**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.UBAID**

**FRIDAY, THE 29TH DAY OF JUNE 2018 / 8TH ASHADHA, 1940**

**Crl.Rev.Pet.No. 1660 of 2005**

**JUDGMENT IN CRA 89/1999 of SESSIONS COURT, MANJERI DATED 09-01-2001**
**JUDGMENT IN SC 38/1990 of ASSISTANT SESSIONS COURT, MANJERI DATED 26-05-1999**

**REVISION PETITIONER(S)/APPELLANT/ACCUSED :-**

**KUNNAMCHIRA SIBI @ JOSEPH,**
**S/O. ANTONY, KUNNATHKADU,**
**KALLADIKKODE AMSOM, PALAKKAD DISTRICT.**

**BY ADV. SRI.M.A.HAKEEM SHAH**

**RESPONDENT(S)/RESPONDENT/STATE :-**

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

**BY SR.PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29-06-2018 ALONG WITH CRL.R.P.No.1810/2005, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**P.UBAID, J.**

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**Crl.R.P. Nos.1660 & 1810 of 2005**

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**Dated this the 29th day of June 2018**

**O R D E R**

The revision petitioner in Crl.R.P. No.1660 of 2005 is the 1st accused in S.C. No.38 of 1990 of the Court of Session, Manjeri, and the revision petitioner in Crl.R.P. No.1810 of 2005 is the 3rd accused therein. As the 2nd accused absconded during trial, the case against him was split up and refiled. The accused Nos.1 and 3 faced trial before the learned Assistant Sessions Judge, Manjeri under Sections 450, 394, 342 and 307 IPC read with Section 34 IPC on the allegation that they and the absconding accused trespassed into the house of one Tomy Joseph at Mannamkunnam at about 11.00 p.m. on 17.10.1989 with the object of committing robbery there, they came at the house under the pretext of visiting the said Tomy Joseph as a person familiar to the 1st accused, they sought food and shelter there, and after taking food, the accused, quite unexpectedly, and to the surprise of the complainant and his wife (teachers couple), assaulted them, and inflicted very serious injuries on their body with weapons like dagger, screw driver etc., in an

attempt on their life, with the object of committing robbery. Before they could commit robbery, the neighbours rushed in on hearing the alarm made by the complainant and his wife, and just then the accused escaped. The police registered the crime on the First Information Statement given by the de facto complainant Tomy Joseph, and after investigation submitted final report in Court. The two revision petitioners appeared before the learned trial Judge, and pleaded not guilty to the charge framed against them.

2. The prosecution examined 18 witnesses, and proved Exts.P1 to P16 documents in the trial court. MO1 to MO8 properties were also identified during trial, including the weapons of offence. When examined under Section 313 Cr.P.C., the accused denied the incriminating circumstances. They did not adduce any oral evidence in defence, but Ext.D1 was marked on their side. On an appreciation of the evidence, the trial court found the accused not guilty under Sections 450, 394 and 342 IPC, but they were found guilty under Section 307 IPC read with Section 34 IPC. On conviction, they were sentenced to undergo rigorous imprisonment for three years each, and to pay a fine of ₹10,000/- each.

3. Aggrieved by the judgment of conviction dated 26.05.1999, the accused Nos.1 and 3 approached the Court of Session, Manjeri with Crl.Appeal Nos.89 of 1999 and 92 of 1999 respectively. In appeal, the learned Sessions Judge confirmed the conviction and sentence, and accordingly, dismissed the two appeals. Now, the accused Nos.1 and 3 are before this Court in revision, challenging the legality and propriety of the conviction and sentence.

4. When the two appeals came up for hearing, the learned counsel representing the revision petitioners could not point out any illegality, or irregularity, or impropriety in the findings, or the conviction made by the courts below concurrently against the two accused. Some arguments and submissions were made by them on factual aspects. In a revision, the factual aspects cannot be examined by the revisional court. Anyway, the medical evidence and other aspects were examined by me for taking a just decision.

5. On hearing both sides, and on a perusal of the entire materials, I do not find any reason or ground for interference in the conviction or the findings concurrently made by the courts below against the revision petitioners under Section 307 IPC.

PW1 is the de facto complainant, and PW2 is his wife. They are the two victims, who sustained very serious injuries. PW3 is a neighbour, who came to the house of the de facto complainant on hearing his alarm. His evidence is that when he reached there he saw PW1 and PW2 with bleeding injuries, and without any delay, they were taken to the hospital. When asked what happened, PW1 told him that he and his wife were assaulted by the accused in this case. Though PW3 had not witnessed the incident, his evidence can be accepted as *res geste* evidence, proving the statements given by the victims immediately after the incident.

