

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE. P.S.GOPINATHAN

FRIDAY, THE 28TH DAY OF SEPTEMBER 2012/6TH ASWINA 1934

Cr1.Rev.Pet.No. 1696 of 2004 (B)

Cr1.A.93/2003 of ADDL.SESIONS COURT,KOTTAYAM
SC.40/1999 of ADDL.DISTRICT SESSIONS COURT,KOTTAYAM

REVISION PETITIONER(S)/APPELLANTS/ACCUSED.:

1. SHAJI, S/O.RAVEENDRAN
MANAKKALATHU HOUSE, MANIKANTAVAYAL BHAGOM,
THRIKKODITHANAM VILLAGE.
2. SHAIJU @ KOCHUMON, S/O.RAVEENDRAN,
DO. DO.

BY ADV. SRI.R.SUDHEER

RESPONDENT/RESPONDENT/COMPLAINANT.:

STATE OF KERALA, REPRESENTED BY THE CIRCLE
INSPECTOR OF POLICE, CHANGANACHERRY
(CRIME NO.267/97 OF CHANGANACHERRY POLICE STATION)
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT. MADHU BEN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 28-09-2012, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

DSV/-

P.S.GOPINATHAN, J.

Crl.R.P.NO. 1696 OF 2004

Dated this the 28th day of September, 2012

O R D E R

The revision petitioners were found guilty by the Additional Assistant Sessions Judge, Kottayam in Sessions Case No. 40/1999 for offences under Sections 324, 447 and 307 read with 34 IPC. They were convicted and sentenced to rigorous imprisonment for three years and and a fine of Rs.5,000/- under Section 307 IPC with a default sentence of imprisonment for three months. No separate sentence was awarded under Sections 324 and 447 IPC. Aggrieved by the above conviction and sentence, they preferred Cril.A.No.93/2003 before the Additional Sessions Judge, Kottayam. By the impugned judgment dated 12/3/2004 the Additional Sessions Judge, Kottayam to whom the appeal was

made over, while confirming the conviction and sentence, dismissed the appeal. Assailing the legality, correctness and propriety of the above conviction and sentence, this revision petition is preferred.

2. PW11, the Circle Inspector of Police, Changanassery Police Station in Crime No.267/1997 filed the charge sheet against the revision petitioners accusing offences under Sections 323, 324, 447 and 307 read with 34 IPC with an allegation that at 4 P.M. on 20/4/1997, the revision petitioners in furtherance of their common intention, trespassed into the courtyard of the house of PW2 bearing Door No.IV/3 of Thrikodithanam Panchayath. Both of them were armed with two sword sticks which are deadly weapons. MOs 1 and

2 are the weapons. In furtherance of their common intention to commit murder, PW2, who was giving water to the cows, in front of the cattle shed, was hacked by the first accused with MO1. Thereupon PW2 fell down. The 2nd revision petitioner then hacked PW2 with MO2 at his neck which was ward off with both hands. As a result, the left index, middle and ring fingers were amputated. The right index finger was severed and hanging on muscle. When PW1, who is the son of the brother of PW2 attempted to intervene, he was also hacked with the sword stick. He also sustained injuries. PW3, the brother of PW1, and PW4, another relative, also attempted to rescue. They were also assaulted and sustained injuries.

3. PW2 was first taken to the Government

Hospital at Changanassery. On getting intimation, PW10, the Head Constable went to the hospital and recorded Exhibit P1 statement given by PW1. Case was registered against the revision petitioners and another. PW2 was later shifted to the Specialist Hospital at Ernakulam and had undergone treatment. PW11 took over the investigation. On completing the investigation, PW11 removed the third accused from party array and submitted the final report against the revision petitioners before the Judicial Magistrate of the First Class, Changanassery. The case was committed to the Court of Session. From there it was made over to the Additional Assistant Sessions Judge, before whom the revision petitioners faced the trial.

4. I have heard Adv. Smt. Mable, the learned

counsel appearing for the revision petitioners and Miss. Madhu Ben, the learned Government Pleader. The judgments impugned as well as the material evidence were perused.

5. The conviction under challenge is based upon the testimonies of PW1 to 4. Though PWs 3 and 4 were also said to have sustained simple hurt, no medical evidence in support of the allegation was produced. Therefore, the trial court acquitted the revision petitioners for the offence under Section 323 IPC. Now the question that arises for consideration is whether the evidence of PWs 1 to 4 is believable to sustain the impugned conviction and sentence. The defence advanced is that Raveendran, the father of the revision petitioners had kept some wooden logs near the house of PW2.

