

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

Crl.Rev.Pet.No. 1745 of 2014 ()

CRA 814/2012 of ADDL. D. & SESSIONS COURT - II, NORTH PARAVUR
CC 474/2008 of J.M.F.C.-II, ALUVA

REVISION PETITIONERS/APPELLANTS/ACCUSED NOS 1 & 2:

1. AYYAPPAN, AGED 61 YEARS
S/O.KOCHUNNI, KARUKAMPILLY HOUSE, POOTHANKUTTY KARA
MOOKKANNOOR VILLAGE
2. BAIJU, AGED 38 YEARS
S/O.AYYAPPAN, KARUKAMPILLY HOUSE, POOTHANKUTTY KARA
MOOKKANNOOR VILLAGE

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.KRISHNADAS P. NAIR
SRI.V.C.SARATH

RESPONDENT/RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLICPROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
07-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1745 of 2014

Dated this the 7th day of September 2015

O R D E R

The revision petitioners are the accused in C.C.No.474 of 2008 on the files of the Court of the Judicial Magistrate of First Class-II, Aluva.

2. The trial court convicted the revision petitioners under Section 324 read with Section 34 I.P.C. and sentenced them thereunder to simple imprisonment for six months each. The appeal filed against the said conviction and sentence was dismissed by the appellate court as per judgment dated 3.9.2014 in Crl.Appeal No. 814 of 2012. Aggrieved by the said conviction and sentence, this

Revision Petition was filed.

3. Heard the learned counsel for the revision petitioners and the learned Public Prosecutor.

4. The prosecution allegation is that on 18.4.2007 at about 3.30 p.m., the revision petitioners and the other accused formed themselves into an unlawful assembly, armed with deadly weapons, committed rioting and attacked PW1. The first accused beat PW1 on his leg below the knee with an iron rod and the second accused inflicted a stab injury on the abdomen and right hand of PW1 using a sword stick. The other accused also attacked PW1. Accused Nos.1 and 2 alone faced the trial. The identity of the other accused is not yet revealed.

5. PW1 is the injured in this case. He stated that on

18.4.2007 at about 3.30 p.m., he was attacked by a group of persons near to the bridge in Poothamkutty. PW1 stated that the revision petitioners were there along with the persons who attacked him. The first accused, who is the first revision petitioner, beat PW1 with an iron rod and the second accused, who is the second revision petitioner, stabbed on his abdomen and right hand with a sword stick. PW1 was taken to the Little Flower hospital, Angamaly and from there, he was taken to the Medical College Hospital, Thrissur. PW2, PW3 and PW4 are the witnesses examined by the prosecution to prove the occurrence. However, they did not support the prosecution case with regard to the occurrence. The solitary evidence available before the court to prove the occurrence is the evidence of

PW1. The evidence of PW1 is corroborated by the medical evidence of PW6.

6. It has been argued by the learned counsel for the revision petitioners that PW1 is a goonda involved in many cases and that a counter case had been also registered against him and others in connection with the incident in this case and in the said circumstances, the revision petitioners are entitled to be granted benefit of doubt. PW1 admitted that he was involved in two other cases. However, he denied the suggestion that he was a goonda of C.P.I.(M). party. The courts below appreciated the entire evidence and concurrently found that the revision petitioners are guilty under Section 324 read with Section 34 I.P.C. The defence set up by the revision petitioners

was repelled by the courts below. Since there is concurrent finding on facts, this Court will not be justified in interfering with the same unless the finding is perverse or incorrect. No circumstance has been brought to my notice to indicate that the finding of the courts below was perverse or incorrect. In the said circumstances, I do not find any reason to interfere with the finding of the courts below that the revision petitioners committed the offence under Section 324 read with Section 34 I.P.C.

7. As regards the sentence, the learned counsel for the revision petitioner pleaded for leniency. The revision petitioners are father and son. The first revision petitioner is presently aged 64 years and the 2nd revision petitioner is aged 41 years. The revision petitioners had undergone

detention for three days in connection with the incident in this case. The evidence would show that PW1 was discharged on the date of admission itself from the hospital. Considering the facts and circumstances of the case, including the age of first revision petitioner, I am of the view that the sentence awarded by the courts below can be modified and reduced to imprisonment already undergone by the revision petitioners and a fine of Rs.10,000/- each under Section 324 read with Section 34 I.P.C., to secure the ends of justice. Accordingly, I order so.

In the result, this revision petition stands allowed in part,

- (i) confirming the verdict of guilty and conviction passed by the courts below

under Section 324 read with Section 34 I.P.C.

- (ii) the sentence awarded by the courts below under Section 324 read with Section 34 I.P.C. stands modified and reduced to imprisonment already undergone by the revision petitioners in connection with this case and a fine of Rs.10,000/- (Rupees ten thousand only) each.
- (iii) in default of payment of fine, the revision petitioners shall undergo simple imprisonment for two months each.
- (iv) in the event of realisation of the fine amount, the entire amount shall be given to PW1 as compensation under Section 357(1) (b) Cr.P.C.

The revision petitioners are granted one month to deposit the fine directed in this order.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

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/ True copy /

PA to Judge