

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 30TH DAY OF NOVEMBER 2017/9TH AGRAHAYANA, 1939

Cr1.Rev.Pet.No. 1111 of 2003 ()

CRA 77/2001 of ADDITIONAL SESSIONS COURT, KOTTAYAM
CC 60/1995 of JUDICIAL FIRST CLASS MAGISTRATE COURT, ETTUMANUR
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REVISION PETITIONER/APPELLANT/ACCUSED:

JOSEPH @ SONY, S/O. KURUVILA
OOPPOOTILAYA KALAPPURAYIL VEEDU
PADINJATTUKARA KARA, PULIYANNOOR
VILLAGE, MEENACHIL TALUK

BY ADVS.SRI.GEORGE BOBAN
SRI.LIJI.J.VADAKEDOM

RESPONDENT/RESPONDENT/COMPLAINANT:

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

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30-11-2017, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SD

P.UBAID, J.

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Crl.R.P.No.1111 of 2003
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Dated this the 30th day of November, 2017

ORDER

The revision petitioner herein is the sole accused in C.C.No.60/1995 of the Judicial First Class Magistrate Court, Ettumanoor. He faced prosecution in the trial court under Sections 452, 323 and 324 IPC on the allegation that at about 11.00 p.m. on 03.02.1995, he trespassed into the house of one Satheesh, and inflicted injuries on his body, and also on the body of another inmate Ammini.

2. The accused pleaded not guilty to the charge framed against him by the trial court. The prosecution examined eight witnesses, and proved Exts.P1 to P6 documents in the trial court. No evidence was adduced in defence. The weapon of offence was identified as MO1 during trial. On an appreciation of the evidence, the trial court found the accused guilty. On conviction, he was sentenced to undergo rigorous imprisonment for six months under Section 324 IPC, to undergo rigorous imprisonment for three months under Section 323 IPC, and to undergo rigorous imprisonment for six months, and to pay a fine of Rs.1,000/- under Section 452 IPC.

3. Aggrieved by the judgment of conviction. the

accused approached the Court of Session with Crl.Appeal No.77/2001. In appeal, the learned First Additional Sessions Judge, Kottayam confirmed the conviction, and modified the sentence. The jail sentence under Section 452 IPC was reduced to simple imprisonment for two months, and the fine sentence was maintained. The jail sentence under Sections 324 and 323 IPC was set aside, and instead, a fine of Rs.2,000/- was imposed under Section 324 IPC, and a fine of Rs.1,000/- was imposed under Section 323 IPC. Now the accused is before this Court in revision challenging the legality of the conviction and sentence.

4. On hearing both sides, and on a perusal of the materials, I find no scope for interference in the conviction made by the courts below concurrently under Sections 324 and 323 IPC. PW1 and PW2 examined as eye witnesses turned hostile. PW3 and PW4 have given convincing evidence consistently proving the assault and infliction of injuries punishable under Sections 324 and 323 IPC. Ofcourse, the house trespass proved in this case is only house trespass with intention to cause hurt. What is punishable under Section 452 IPC is house trespass with preparation to cause hurt. I find no evidence constituting such an offence in this case. The MO1 torch identified as weapon of offence was the torch used by the

accused when come to the house of the accused. It cannot be said that it was carried by him as part of a preparation to cause hurt. What is proved is only house trespass with intention to cause hurt, and that is punishable only under Section 451 IPC. So, the conviction under Section 452 IPC will have to be altered to one under Section 451 IPC, and I feel that a fine sentence will suffice under Section 451 IPC. To that limited extent, the revision can be allowed in part. The sentence under Sections 323 and 324 will have to be confirmed.

In the result, this revision petition is allowed in part. The conviction under Sections 323 and 324 IPC made by the courts below is confirmed, and the conviction under Section 452 IPC is altered to one under Section 451 IPC. The jail sentence imposed under Section 452 IPC will stand set aside, and the fine sentence will stand maintained under Section 451 IPC. The other fine sentence also will stand maintained. The revision petitioner will surrender before the trial court within three weeks, and make payment of fine, on failure of which, steps shall be taken by the trial court, to recover the amount of fine, or enforce the default sentence.

Sd/-
P.UBAID, JUDGE

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P.A. TO JUDGE