IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 1ST DAY OF NOVEMBER 2023 / 10TH KARTHIKA, 1945

CRL.REV.PET NO. 600 OF 2011

AGAINST THE ORDER/JUDGMENT CRA 421/2009 OF ADDITIONAL DISTRICT COURT (ADHOC), MAVELIKKARA

SC 1/2008 OF SUB COURT, MAVELIKKARA

REVISION PETITIONER/S:

SUNIL KUMAR @ RAKKAN, S/O.RAHAVAN,
[redacted]

BY ADVS.
SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENT/S:

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

OTHER PRESENT:

PP SMT NIMA JACB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01.11.2023, ALONG WITH Crl.Rev.Pet.669/2011, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 1ST DAY OF NOVEMBER 2023 / 10TH KARTHIKA, 1945

CRL.REV.PET NO. 669 OF 2011

AGAINST THE ORDER/JUDGMENT CRA 421/2009 OF ADDITIONAL DISTRICT COURT (ADHOC), MAVELIKKARA

SC 1/2008 OF SUB COURT, MAVELIKKARA

REVISION PETITIONER/S:

LIJU OOMMEN @ LIJU
[redacted]

BY ADVS.
SRI.JOHN BRITTO
SRI.C.A.RAJEEV

RESPONDENT/S:

STATE OF KERALA
THE PUBLIC PROSECUTOR, HIGH COURT OF, KERALA, ERNAKULAM.

SR PP SEETHA S

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01.11.2023, ALONG WITH Crl.Rev.Pet.600/2011, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 1st day of November, 2023

COMMON ORDER

As these revision petitions are filed challenging the same judgments passed by the courts below and are between the same parties, they were consolidated, jointly heard and disposed by this common order.

2. The revision petitioners question the legality, propriety and correctness of the judgment in Crl.A.No. 421/2009 passed by the Court of the Additional Sessions Judge, Fast Track (Adhoc) Mavelikara (Appellate Court), confirming the judgment in Sessions Case No.1/2008 of the Court of the Assistant Sessions Judge, Mavelikara (Trial Court), holding the revision petitioners guilty and convicting them for the offence under Sec.447 of the Indian Penal Code ('IPC' for short) and consequentially sentencing them to undergo simple imprisonment for a period of one month.

3. The revision petitioner in Crl.R.P.No.600/2011 was

the 1st accused and the revision petitioner in Crl.R.P. No.669/2011 was the 2nd accused in SC No.1/2008.

Relevant prosecution case:

4. The prosecution case is that, on 16.02.2006, the accused in furtherance of a common intention and out of their previous enmity with Santhosh @ Sunny – the son of PWs 1 and 3 and the brother of PW2 - trespassed into the house of PW1 and caused hurt to Santhosh. The 1st accused hit Santhosh with an iron pipe on his right upper arm and forearm and the 2nd accused inflicted a cut injury with a sword stick on his right leg below the knee. The accused also beat PWs 1 and 2 on their chest and back. The accused did the acts with the knowledge that their acts would cause death.

5. The Mavelikara Police, after investigation, filed their final report in Crime No.86/2006 alleging the accused to have committed the offences under Sections 447, 308, 324 and 323 r/w Section 34 of IPC. The learned

Magistrate committed the case to the Court of Sessions, Alappuzha as C.P. No.77/2007. The learned Sessions Judge made over the case for trial and disposal to the Trial Court.

6. The accused pleaded not guilty to the substance of accusations read over to them.

7. In the trial, the prosecution examined PWs 1 to 10 and marked Exts.P1 to P8 and MOs 1 to 3. The accused denied the incriminating circumstances appearing against them in evidence in the questioning under Section 313 of the Code of Criminal Procedure.

8. The Trial Court, after analysing the materials placed on record, found the accused not guilty for the offences under Sections 323, 324 and 308 of the IPC, but found them guilty and convicted them for the offence punishable under Section 447 of the IPC, and sentenced them to undergo simple imprisonment for a period of three months and pay a fine of Rs.500/-, and in default to

undergo simple imprisonment for a further period of one month.

9. Aggrieved by the said judgment, the accused preferred Crl.A No.421/2009 before the Appellate Court. The Appellate Court, after re-appreciating the materials placed on record, by the impugned judgment, confirmed the conviction and sentence passed by the Trial Court.

10. It is assailing the concurrent judgments of the courts below, the revision petitions are filed.

11. Heard; Sri.R.Sunil Kumar and Sri.Ajith Murali, the learned counsel appearing for the revision petitioners in the two revision petitions and Smt.Seetha.S., the learned Public Prosecutor appearing for the respondent – State.

12. Is there any illegality, impropriety or irregularity in the judgments of the courts below?

13. It is well-settled in a host of judicial pronouncements that the revisional powers of this Court

is to be sparingly exercised only in case of exceptional rarity, when there is patent errors, manifest illegality and a total misleading of the records. The power is more in the nature of a supervisory jurisdiction. Unless, the findings of the courts below are perverse, this Court is not expected to take a contrary view.

14. The prosecution case, as narrated above, is that the accused trespassed into the courtyard of the house of PW1 and inflicted injuries on his son – Santhosh, who admittedly died in other incident within ten - twelve days after the present incident.

15. It is alleged that the 1st accused dealt blows on Santhosh with an iron pipe and the 2nd accused inflicted cut injuries with a sword stick, and they also beat PWs1 and 2 on their chest and back. Hence, they, committed the above offences .

16. The Trial Court, after analysing the materials placed on record, especially taking into account the oral

testimonies of PWs 1 and 2 who testified that no such incident as alleged by the prosecution had taken place, instead there was only a scuffle between the 2nd accused and the deceased Sunny, concluded that the prosecution had failed to prove that the accused had committed the offences, except Section 447 of the IPC. Accordingly, the Trial Court found the accused guilty for the offence under Section 447 of the IPC.

