there assaulted him, thereby he

sustained serious injuries. He lost one teeth from the upper jaw and one teeth from the lower jaw. There was sufficient light at the place of occurrence from the church and from the temple near by. During cross-examination, he denied the suggestive question made by the accused. The accused raised a contention that Gireesh (PW2) teased the sister of one Aneesh, who is the friend of PW1 and in that incident, there was a clash between the accused and PW1. The accused asked a suggestive question that, in order to escape from the liability of the above allegation, he foisted the present case which was denied by PW1. PW2 supported the evidence of PW1. Ext.D1 is the statement given by one accused to the police officer, but he denied that statement. The trial court while analyzing the oral evidence of PW1, observed that there was inconsistent version with regard to the occurrence and major discrepancy in the oral testimony. PW1 is suppressing some material facts and he distorted the incident and gave a different version. He observed that, even though, A1 assaulted with MO1 marble piece on

the face of PW1, it is clear from the oral evidence of PW1 that, A1 inflicted injury on the left side of his face. PW7 stated that one Manoj inflicted blow on the right side on the face of the PW1. Exts.D2 to D6 were marked in the trial court.

7. The trial court analysed the oral evidence of the occurrence witness PW3, PW4, PW5 and PW6 cited by the prosecution. PW3 and PW4 did not see the attack. PW5 and PW6 also did not know who attacked PW1. But PW7 admitted that when he was coming out from the church he heard a hue and cry and one Majeesh beat PW1.

8. The Doctor, who issued Ext.P3 wound certificate was examined as PW9. PW9 noticed swelling and tenderness on his right arm, contused abrasion on left side of forehead and lacerated wound on lateral aspect of left eye. The alleged cause of injury was, "three or four persons attacked him in front of St.Sebastian church". He was referred to Dental Department for ascertaining any fracture on his central lateral and fracture crown lateral left. The accused in the above case examined DW1 and

marked Exts.D3, D5 and D6 which shows that there was another incident on the same day and trial court after analyzing the oral and documentary evidence concluded that, there is no conclusive proof with regard to the alleged occurrence and there is suppression of facts. In the circumstance, the trial court observed that the accused are entitled to get the benefit of doubt and they were acquitted. No evidence has been adduced in the trial court to prove the case beyond reasonable doubt. I find no illegality in the above order to invoke revisional jurisdiction. In this circumstance, this revision petition is dismissed.

STK

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P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE