

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

Crl.Rev.Pet.No. 2289 of 2013 (A2)

**AGAINST THE ORDER/JUDGMENT IN CRA 851/2010 of ADDL.DISTRICT COURT,
KOZHIKODE DATED 12-02-2013**

**AGAINST THE ORDER/JUDGMENT IN CC 58/2009 of J.M.C. - II, PERAMBRA
DATED 22-11-2010**

REVISION PETITIONER/APPELLANT/ACCUSED:

**SHAJI, S/O.VELAYUDHAN,
KOTTAKUNNUMMAL HOUSE, ATHOLI AMSOM THORAYIL,
KOYILANDY TALUK**

**BY ADVS.SRI.A.RANJITH NARAYANAN
SMT.A.SIMI
SRI.S.K.SAJU**

RESPONDENT:

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

BY PUBLIC PROSECUTOR, SRI. GITHESH R.

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

DST

K.ABRAHAM MATHEW, J.

.....
Crl. Rev. Petition No. 2289 of 2013
.....

Dated this the 11th day of March, 2015

ORDER

The accused who was tried for the offences u/ss. 323 and 324 IPC is the revision petitioner. The allegation against him was that he assaulted his wife with hands and attacked her with a chopper causing injuries on the dorsem of her right hand. The trial court convicted him of both offences and sentenced him to undergo imprisonment and to pay fine. The learned Sessions Judge in Criminal Appeal No. 851/2010 confirmed the order of conviction and sentence.

2) The prosecution sought to prove its case against the revision petitioner by the testimony of the victim who was examined as PW1 and her father was examined as PW2. The revision petitioner and PW1 were residing at Kodakkalloor. She deposed that at about 9.30 am on 12.12.2008 the revision petitioner caught hold of her hair, hit him on the neck and attacked her with MO1 chopper causing an injury on the right palm. Her father PW2, who was residing 8 km away, happened to be there accidentally. He claims to have seen the occurrence. Their evidence was accepted by the trial court as well the

appellate court as the defence could not bring out any inconsistencies in their evidence. Having regard to this fact, unless there is some serious irregularity in the judgments of the courts below this Court cannot interfere with the order of conviction.

3) Learned counsel for the revision petitioner submits that there is a serious flaw in the prosecution case. According to him genuineness of Ext.P1 F.I. Statement is in serious doubt. The incident happened at 9.30 am on 12.12.2005. PW1 was taken to hospital on the same day. Ext.P4 is the wound certificate issued by PW10 Dr Deepa of Community Health Centre, Perambra. Ext.P1 F.I. Statement and evidence of PW1 and of PW6, the police officer who recorded the F.I. Statement show that it was recorded at Community Health Centre, where PW1 was being treated as an inpatient. The date of recording the statement is shown as 13.12.2008 and the time 4 pm. But the evidence of PW10 Dr Deepa and Ext. P4 certificate issued by her show that PW1 was treated only as an out patient and she left the hospital on the same day. It was not even suggested to her that PW1 was treated as an inpatient. It is recorded in Ext. P1 F.I. Statement that the police office who recorded the statement went to the

Community Health Centre on receiving intimation from the hospital. But the intimation was not marked in the evidence. At the request of this Court the learned Public Prosecutor verified the case diary. In the case diary also no intimation is seen. The evidence of the doctor that PW1 was treated as an out patient only and the absence of the intimation in the case diary reveal that the prosecution case that the statement of PW1 was recorded on the next day of the occurrence at hospital cannot be true. This is a serious flaw in the prosecution case as submitted by the learned counsel for the revision petitioner. It was not taken serious notice of either by the trial Magistrate or by the appellate Judge. The evidence of the prosecution does not inspire confidence. The revision petitioner is entitled to benefit of doubt.

In the result, this revision petition is allowed. The conviction of the revision petitioner and the sentence imposed on him are set aside. He is acquitted of the offences u/ss. 323 and 324 IPC. If he has deposited the fine amount, it shall be refunded to him.

Sd/-
K.ABRAHAM MATHEW,
JUDGE

DST/11/03/15

/True Copy/

P.A. to Judge