

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 2478 of 2013 ()

AGAINST THE JUDGMENT IN CRA 729/2010 OF THE COURT OF SESSIONS JUDGE,
THRISSUR DATED 18-07-2013

AGAINST THE JUDGMENT IN CC 409/2009 OF JUDICIAL MAGISTRATE OF I
CLASS, KODUNGALLUR DATED 08-11-2010

CRIME NO. 254/2009 OF MATHILAKAM POLICE STATION, TRISSUR

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SURENDRAN, AGED 40 YEARS
S/O.AYYAPPAN, KANAKAN VEETIL HOUSE,
KAIPPAMANGALAM VILLAGE, VAZHIAMBALAM
THRISSUR DISTRICT.

BY ADVS.SRI.P.K.SAJEEV
SRI.P.P.HARRIS

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY SUB INSPECTOR OF POLICE,
MATHILAKAM POLICE STATION, THROUGH PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.M.G.LISHA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 11-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. R. P. No. 2478 of 2013

Dated this the 11th day of December, 2015

O R D E R

The appellant is the sole accused who stands convicted by the Magistrate Court by judgment in C.C. No.409/2009 and the sentence modified by the Sessions Court in Crl. Appeal No.729/2010.

2. The allegation of the prosecution is that, due to previous enmity, on 22.03.2009 at about 10 am, the accused trespassed into the house of the defacto complainant and using MO1 iron rod, caused bodily injuries on her. She was immediately rushed to the hospital wherein she underwent treatment. There FIS was lodged and crime was registered. After investigation, final report was laid for offences punishable under Sections 324, 448 and 326 IPC.

3. Before the Court below, the accused pleaded not guilty and demanded trial. On the side of the prosecution, PW 1 to PW9 were examined and Exhibits P1 to P7 were marked. MO1 was identified. On the side of the accused, DW1 and DW2 were examined. The learned Magistrate on an evaluation of the

available evidence found the accused guilty under Sections 324, 448 & 326 IPC and sentenced to undergo various periods. This was carried in appeal before the Sessions Court. The Sessions Judge after re-appreciation of the entire evidence, allowed the appeal in part. While confirming the finding under Section 448, the finding under Section 326 was modified to one under Section 325 and imposed the penalty. Contenting that both the courts have gone materially wrong in the appreciation of evidence, the accused has preferred this revision.

4. Heart both sides and examined the records.

5. The prosecution case is sought to be established through the oral testimony of PW1 and PW2 who are the injured and her daughter and claimed to be the eye witnesses. Both tendered evidence in support of the prosecution case. The fact that PW1 sustained injury, was sought to be established through Exts.P2 and P3 certificates. Ext.P2 was the wound certificate issued by PW3, who had seen her at 11.10 a.m. on that day. Thereafter, she was referred to the Taluk Hospital, wherein she underwent treatment under PW4. Ext.P3 is the discharge summary. The oral testimony of PW1 and PW2 coupled with the

documentary evidence in the form of Exts.P2 and P3 eminently show that PW1 had sustained injury on that day. It is seen that, she had sustained six injuries on the various parts of her body. It includes an injury on the head also.

6. The learned counsel for the revision petitioner contended that on the basis of the various infirmities in the evidence of PW1 and PW2 both the Courts went wrong in appreciating the evidence. The learned counsel contended that in Ext.P1 as well as in the oral testimony of PW1, they have stated that the incident happened at 10 a.m. However, in Ext.P2 wound certificate the time of incident is mentioned as 11 a.m. It was found that there was a substantial shift in the scene of occurrence. According to the counsel, even though PW1 and PW2 stated that the incident happened in the bedroom, the version of PW8 coupled with Ext.P4 scene mahazar indicate that the scene of occurrence was a room on the north-eastern side of the front veranda. Even though PW2 stated that blood oozed out of the body and had fallen on the floor, this was not seen by the Officer who prepared the scene mahazar. It was also contended that a probable defence was set up through the oral testimony of DW1

and DW2.

7. Regarding the infirmities as mentioned above, I feel that these are not very substantial. Regarding the time factor, Ext.P2 certificate cannot be treated as the bible regarding all the factual details of the incident. Even though there is a reference that the incident happened in the bedroom, the actual scene of occurrence remains as a portion of the residential building. Having regard to the totality of the circumstances, this does not appear to be much material.

8. The defence set up by the accused through DW1 and DW2 is to the effect that there was a verbal quarrel between DW1 and PW1, touching upon her conduct, whereupon PW1 went inside, took out the iron rod and rushed outside then he fell out and sustained injury on her body. Though both the Doctors were questioned regarding the possibility of such an injury being carried consequent to a fall, to which the Doctor answered in the affirmative. However, it is very unlikely that the person will have multiple injuries in the nature as seen from Ext.P2. Hence the possibility of the injuries having been sustained consequent to a fall is not completely believable. The version of DW1 and DW2

were also to the effect that the accused was not there at the place of incident. However, when the accused was heard at the time of Section 313 Cr.P.C. questioning, he had not set up such a case. On the other hand, there seems to be a suggestion of PW1 at the time of cross examination that, PW1 had attacked the accused and his daughter while they were travelling on the motor cycle and had caused bodily injuries on the daughter of PW1. Evidently, these are two defences, which are contradictory to each other.

9. Having regard to the entire evidence available, I find no material to hold that the Courts below could not have arrived at a finding of guilt of accused based on the evidence adduced. The lower appellate court has also appreciated the entire evidence in its correct perspective and has modified the conviction under Section 326 to one under Section 325. Having regard to these facts, I find no reason to interfere in revision in the concurrent findings of the fact arrived at by the courts below. Hence the findings of the Court below regarding the offences under Section 325 and 448 IPC are only to be sustained.

10. With reference to both offences, the court below has

imposed a substantive sentence of three months each. It is to be noted that there is nothing on record to show that the accused is involved in any other case. He seems to be about 45 years old as evident from the age shown in the judgment of the appellate court. The parties are close relatives. It appears that both are living in the neighbourhood. Hence I feel that the sentence to be imposed can be a minimal one. I feel that a substantive sentence of Simple Imprisonment for one month each would serve the interest of justice and if it is coupled with a sentence of fine.

In the result, the revision is allowed in part. The accused is sentenced to undergo simple imprisonment for one month for offence punishable under Section 448 IPC and to pay a fine of ₹1,000/- (Rupees one thousand only) and simple imprisonment for one month for offence punishable under Section 325 with a fine of ₹2,000/- (Rupees two thousand only) and in default of each of the fine, he shall undergo simple imprisonment for seven days each. Both the sentence shall run concurrently. If the fine is remitted, it shall be given to PW1 as compensation. If the accused has undergone any period of detention, set off will be provided in accordance with the law. He shall appear before the trial court to

undergo the remaining period of sentence as above, within a period of two weeks.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

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