

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE S.SIRI JAGAN

FRIDAY, THE 30TH DAY OF NOVEMBER 2012/9TH AGRAHAYANA 1934

Crl.Rev.Pet.No. 1819 of 2002 (B)

CRA.133/1999 of ADDL.DISTRICT COURT,KOTTAYAM
CC.390/1994 of J.M.F.C.,VAIKOM

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SURESH @ SURAJ,S/O.KRISHNAN,
KALAYIL HOUSE,POOZHICOL KARA, KADUTHURUTHY VILLAGE
KOTTAYAM.

BY ADV. SRI.B.PREMOD

COMPLAINANT(S)/RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

PUBLIC PROSECUTOR SRI. BIJU MEENATHOOR.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
30-11-2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

S. Siri Jagan, J.

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Crl. R.P. No. 1819 of 2002

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Dated this, the 30th day of November, 2012.

O R D E R

The petitioner is the accused in C.C.No. 390/1994 before the Judicial First Class Magistrate, Vaikom. He was prosecuted for offences punishable under Sections 451, 323 and 354 of the Indian Penal Code.

2. The prosecution case discernible from the judgment of the lower court is that due to previous enmity of the accused towards PW2, the accused with the intention to cause her hurt and outraging her modesty on 24.4.1996 at about 6 p.m., criminally trespassed into the house bearing No. 10/333 of Mulakkulam Panchayat, wherein PW1 was residing with her family members, slapped and fisted on the face of PW2, causing injury and thereafter she was dragged by pulling on her hair, struck her head on the iron cot in the room and on the wall of the room causing injury and pressed her breasts with his hand, outraging her modesty.

3. The prosecution examined PWs 1 to 6 and marked Exts. P1 to P4. The petitioner did not adduce any evidence. After considering the evidence of the prosecution, the Magistrate convicted the petitioner and sentenced him to undergo simple imprisonment for six months each under Sections 451 and 354 of the Indian Penal Code and simple imprisonment for three months under Section 323 of the Indian Penal Code. The sentences were directed to run concurrently. The period of remand was allowed to be set off against the period of sentence.

The petitioner challenged the judgment of the Magistrate by filing Crl. A. No. 133/1999 before the Additional Sessions Judge, Kottayam, who dismissed the appeal confirming the conviction and sentence. The petitioner is challenging the judgments of the courts below.

4. According to the petitioner, there is no reliable evidence to convict the petitioner. It is submitted that apart from the interested testimony of PW2, whose modesty the petitioner is alleged to have outraged, there is no other independent evidence in support of the prosecution case. The only other occurrence witness did not support the prosecution case. It is submitted that although Aravindan and Roy were stated to have come to the place of occurrence, they were not even cited as occurrence witnesses, which would show the falsity of the prosecution case. Therefore, according to the petitioner, there is no reliable evidence for convicting the petitioner.

5. The learned Public Prosecutor would point out that the finding is concurrent by two courts below. It is submitted that unless this Court finds that there is perversity in appreciation of evidence by the courts below, this Court will not be justified in interfering with the judgments of the courts below in exercise of the jurisdiction under Section 397 of the Criminal Procedure Code. The submission is that in cases of such nature, the evidence of

the prosecutrix is sufficient evidence to convict the accused if the same is cogent and convincing. The learned Public Prosecutor contends that PW2 has been cross-examined in detail by the petitioner and nothing could be brought out in cross examination. Therefore, the evidence of PW2 is convincing enough for a conviction, is the contention raised.

6. I have considered the rival contentions in detail.

7. It is common knowledge that a decent lady will not come out with such an allegation against a neighbour unless it is true. In cases of such nature, the cogent and convincing evidence of prosecutrix alone is sufficient for entering a conviction. Here, PW2, who was the person whose modesty was stated to be outraged by the petitioner, has given evidence in graphic detail as to what the petitioner has done. In fact, the petitioner himself has brought out in cross examination that the petitioner and the family of PW2 were neighbours and were in very intimate terms, but for this incident. On a reading of the evidence of PW2, I do not find anything to suspect the veracity of her evidence. Therefore, her evidence is sufficient to convict the petitioner. In the above circumstances, I do not find any perversity in the appreciation of evidence by the courts below. As such, I am not inclined to interfere with the conviction entered by the courts below. However, taking into account the facts and circumstances of the case, I

reduce the punishment to three months each under Sections 451 and 354 of the Indian Penal Code and two months under Section 323 of the Indian Penal Code. The sentences shall run concurrently.

The Criminal R.P. is disposed of as above.

Sd/- S. Siri Jagan, Judge.

[True copy]

P.S to Judge.