

(2012) 11 KL CK 0050

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 1709 of 2003

Abdul Rahim, Ibrahim and Aziz

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 323

Citation : (2012) 11 KL CK 0050

Hon'ble Judges : P.S. Gopinathan, J

Bench : Single Bench

Advocate : M.R. Sudheendran, Sri. Nidhi Balachandran, Sri. George Joseph T.A. and Sri. Sooraj S, for the Appellant; Noushad Thottathil Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Gopinathan, J.—The Sub Inspector of Police, Peermade Police Station in Crime No. 140/1997 prosecuted 21 persons accusing offences under Sections 143, 147, 148, 323, 324, 427, 449 and 506(1) read with 149 IPC. Revision petitioners are accused 2 to 4. The prosecution case in brief is that at 3 P.M. On 10/8/1997, the revision petitioners along with accused 1 and 5 to 21 formed themselves into an unlawful assembly and they were armed with deadly weapons. As members of unlawful assembly, they committed rioting and mischief by destroying the compound wall and gate of the house site of the defacto complainant who was examined as PW1.

PW1 was also intimidated with death.

2. The revision petitioners and other accused pleaded not guilty when the charge was framed, read over and explained. Therefore, they were sent for trial. On the side of the prosecution, PWs 1 to 6 were examined. Exhibits P1 to P7 were marked. After closing the evidence for the prosecution, all the accused were questioned u/s 313 of the Code of Criminal Procedure. They denied the

incriminating evidence. On their side, DWs 1 to 3 were examined. Exhibits D1 and D2 were marked. On appraisal of the evidence, the learned Magistrate arrived at a finding that the prosecution had succeeded only to establish offences u/s 427 and 506(1) IPC as against the revision petitioners. Accordingly, they were convicted and sentenced to rigorous imprisonment for one year and a fine of Rs. 3,000/- each for offence u/s 427 IPC. For offence u/s 506(1) IPC, they were sentenced to rigorous imprisonment for six months and a fine of Rs. 2,000/- each with a default sentence. Other accused were acquitted. For other offences, the revision petitioners were also acquitted.

3. Aggrieved by the above conviction and sentence, the revision petitioners preferred Crl. Appeal 179/2002 before the Sessions Judge, Thodupuzha. The Additional Sessions Judge(Adhoc-I), Thodupuzha, to whom the appeal was made over, by judgment dated 6/5/2003, arrived at a finding that the prosecution had succeeded to establish the offence u/s 427 IPC against the revision petitioners. But the evidence on record is not sufficient to come to a conclusion of guilty for offence u/s 506(1) IPC. Therefore, the conviction and sentence for offence u/s 506(1) IPC were set aside. The learned Sessions Judge took a lenient view and the sentence for offence u/s 427 IPC was reduced to a fine of Rs. 5,000/- with a default sentence of simple imprisonment for three months. Assailing the legality, correctness and propriety of the above conviction and sentence as modified in appeal, this revision petition is preferred.

4. I have heard Adv. Smt. Afreeza, the learned counsel appearing for the revision petitioners and perused the judgments impugned.

5. Regarding the mischief committed, there is evidence of PW1 who is the defacto complainant. His evidence is corroborated by the testimony of PW2 and PW4. Further his evidence is corroborated by Exhibit P1 First Information Statement. The mischief committed by the revision petitioners are further proved by Exhibit P7 scene mahazar. I find no error, impropriety or illegality committed by the appellate court in arriving at a conclusion of guilty for offence u/s 427 IPC against the revision petitioners. The conviction under challenge is unassailable. The appellate court was very lenient in reducing the sentence to a fine of Rs. 5,000/- each though the extent of the mischief is to the tune of Rs. 45,000/-. Even if the appellate court had gone wrong in sentencing, it is only towards leniency. I find no reason to interfere.

In the result, this revision petition is dismissed. The trial court shall see the execution of sentence and report compliance.