

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

Cr1.Rev.Pet.No. 1314 of 2005 ()

AGAINST THE ORDER/JUDGMENT IN CRA 433/2003 of ADDL.SESIONS COURT
(ADHOC FAST TRACK-III, MANJERI DATED 14-02-2005
AGAINST THE ORDER/JUDGMENT IN CC 208/2002 of JUDL.MAG.OF FIRST CLASS-
I,MANJERI DATED 01-12-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

PATHIYIL RAJU, S/O.MATHEW,
CHERI, THARISHU, KARUVARAKUNDU
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/RESPONDENT/STATE & COMPLAINANT:

THE STATE OF KERALA, REP. BY
THE SUB INSPECTOR OF POLICE, KARUVARAKUNDU
POLICE STATION, THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

BY ADV. SMT. MADHUBEN - SC

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 31-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P. No. 1314 of 2005

Dated this the 31st day of March, 2015

ORDER

The accused in C.C.No.208/2002 of the Judicial First Class Magistrate Court-III, Manjeri, who was convicted and sentenced under Section 326 IPC, is the revision petitioner. The prosecution allegation is that on 24.3.2002 at 7.45 p.m. the accused voluntarily caused grievous hurt to PW3 by assulating with a stone at a place called Atti. Immediately, he was removed to hospital. The reason for the assault was that PW3 was reluctant to interfere in the family dispute of the revision petitioner.

2. To prove the allegation, the prosecution examined PWs 1 to 9. MO1 was also admitted in evidence. The incriminating circumstances brought out in evidence were

denied by the accused while questioning him. The trial Court convicted him. Aggrieved by that, he preferred Crl.Appeal No.433/2003 in the Additional Sessions Court, Manjeri, which was dismissed by that Court.

3. The learned counsel for the revision petitioner submitted that the sentence imposed by the trial Court was too harsh, since the revision petitioner and PW3 are close relatives. The incident was occurred in the year 2002 and 13 years have been elapsed, which is sufficient to reduce the sentence. She also contended that MO1 was not identified by PW3 and the investigating officer was not examined in the trial Court, since he was liad up due to cancer.

4. The learned Public Prosecutor resisted the above contention and contended that the evidence of PW9 is sufficient to support the evidence of investigating officer.

The identity of the MO1 is not sufficient ground to discard the oral testimony of PW1, when his direct evidence is available.

5. For ascertaining the legality and propriety of the finding, I have perused the oral and documentary evidence adduced in this case. PW3 in his oral testimony stated the way in which he sustained injury. Ext.P4 is the wound certificate issued by PW8 doctor. In Ext.P4, it is specifically stated that PW3 sustained fracture zygomatic complex left. X-ray confirmed the fracture. The oral testimony of PW3 and PW8 is sufficient to prove the injury and the occurrence. PWs 1 and 2, who are the occurrence witness did not support the prosecution case, which is not sufficient to discard the direct evidence of PW1. The medical certificate is sufficient to believe the injury sustained to PW3. Therefore a further discussion

on that point is not necessary.

6. The investigation was conducted by the Assistant Sub Inspector, Ummer, who was bed ridden at the time of examination. Therefore, PW9, Sub Inspector, who was present in the Police Station, verified the signature and identified the documents prepared by Ummer and he was examined as a witness in the trial Court. The revision petitioner has not disputed those documents in the trial Court. Ext.P1 is the F.I. Statement, Ext.P2 is the scene mahazar and Ext.P3 is the F.I.R. The place of occurrence was supported by PW3 and PW4, which is in consonance with Ext.P2 mahazar. When direct oral evidence is sufficient and no reason to disbelieve them, non-examination of the investigating officer is not a ground to discard the oral testimony to the occurrence. Therefore, I am of the view that the conviction passed by

the trial Court is only to be confirmed.

7. The learned counsel for the revision petitioners submitted that the revision petitioner is close relative of the victim. Therefore, a lenient view may be taken in imposing sentence, since 13 years had already been elapsed after the occurrence. The learned Public Prosecutor admitted that incident was occurred long 13 years ago. While exercising revisional jurisdiction, this Court cannot act as an appellate authority for scanning the evidence and other materials. Considering the facts and circumstances, the sentence imposed by the trial Court is modified as follows:

The revision petitioner is sentenced to undergo rigorous imprisonment for six months and directed to pay a fine of ₹25,000/-, in default of payment of fine, he shall undergo simple imprisonment for three months. If fine

amount is realized a sum of ₹20,000/- shall be paid to PW3, the victim u/s.357 (1) (b) of Cr.P.C., since he sustained fracture zygomatic complex left.

The revision petition is partly allowed.

P.D. RAJAN, JUDGE.

acd

