IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 01ST DAY OF DECEMBER 2020 / 10TH AGRAHAYANA, 1942

Crl.Rev.Pet.No.2264 OF 2006

AGAINST THE JUDGMENT IN CRL.APPEAL NO.766/2004 DATED 31-10-2005 ON THE FILE OF THE SESSIONS COURT, KOZHIKODE DIVISION

REVISION PETITIONER/DEFACTO COMPLAINANT:

GEETHA, W/O.KARUNAKARAN NAIR,
CHALIL HOUSE, KEEZHARIYUR, AMSOM,, NADUVATHUR DESOM,
KOZHIKODE DISTRICT.

BY ADV. SRI.SANTHARAM.P

RESPONDENTS/APPELLANT/ACCUSED & STATE:

1 **SURENDRAN, S/O. KUNHICHEKKINI,**
THEKKEPUNATHIL HOUSE,, KEEZHRIYUR AMSOM,
NAMBRTHUKARA,, KOZHIKODE DISTRICT.

2 **STATE REPRESENTED BY PUBLIC PROSECUTOR**
HIGH COURT OF KERALA.

R2 BY SHRI.K.B.UDAYAKUMAR, SR.PUBLIC PROSECUTOR
R1 BY ADV. SRI.K.K.JAYARAJ NAMBIAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01.12.2020,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JUDGMENT

Dated this the 1st day of December 2020

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This revision is filed by the defacto complainant in C.C.No.589 of 1999 on the file of the Judicial First Class Magistrate Court, Koylandy.

2. It is a case charge sheeted by the Station House Officer, Koylandy Police Station against the 1st respondent herein alleging offences punishable under Sections 341, 323 and 354 r/w. Section 34 IPC.

3. The prosecution case is that, on 11.2.1999 at about 8.30 a.m., the accused with the intention and preparation of committing the offence and also due to the previous enmity towards CW1 wrongfully restrained her at the tar road which is situated on the northern side of Kunnothmukku-Naduvthur road. After that, the accused with the intention to outrage the modesty of CW1 used criminal force by caught hold of the hands and also pulled the saree of CW1. While seeing the incident when CW2 who is the husband of CW1 came

there and at that time the accused also beaten him by hands. Due to this act CW2 sustained injuries. Thus the accused is alleged to have committed the above said offences.

4. To substantiate the case, the prosecution examined PW1 to PW7. Exhibits P1 to P5 are the documents marked on the side of the prosecution.

5. After going through the evidence and documents, the trial court found that, the accused committed the offence under Sections 341, 323 and 354 IPC. The accused is sentenced to undergo simple imprisonment for one month under Section 341 IPC, simple imprisonment for one year under Section 323 IPC and also simple imprisonment for one year under Section 354 IPC.

6. Aggrieved by the above conviction and sentence, the accused filed an appeal before the Sessions Court as Crl.Appeal No.766 of 2004. The conviction and sentence imposed on the accused under Section 354 IPC was set aside by the learned Sessions Judge and the accused was acquitted thereunder. The

conviction imposed under Sections 341 and 323 IPC were confirmed. But the sentence imposed on the accused under Section 341 IPC was modified to a fine of Rs.500/- and in default of payment of fine, the accused was directed to undergo simple imprisonment for two weeks. The sentence imposed on the accused under Section 323 IPC was modified to a fine of Rs.1,000/- and in default of payment of fine, the accused was directed to undergo simple imprisonment for one month.

7. Aggrieved by the above judgment, the defacto complainant filed this revision.

8. Heard the learned counsel for the petitioner and the accused. I also heard the learned Public Prosecutor.

9. The appellate court, after considering the entire oral and documentary evidence came to a definite conclusion that, the offence under Section 354 IPC is not made out. I see no reason to interfere with the above finding of fact by the appellate court. I perused once again the entire oral and

documentary evidence along with the impugned judgment. The appellate court considered the entire evidence. The finding of the appellate court is there in paragraphs 5 to 7 of the impugned judgment, which is extracted hereunder:

> *"5. Point No.1 :- P.W.4 examined P.W.2 at 9.55 a.m on 11-2-1999 and issued Ext.P3. P.W.2 had multiple abrasions on the left lower arm, pain and tenderness on the back of chest. He came with the history that the appellant slapped him on the face with key and pushed him down at about 8 a.m that day. P.W.4 examined P.W.1 in the same hospital the same day at 10.09 a.m and issued Ext.P2. P.W.1 had pain and tenderness on the right lower arm, back of chest and right shoulder. She came with the same history as given by P.W.2. P.W.4 opined that the injuries could be caused as alleged. It is also the opinion of P.W.4 that tenderness is a feeling and that it could be pretended. The injuries mentioned in Ext.P2 can be the result of a scuffle and falling on hard surface. The abrasion can be self-inflicted. While undergoing treatment in that hospital, P.W.1, gave First Information (Ext.P1) at 4 p.m. 12-2-1999. She alleged that at about 8.30 a.m. the previous day, while she was going to the nearby house to attend the marriage and reached the scene of occurrence, appellant came there, restrained her asking her to stay with him for*

two days and when she retorted the appellant caught her on the arms. She raised alarm. 3/4th portion of her saree got untied in the melee. Her husband (P.W.2) reached the scene of occurrence. He was assaulted by the appellant. P.W.6 recorded Ext.P1 and registered the case. Ext.P5 is the F.I.R. The investigation was conduct by the Head Constable. He prepared mahazar for scene of occurrence – Ext.P4. P.W.5 is the attester in Ext.P4. P.Ws.1 to 3 are the witnesses to the alleged incident. They gave evidence regarding the alleged incident in the manner stated by P.W.1 in Ext.P1. Counsel for the appellant contended that the version of P.Ws.1 to 3 cannot be believed. The court below did not take into account the fact that P.Ws.1 and 2 are accused in C.C.No.261/2000 for causing injury to the appellant. The records of that case are not produced by the prosecution. Hence, the conviction is illegal.

6. It is true that P.Ws.1 and 2 admitted that a case is pending against them in the same court as C.C.No.361/2000 for allegedly assaulting the appellant with hand/stone. It is also true that prosecution did not summon the records of that case. Going by the suggestion to P.W.1, the alleged incident referred in C.C.No.361/2000 occurred at the same time, day and place. But, it is not clear whether, that case was initiated on a police report or a private complaint. There is no evidence to show that the appellant had suffered any injury as suggested by him. The mere fact that another

case is pending against P.Ws.1 and 2 for allegedly assaulting the appellant/ by itself, is not sufficient to discard the evidence of P.Ws.1 to 3.

7. As regards the alleged incident, I referred to the evidence of P.Ws.1 to 3. I did not find any inconsistency in the evidence of P.Ws.1 to 3 regarding the incident. But, it is pertinent to note from Exts.P2 and P3 that at the first point of time when P.Ws.1 and 2 were referring to the incident, they did not have a case of the appellant outraging the modesty of P.W.1. Instead what was stated by P.Ws.1 and 2 to P.W.4 was only a case of assault. It has come in evidence that the younger brother of P.W.2 is working in the Police Department. But that also is not sufficient to discard the evidence of P.Ws.1 to 3. Though P.W.1 has a case that the saree she was wearing at the time of incident and allegedly got untied was torn, that saree has not been taken to custody or produced in court. Considering the fact that P.Ws.1 and 2 are closely related, are the defacto complainant and her husband and P.W.3 is none other than their immediate neighbour, I am persuaded to think in the absence of P.Ws.1 and 2 telling P.W.4 at the first point of time anything about the alleged outrage of modesty and the police not producing in court the saree of P.W.1 which was allegedly torn, it is not safe to accept that case of the prosecution. Hence, as regards the alleged outrage of modesty, I am persuaded

to think that the appellant is entitled to the benefit of doubt. But, as regards the wrongful restraint of P.W.1 and assault on P.W.2, there is sufficient evidence which gets corroboration from Exts.P2 and P3 as well. Hence, the conviction of the appellant for the offences under Section 341 and 323 I.P.C. is justified and I find no reason to interfere."

10. I see no reason to interfere with the finding of fact by the appellate court. Moreover, the accused is already convicted under Sections 341 and 323 IPC. The same is not challenged by the accused. Considering the entire facts and circumstances of this case, I think, there is nothing to interfere with the order passed by the appellate court in a revision filed against acquittal.

Thus, this Crl.R.P. is dismissed.

Sd/-

P.V.KUNHIKRISHNAN

pkk **JUDGE**