**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.1345 OF 2012**

**AGAINST THE ORDER/JUDGMENT IN CRA 113/2005 DATED 24-11-2010 OF ADDITIONAL SESSIONS COURT (ADHOC)-II, THALASSERY**

**AGAINST THE ORDER/JUDGMENT IN CC 275/2000 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,MATTANNUR**

**REVISION PETITIONER/APPELLANT/ACCUSED NO.1:**

**K.P.PAVITHRAN**
**S/O KUNHIRAMAN,**
**AGED 55 YEARS,**
**KUNNUMMEL HOUSE,**
**KOLARI AMSOM,**
**KALLUR DESOM,**
**MATTANNUR,**
**KANNUR DISTRICT.**

**BY ADV. SRI.R.SURENDRAN**

**RESPONDENT/RESPONDENT/STATE:**

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

**BY SR.K.B UDAYAKUMAR (SR.PP)**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30-11-2020,THE COURT ON 01-12-2020 PASSED THE FOLLOWING:**

# JUDGMENT

**Dated this the 1st day of December 2020**

The above revision petition is filed against the concurrent finding of guilt against the first accused in C.C.No.275/2000 on the file of the Judicial First Class Magistrate, Mattannur. The above case is charge sheeted by the Station House Officer, Mattannur against three accused alleging offences punishable under Section 341,324 read with 34 of I.P.C.

2. The prosecution case is that, accused Nos. 1 to 3 wrongfully restrained the defacto complainant at about 09:00 a.m on 05.04.2000. It is further alleged that the accused person during the course of the said transaction, voluntarily caused hurt to PW 1 by cutting him with a knife, which is a dangerous weapon, in furtherance of their common intention. Hence it is alleged that the accused committed the offence.

3. To substantiate the case, prosecution examined PW 1 to PW 6. Exhibit P1 to P5 are marked as exhibits from the side of prosecution. D1 and D2 are the exhibits marked on the side of defense. MO-1 to MO-3 are the material objects.

4. After going through the evidence and documents the trial court found that, accused Nos.2 and 3 are not guilty and they were acquitted. The first accused was found guilty under Section 324 I.P.C and he was sentenced to undergo simple imprisonment for 6 months and to pay a fine of Rs.1000/- (Rupees One Thousand Only). In default of payment of the fine amount, the accused is directed to undergo simple imprisonment for one month. Aggrieved by the conviction and sentence the first accused filed an appeal before the Sessions Court, Thalassery. The Additional Sessions Judge (Adhoc) II, Thalassery considered the appeal. The learned Sessions Judge found that, the conviction imposed on the first accused is justified but the sentence was reduced to a fine of Rs.4,000/- with a default

sentence. Aggrieved by the above conviction and sentence this Criminal Revision is filed.

5. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

6. The learned counsel for the revision petitioner submitted that, there is only the evidence of the PW1 the injured in this case. The learned counsel for the revision petitioner submitted that, PW2 is not supporting the evidence of PW1 on all aspects. The learned counsel for the revision petitioner submitted that, there is contradiction regarding the actual incident between the evidence of these witnesses. The learned counsel for the revision petitioner also submitted that, in the F.I statement given by PW1, he stated that the first injury was inflicted by the first accused and the other injuries were sustained to him due to a fall. But, when he was examined before the Court, he says that the accused inflicted all the injuries. The learned counsel for the revision petitioner submitted that, this itself will show that this witness is not reliable. The

learned counsel for the revision petitioner also submitted that, the accused proved Exhibit D1 and D2. Exhibit D1 is the wound certificate of the 2nd accused. According to the learned counsel for the revision petitioner, in the same incident the second accused sustained an incised injury and D2 is the complaint filed by the first accused. The learned counsel for the revision petitioner submitted that, the prosecution suppressed the injury sustained to the second accused. According to the learned counsel for the revision petitioner the prosecution is not coming forward with the entire incident. The learned counsel for the revision petitioner submitted that, a perusal of Exhibit D1 will show that the second accused sustained serious injuries compared to the injuries sustained to the PW1. But when a question was put to PW1 he denied that he is not aware how the 2nd accused sustained injuries. Therefore, the learned counsel for the revision petitioner submitted that, the accused is entitle the benefit of doubt on that reason itself.

7. The learned Public Prosecutor submitted that, in the light of evidence of PW1, PW2, and the evidence of PW3 the doctor, the prosecution proved the offence under Section 324 I.P.C against the first accused. There is nothing to interfere with the conviction and sentence imposed by the lower court.

8. Admittedly PW1 is the elder brother of the first accused. Second accused is the sister of the first accused and the third accused is the wife of the first accused. So the accused in this case and PW1 are close relatives. Admittedly there is some property disputes between the parties. It is a case and counter case. This case is registered against three persons and another case which is numbered as C.C.No.552/2000 was registered against the PW1. That was a private complaint.

9. Admittedly, the prosecution not explained the injuries sustained to the second accused in this case while adducing evidence. The accused produced Exhibit D1 and D2. I perused Exhibit D1. A perusal of Exhibit D1 will show that the second accused sustained an

injury. I perused Exhibit P2 wound certificate also. When both parties sustained injuries in the same incident, it is the duty of the prosecution to explain the injuries sustained to the accused also. In this case the accused produced Exhibit D1 wound certificate , in which it is clear that the second accused sustained an incised wound. while cross examining PW1 the accused asked a question whether he is aware, how 2nd accused sustained injuries. But PW1 pleaded ignorance.

10. I think in such circumstances, it can be concluded that prosecution has not explained the injuries sustained to the accused in this case. Hence, the evidence of PW1 the injured alone cannot be relied to convict the accused under Section 324 of I.P.C. I think the Revision Petitioner in this case is entitle the benefit of doubt.

11. Therefore, this criminal revision is allowed. The conviction and sentence imposed on the revision petitioner as per the judgment dated 24.11.2010 in Crl.A.No. 113/2005 on the file of

Additional Sessions Judge (Adhoc) II, Thalassery and as per the judgment dated 24.01.2005 in C.C.275/2000 on the file of Judicial First Class Magistrate Mattannur is set aside.

The amount if any deposited as per the interim order passed by this Court in this revision will be disbursed to the revision petitioner.

**Sd/-**

**P.V.KUNHIKRISHNAN**

**JUDGE**

**Jms** **//True Copy// P.A to Judge**