

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOMAS P.JOSEPH

FRIDAY, THE 29TH MAY 2009 / 8TH JYAISHTA 1931

Crl.Rev.Pet.No. 1275 of 2009()

CRA.494/2000 of ADDL. SESSIONS COURT, FAST TRACK (ADHOC)-II, TRIVANDRUM
CC.521/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, NEDUMANGAD

REVN. PETITIONER(S): APPELLANTS 1 & 2/ACCUSED 1 & 2

1. RAJU @ MANIYAN, S/O.KOCHAPPI,
KUDAYALIN MUGAL MANNINGAVILA VEEDU,
MANIKANDESWARAM P.O., NETTAYAM,
THIRUVANANTHAPURAM.

2. BINU, S/O.MANIYAN, DO. DO.

BY ADV. SRI.G.SUDHEER

RESPONDENT(S): RESPONDENT/STATE & DEFACTO COMPLAINANT

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

2. SASI, MANNINGAVILA VEEDU,
KUDAYAL, MANIKANDESWARAM,
PEROORKADA VILLAGE.

ADV. SRI.R.GOPAN FOR R2
PUBLIC PROSECUTOR SHRI RAVINDRA BABU FOR R1

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 29/05/2009, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

THOMAS P. JOSEPH, J.

Crl.R.P.No.1275 of 2009

Dated this the 29th day of May, 2009.

ORDER

Heard counsel for petitioner and the Public Prosecutor.

2. This revision is in challenge of the judgment of learned Additional Sessions Judge, Fast Track (Adhoc)-II, Thiruvananthapuram in Crl.Appeal No.494 of 2000 confirming conviction and sentence of the petitioners for offences punishable under Section 341, 323, 324 and 326 read with Section 34 of the Indian Penal Code (for short, "the Code").

3. Case is that on 14.2.1992 at about 6.30 p.m. petitioners along with accused No.3 (he died pending appeal and the appeal as against him stood abated), in furtherance of their common intention wrongfully restrained PW2/respondent No.2 and voluntarily caused hurt/grievous hurt with chopper and stone. Initially police after investigation filed a refer report. In the meantime, respondent No.2 filed a private complaint which was taken on file as C.C.No.240 of 1994. While so as per direction of the superior officers further investigation was conducted by the police and final report was submitted alleging that petitioners and accused No.3 committed offences as alleged. Based on that final report the present case – C.C.No.521 of 1996 was taken on file. C.C.No.521 of 1996 and C.C.No.240 of 1994 were clubbed together and

evidence was recorded in C.C.No.521 of 1996. Prosecution examined PWs 1 to 9 and proved Exts.P1 to P6. Petitioners examined DW1. The medical officer who issued the treatment certificate of respondent No.2 was examined as CW1. Learned magistrate after consideration of the evidence found that petitioners and accused No.3 committed offences as alleged, convicted them for the said offences and sentenced them to undergo imprisonment and payment of fine. In appeal, conviction and sentence as against petitioner Nos.1 and 2 were confirmed. It is contended by learned counsel that petitioners and respondent No.2 have settled the case outside the court and have filed Crl.M.A.No.3811 of 2009 seeking permission to compound the offences. That application was also heard along with the revision.

4. Since the offence found against the petitioners included one under Section 326 of the Code, the application for composition of the offences cannot stand. However, the fact of composition is something that can be considered while considering sentence in case conviction were to be confirmed.

5. That, respondent No.2 (PW2) suffered hurt/grievous hurt is not challenged before me and is proved by the evidence of PW6 and CW1 and Exts.P4 and P5. PWs 1 to 3 and 7 were examined to prove the alleged incident. Of them, PW7 refused to support. PWs 1 to 3 have given evidence. According to them, on the relevant day, time and place petitioner No.1 wrongfully restrained respondent No.2 by holding on his neck while petitioner No.2 assaulted him with a chopper on the back of left shoulder. Accused No.3 hit on his face with a stone which resulted in grievous hurt.

6. So far as evidence of PWs 1 to 3 is concerned, courts below have placed reliance on that. It is not shown that there is anything improbable in their evidence or, that their evidence has to be viewed suspiciously. PW2 is the injured. There is no reason to think that he would exonerate the real culprits and falsely implicate the petitioners. On going through the judgments under challenge I find no reason to interfere with the conviction of the petitioners.

7. So far as sentence is concerned, fact remained that respondent No.2 suffered grievous hurt at the hands of accused No.3 who is no more. True, petitioners are found to have shared common intention with accused No.3 and hence they are constructively liable for the act of accused No.3. It is stated in Crl.M.A.No.3811 of 2009 that petitioners and respondent No.2 are neighbours and are now having good relation. Learned counsel stated that compensation has been paid to respondent No.2. However, that fact is not mentioned in Crl.M.A.No.3811 of 2009. Considering the facts and circumstances of the case including that grievous hurt was inflicted by accused No.3 though, in furtherance of his common intention with the petitioners, the parties are neighbours and they have settled their dispute, I am inclined to think that simple imprisonment till rising of the court for the offences found against the petitioners is sufficient in the ends of justice. At the same time, so far as it is not stated in Crl.M.A.No.3811 of 2009 that compensation was paid, the victim who suffered injury cannot be forgotten. Hence petitioners shall pay Rs.2,500/- each as compensation to respondent No.2 within one month from this day failing which, they shall undergo simple imprisonment for one month each.

Resultantly, this revision petition is allowed in part to the following extent:

- i. Sentence imposed on petitioner Nos.1 and 2 for offences found against them is modified as simple imprisonment till rising of the court.
- ii. Petitioners are directed to deposit in the trial court for payment to respondent No.2 as compensation Rs.2,500/- each within one month from this day failing which, they shall undergo simple imprisonment for one month each.
- iii. It is made clear that it will be sufficient compliance with the direction for payment of compensation if petitioners paid the compensation to respondent No.2 through their counsel in the trial court and respondent No.2 filed a statement in the trial court through his counsel acknowledging receipt of the compensation within the aforesaid time.
- iv. Petitioners shall appear in the trial court on 1.7.2009 to receive sentence.

Crl.M.A.Nos.3811 and 3812 of 2009 will stand dismissed.

THOMAS P.JOSEPH,
Judge.

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