6. The consistent and definite evidence given by PW1 and PW2 is that they closed the doors at about 10.00 a.m. for going to sleep, and at about 11 p.m., they heard the calling bell ringing. When PW1 opened the door, he saw the 1st accused at the veranda. Being a person familiar to him, he was asked to come inside. Two other persons were also there along with the 1st accused, and they also entered the house with the 1st accused. The 1st accused told him that they had come to meet the priest, but they were not in a position to leave at that time. Accordingly, he sought food and shelter there. Being a person familiar to them, PW1 and PW2 offered food and shelter, and the accused

had been there for one hour talking to PW1. After the conversation, the 1st accused went to the courtyard for washing his feet, and he was followed by PW1. Just then, quite unexpectedly, the three accused attacked him, and inflicted serious injuries on his body. The 1st accused inflicted very serious injuries on his abdomen with a dagger, and when PW2 came to save him, she was also attacked by the accused. The two witnesses identified the weapons during trial, and they affirmed in evidence that the serious injuries on their body were inflicted by the accused with the weapons identified in Court.

7. PW1 asserted that the 1st accused stabbed him with a knife when he resisted the attempt of the 1st accused to snatch away the gold chain worn by him. It is quite clear that the attempt of the accused was to commit robbery, and they inflicted injuries on the body of PW1 and his wife in their attempt to commit robbery.

8. Exts.P10 and P11 are the wound certificates relating to PW1 and PW2. Exts.P5 and P6 are the discharge certificates issued from the Medical College Hospital, Kozhikode. The injured were seen at the local hospital by the Assistant Surgeon, and all the injuries were noted in the wound certificates by the doctor

there. The wound certificates will show that the doctor had noted very serious injuries on the body of the two witnesses.

9. The Exts.P5 and P6 discharge certificates also would show the gravity of the injuries noted on the body of the two witnesses. PW1 had four serious incised wounds, and one lacerated injury. The medical evidence given by the doctor examined as PW8 is that the injuries sustained by PW1 were very serious and fatal, and the injuries would cause death in normal circumstances, if not promptly and immediately attended to. The prosecution has brought out the necessary aspects in the evidence of doctor to constitute the offence under Section 307 IPC. The accused have no explanation for the very serious injuries sustained by PW1 and PW2. Of the four incised wounds sustained by PW1, three were on the abdomen; the omentum protruding through the first injury. PW2 had multiple incised looking wounds on the abdomen, back and left arm. The doctor's evidence is that the incised wound sustained by PW2 on the abdomen was also a serious injury. The medical evidence given by the doctor unerringly proves that the injuries sustained by the victims were in fact fatal, and these injuries would cause death in ordinary circumstances, if not promptly and immediately treated.

Without delay, PW1 and PW2 were taken to the local hospital, from where, they were referred to the Medical College Hospital, after necessary initial treatment.

10. I find no reason to disbelieve PW1 and PW2, or to reject their evidence. The evidence given by the other witnesses need not be discussed much, because it is formal in nature. The police officer, who conducted investigation has given evidence proving the recovery of the weapons of offence at the instance of the accused.

11. One aspect argued by the learned counsel is that as regards the accused No.3, there is no clear and satisfactory evidence proving his identity. I find that the evidence given by the witnesses regarding identity is quite clear and convincing. Of course, it is true that only the 1st accused was familiar to the de facto complainant. But there is clear evidence that all the three accused had been at the house of the complainant for more than one hour from 11 p.m. onwards, and they attacked PW1 and his wife at about 12.15 a.m., after taking food. PW2 had prepared food for the accused at the midnight, and they had also offered shelter to the accused. They had been at the veranda or balcony talking about something for about one hour. Thus, the witnesses

had sufficient time to see the accused, and to have their face and physical features imprinted in their mind. Just because the accused were shown to the witnesses during investigation by the police, the evidence of the witnesses regarding identification cannot be doubted or rejected, when the court finds that the witnesses had sufficient time to see, identify, and have the face and features of the accused imprinted in their mind for more than one hour, at their residence.

12. On an examination of the entire materials, I find that the evidence given by the prosecution on factual aspects is fool proof, and there is no reason to entertain any doubt regarding the clear evidence given by PW1 and PW2. There is absolutely no legal reason, or infirmity, or illegality for interference by this Court in revision.

13. Of course, it has come out in evidence that the accused came at the house of the complainant with the object of committing robbery there, and they inflicted fatal injuries in an attempt to commit robbery. No doubt, their entry was an act of house trespass. Though, they came there as friends of PW1, their entry became an act of trespass the moment they attacked and assaulted PW1. Any way, the trial court did not find the accused

guilty of house trespass. The conviction is only under Section 307 IPC. The sentence imposed by the trial court is rigorous imprisonment for three years each, and a fine of ₹10,000/- each. I do not find any reason for interference in the sentence.

In the result, the two revision petitions are dismissed, confirming the conviction and sentence against the revision petitioners under Section 307 IPC in S.C. No.38/1990 of the court below.

**Sd/-**
**P.UBAID**
**JUDGE**

*//True copy//*

*P.A. To Judge*

rkj/Jvt/30.6.2018