When he went there to take back the wooden logs PWs 1 and 2 picked up quarrel with Raveendran. Raveendran was assaulted by beating with wooden logs. Seeing that, the 2nd revision petitioner rushed to the spot in rescue of Raveendran. He was also assaulted. Thereafter, there was scuffle and somehow or other PWs 1 and 2 sustained injuries. In proof of the allegation that the revision petitioners sustained injuries Exhibits D2 and D3 were produced. Exhibit D2 would show that Raveendran had been to the General Hospital, Changanassery with tenderness left side of chest, tenderness over right ankle and tenderness para spinal region low back. The cause of injury was stated to be pelting with stone. Exhibit D3 would show that Raveendran was treated for lacerated

wound on the left side of the head. There is nothing on record to come to a conclusion that the above injury was sustained in the same incident at the same spot or that Raveendran was involved in the incident alleged. The defence had also produced a statement said to have been given by the second revision petitioner regarding the injuries sustained to him. In the statement, it is stated that while he was sitting at his house, his father brought some hay in a tempo van. While unloading the same in front of the house of PW2, PW2 and his brother Ponnappan and Gopi started quarrelling with his father. PW2 took an iron rod and beat his father. When the 2nd revision petitioner rushed to rescue his father, he was also beaten with iron rod and sustained injuries. The appellate court had meticulously considered the

defence version and found that there is no consistency in the defence version and absolutely there is nothing on record to come to a conclusion that the revision petitioners or their father sustained any injury in the same incident alleged by the prosecution or at the same time or place. Adding to that the injuries sustained by Raveendran and the 2nd revision petitioner were very simple. Therefore the appellate court found that the prosecution was not bound to explain the injuries alleged to have been sustained by the revision petitioners or their father.

6. Going by the evidence of PWs 1 to 4, the trial court as well as the appellate court found that their evidence is credible. I had also gone through the evidence of PWs 1 and 2. PW 1 was then aged 15

years and studying in VIIIth standard. PW2 is a coolie. Except some minor contradictions and embellishments here and there, there is no material contradiction affecting the core of the prosecution case. There is nothing on record to show that the revision petitioners were falsely implicated or that the injuries sustained to PWs 1 and 2, especially to PW2 were caused out the scuffle. PW1 had sustained only incised wound 2 cms long right shoulder and skin deep over the leg. But, the injuries sustained to PW2 are very grievous. The fact that three fingers of the left hand and one finger of the right hand were amputated would show that the injury was inflicted with much force. The very case of PWs 1 and 2 is that when the 2nd accused attempted to cut at the neck, PW2 warded the cut

with both hands and thereby the amputation sustained. That evidence is convincing. There is no reason to disbelieve. PWs 3 and 4 corroborate. Their evidence also would show that after PW2 sustaining amputation of the fingers, he got up somehow or other and ran to his house. The second revision petitioner chased him. But the 2nd petitioner somehow fell down near the well. Motive of the revision petitioners is very evident. Attempt to commit murder is established. I find little material to come to a conclusion that either the trial court or the appellant court committed any error, illegality or impropriety in appreciating the evidence. The conviction under challenge is based upon cogent evidence and requires no interference.

7. As regards the sentence, having due regard

to the nature of the weapons and the injuries inflicted, I find that the revision petitioners deserve no leniency. However, I find that neither the trial court nor the appellante court had awarded proper compensation to PW2 and therefore the sentence requires some modification. I find that a sentence of rigorous imprisonment for two years with a fine of Rs.25,000/- each would meet the ends of justice.

In the result, the revision petition is allowed in part. While confirming the conviction, the sentence is reduced to rigorous imprisonment for two years and a fine of Rs.25,000/- (twenty five thousand only) each under Section 307 IPC. In default of payment of fine the revision petitioners shall undergo simple imprisonment for a further period of six months. In the event, the fine is realised, a sum of Rs.35,000/-

(thirty five thousand only) shall be paid to PW2 and a sum of Rs.5,000/-(five thousand only) shall be paid to PW1. The revision petitioners are directed to surrender before the trial court, which shall see the execution of sentence and report compliance. The under-trial imprisonment if any, shall be set off.

Sd/-
P.S.GOPINATHAN
JUDGE

/True copy/

P.A.To Judge

DSV/-