17. The respondent-State has not challenged the judgment of the Trial Court. Instead, the accused filed the appeal challenging the conviction and sentence for the offence under Section 447 of the IPC.

18. The learned Sessions Judge, after re-appreciating the materials placed on record, confirmed the conviction and sentence of the Trial Court.

19. It is the concurrent judgments; that the accused have challenged in the independent revision petitions.

20. Is there any illegality, impropriety or irregularity

in the judgments of the courts below?

21. Section 441 of the Indian Penal Code reads as under:-

> *"441. Criminal trespass.--Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass". Section 447 is charging section of the offence committed under Section 441 of the IPC".*

22. Interpreting Section 441 of the IPC, the Honourable Supreme Court in ***Mathri and others v. State of Punjab*** *[AIR 1964 (SC) 986]* has held as follows:-

> *"18. We think, with respect, that this statement of law as also the similar statements in Laxaman Raghunath's case, ILR 26 Bom 558 and in Sellamudhu Servaigaran's case, ILR 35 Mad 186 are not quite accurate. The correct position in law may, in our opinion, be stated thus: In order to establish that the entry on the property was with the intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry; that it is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult, and that this likely consequence was known to the persons entering; that in deciding whether the aim of the entry was the causing of such annoyance intimidation or insult, the court has to consider all the relevant circumstances including the presence of knowledge that its natural consequences would be such annoyance, intimidation or insult and*

including also the probability of something else than the causing of such intimidation, insult or annoyance, being the dominant intention which prompted the entry".

23. Again in ***Rajinder and others v. State of Haryana*** *[1995 KHC 1319],* the Honorable Supreme Court reiterated the position as follows:-

"23. It is evident from the above provision that unauthorised entry into or upon property in the possession of another or unlawfully remaining there after lawful entry can answer the definition of criminal trespass if, and only if, such entry or unlawful remaining is with the intent to commit an offence or to intimidate insult or annoy the person in possession of the property. In other words, unless any of the intentions referred in S. 441 is proved no offence of criminal trespass can be said to have been committed. Needless to say, such an intention has to be gathered from the facts and circumstances of a given case.

24. Judged in the light of the above principles it cannot be said that the complainant party committed the offence of "criminal trespass" for they had unauthorisedly entered into the disputed land, which was in possession of the accused party, only to persuade the latter to withdraw thereupon and not with any intention to commit any offence or to insult, intimidate or annoy them. Indeed there is not an iota of material on record to infer any such intention.That necessarily means that the accused party had no right of private defence to property entitling them to launch the murderous attack. On the contrary, such murderous attack not only gave the complainant party the right to strike back in self defence but disentitled the accused to even claim the right of private defence of person."

24. Coming back to the facts of the case in hand. Indisputably, PWs1 to 3 and 5 are the sterling witnesses. PW5 turned hostile to the prosecution. A careful scrutiny

of the depositions of PWs1 to 3 establish that they are unaware of the genesis of the incident. The defence has a case that the accused are the friends of Yesudasan, another son of PWs1 and 3. Their friendship was not relished by PWs1 to 3 and the deceased Santhosh. PWs1 to 3 have all testified that, it is on hearing a loud noise in the courtyard, all of them rushed to the courtyard and found that there was a scuffle taking place between Santhosh and the accused.

25. It is only PW3 who testified that she saw Santhosh successfully pulling out the sword stick from the hands of the 2nd accused and the 1st accused hitting him with an iron pipe. However, the courts below have concurrently disbelieved the case and held that the prosecution has failed to prove that the accused have committed the offences under Sections 323, 324 and 308 of the IPC. Consequentially, the accused were found not guilty of having committed the above offences.

26. PWs1 and 2, who were also allegedly engaged in

the scuffle, have categorically deposed that there was no such incident as alleged by the prosecution, instead there was only a scuffle between the 2nd accused and Santhosh and they intervened in the matter. Therefore, it is principally on the basis of the solitary testimony of PW3 that the courts below have found that the accused have committed the offence under Section 447 of the IPC.

27. Going by the ratio decidendi in ***Mathri*** and ***Rajindran*** (Supra), it is imperative that the prosecution establishes that the accused had entered the property with an intention to intimidate, insult or annoy any person in possession of the property.

28. On an analysis of the oral testimonies of PWs1 to 3 and also the other official witnesses and the materials placed on record, I do not find any material on record, to establish that the accused had entered into the property of PW1 with an intention to commit, intimidate, insult or annoy PW1. Moreover, I find more probability in the defence version that the accused had gone to see their

friend Yesudasan, the other son of PWs1 and 3, which was not acceptable to the other family members. Hence, it is only to be perceived that the accused had no intention to commit any offence or intimidate, insult or annoy PW1 when they entered his house.

29. The prosecution has miserably failed to establish beyond doubt that the accused had entered the property with an intention to commit the offence. Therefore, the revision petitioners/accused are entitled to the benefit of doubt.

30. On an overall consideration of the matter, I am of the firm view that the revision petitions have to be allowed and the conviction and sentence passed by the courts below have to be set aside.

In the result,

(i) The revision petitions are allowed.

(ii) The judgments in Crl.A. No.421/2009 and S.C. No.1/2008, as against the revision

petitioners/accused, are set aside.

(iii) The revision petitioners/accused are found not guilty of the offence charged against them and are consequentially acquitted.

(iv) The bail bonds executed by the revision petitioners and their sureties stand hereby cancelled.

Sd/- C.S.DIAS
JUDGE

rkc/01.11.23