

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 7TH APRIL 2005 / 17TH CHAITHRAM 1927

Crl.Rev.Pet.No. 826 of 1996()

CC.332/1990 of JUDICIAL IST CLASS MAGISTRATE COURT, PERAMBRA
CRA.332/1993 of OF SESSIONS COURT, KOZHIKODE
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REVN. PETITIONER:

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1. KANNANKOTTUMMAL HARINDRAN,
P.O. PALERI, VIA KUTTIADI.
 2. KIZHAKKAYIL RADHAKRISHNAN,
P.O.PALERI, VIA. KUTTIYADY.

BY ADV. SRI.R.K.MURALEEDHARAN

RESPONDENTS:

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1. STATION HOME OFFICER,
PERAMBRA POLICE STATION,
PERAMBRA P.O.
 2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.K.THAMAMONY.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07/04/2005, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.HEMA, J.

Crl.R.P.No. 826 OF 1996

Dated this the 7th day of April, 2005

O R D E R

The petitioners are accused 3 and 5 in C.C.No.332 of 1990 on the file of the Judicial First Class Magistrate's Court, Perambra. They were charge sheeted for offences under Sections 143, 147, 451, 427, 323 and 149 IPC. They were convicted and sentenced to undergo simple imprisonment for a period of six months each under Section 451 IPC and simple imprisonment for six months under Section 323 IPC and also liable to pay fine of Rs.1000/- each. The sentences were to run concurrently. The conviction and sentence were challenged before the Additional Sessions Court and as per judgment dated 17.7.1996 in Crl.Appeal No.332 of 1993 the conviction was confirmed, but the sentence was modified. The petitioners were directed to pay a fine of Rs.2000/- each under Section 451 IPC and Rs.1500/- each under Section 323 IPC. In default to payment of fine, the petitioners will undergo simple imprisonment for a period of three and one months each for the above offences, respectively. The sentence of imprisonment were to run concurrently, in case of default of payment of fine.

2. According to the prosecution, on 6.4.1990 at about 8 P.M. the accused in furtherance of a common intention trespassed into the house of PW1, kicked open the front door, dragged out PWs 2 and 3 and voluntarily caused hurt to them by beating with hand and also dragging

them along the courtyard. After trial only accused 3 and 5 were found guilty and co-accused 1, 2, 4 and 6 were acquitted.

3. The prosecution examined PWs 1 to 9 and marked Exhibits P1 to P4 on the side of the prosecution. The accused did not adduce any evidence. On an analysis of the evidence of injured, PWs 2 and 3, the first informant who came to the scene after the incident, the medical evidence and other circumstances, the courts below found that prosecution proved the case beyond reasonable doubt as against accused 3 and 5 who are the petitioners herein. The other accused were extended the benefit of doubt and acquitted. The appellate court considered relevant evidence in detail in the judgment and also concurred with the findings of the trial court.

4. The learned counsel for petitioners contended that the courts below have not looked into the material contradictions in the evidence of the witnesses. According to learned counsel for the petitioners, there is a contradiction in the evidence of PWs 1 and 2 with respect to the circumstances under which PW2 narrated the incident to PW5. PW2 would state that she had told PW1 when PW1 came home after the incident (PW2 and PW1 are mother and son respectively) whereas PW2 would state that she had told PW1 about the incident on the way to the hospital. PW1 gave evidence that he had got PW2 admitted in the hospital and only thereafter, he went to the Police Station to lodge the complaint. If the

version of PW1 is accepted, it is argued that it would not be possible to lodge the complaint at the time at which it is seen to be registered, as per Exhibit P1. It is also brought to my notice that there were persons residing in the neighbourhood, but none of the witnesses were examined in this case.

5. The courts below have already considered all the above aspects. After analysing the evidence in detail the contradictions and the discrepancies pointed out, I find that those could not affect the core of the prosecution case. It cannot be said that the courts below were perverse in their approach or that no prudent man can arrive at the conclusion, as arrived at by the courts below. Therefore, this Court cannot interfere in the findings of fact by reappreciating the evidence. This Court's jurisdiction in revision is only limited. I am satisfied that the conviction of the petitioners under Sections 451 and 323 IPC is well founded and sound in law and on facts.

6. However, learned counsel for petitioners pointed out that trial court has failed to invoke the benevolent provisions of the Probation of Offenders Act. Petitioners 3 and 5 were quite young at the time of offence as well as at the time of conviction. They were aged 20 and 22 at the time of offence. The date of offence is on 16.4.1990. The conviction was passed in 1993 and at that time also they were quite young. Years

have passed and 15 years have lapsed after completion of the trial. The petitioners are reported to be first offender and they were not involved in other offences. The first petitioner has reportedly completed the Sanitary Inspection Course and his name is listed in the P.S.C. list. It is submitted that his future prospects will be spoiled in case the conviction is confirmed. The second petitioner is also employed and he is young, and he is also first offender and he seeks for mercy.

7. Having regard to the circumstances of the case, including the nature of offence and the character of the offenders and other circumstances discussed above, I find that the prayer made by the accused can be accepted. I find that this is a fit case where the accused could be released on probation by directing them to execute a bond for one year for good behaviour (vide ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand* ((2004)7 SCC 659)**, Punjab State Coop. ***Agricultural Development Bank v. Gurnaib Singh* ((2003)10 SCC 235)** and ***Jagat Pal Singh and others v. State of Haryana* (AIR 2000 SC 3622)**). The trial court has only stated that petitioners are not entitled for the benefit of the benevolent provisions of the Probation of Offenders Act, since they had attacked poor women and caused hurt. The trial court did not consider the need and purpose for invoking the provisions of the Probation of Offenders Act.

In the result, the conviction passed against the petitioners under Sections 451 and 323 IPC is confirmed, but it is directed that the petitioners shall be released on probation on their executing a bond for good behaviour for a period of one year to the satisfaction of the trial court.

This revision is disposed of accordingly.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

CRL.R.P.NO.826 OF 1996

O R D E R

7.4.2005