
(2012) 12 KL CK 0121

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 1158 of 2002 (B)

Dinesan, Abdul Salam, Azeez and Pramod

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 307

Citation : (2012) 12 KL CK 0121

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : S. Vijayakumar, for the Appellant; Seena Ramakrishnan, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—The petitioners are the accused in S.C. No. 157/1998 before the Assistant Sessions Judge, Koylandy. They were prosecuted for offences punishable under Sections 143, 147, 148, 324 and 307 read with Section 149 of the Indian Penal Code. The prosecution case as stated in paragraph 2 of the judgment of the Assistant Sessions Judge is as follows:

The allegation in the charge sheet is that on 9.9.1997 at 7.15 p.m. while C.W. 1 was proceeding along the road in front of "Kelu Ettan Smaraka Grandhalayam" at Muyipphoth, accused Nos. 1 to 4 along with 10 unidentified persons, in prosecution of their common object of committing murder of C.W. 1, formed themselves into an unlawful assembly and committed rioting and rioting armed with deadly weapons like wooden sticks and knives and voluntarily caused hurt to C.W. 1 by accused No. 1 stabbing C.W. 1 with a knife on his back and all other accused jointly beating C.W. 1 with hands and sticks and attempted to murder C.W. 1 and thereby committed the abovesaid offence.

The prosecution examined PWS1 to 15 and marked Exts. P1 to P11 as well as M.01. The defence got Exts. D1 to D3 marked. After considering the evidence

adduced, the Assistant Sessions Judge convicted the petitioners and imposed on them the following punishment.

Accused are convicted and sentenced to undergo S.I. for 3 months u/s. 143, r/w. 149 IPC and 147, r/w. 149 Indian Penal Code. u/s 148 r/w. 149 Indian Penal Code they are sentenced to undergo simple imprisonment for 1 (one) year each and u/s. 324 r/w. 149 IPC they are sentenced to undergo simple imprisonment for 1 (one) year each and to pay a fine of Rs. 3,000/- (three thousand only) each and in default of payment of fine, undergo S.I. for 3 months each. The sentence shall run concurrently.

The petitioners filed Crl. A No. 261/2000 before the Sessions Judge, Kozhikode. The Sessions Judge confirmed the conviction but modified the sentence as follows:

Conviction of the accused U/ss 143, 147, 148 and 324 r/w section 149 IPC is confirmed; but the sentence passed by the lower court is modified and the accused/appellants are sentenced to undergo s/i for 1 month each under sections 143, 147 and 148 r/w section 149 IPC and to undergo s/i. for 6 months each and to pay a fine of Rs. 3000/- each and in default to undergo s/i for 3 months each u/s 324 r/w S. 149 IPC. All the above sentences will run concurrently.

The petitioners are challenging the judgments of the courts below.

2. When the matter was taken up, none appears for the petitioners. The petitioners are also not present. Therefore, I was constrained to dispose of the case after hearing the learned Public Prosecutor and going through the judgments and records of the courts below.

3. On a perusal of the grounds raised in the memorandum of revision petition, the contention of the petitioner is only that the appreciation of evidence by the lower courts is perverse. According to them, the oral evidence adduced by the prosecution was not believable

4. I have considered the contention of the petitioners as available in the grounds in the memorandum of the revision petition. After reading the judgments of the courts below and going through the evidence available on record, I am not satisfied that there is any perversity in appreciation of evidence by the courts below. PW1 is the injured. He gave Ext. P1 First Information Statement and gave evidence in tune with the prosecution case. PW2 was accompanying PW1 at the time of occurrence and he also gave evidence in tune with the prosecution case. PW3 was standing on the varanda of a tailoring shop of one Pavithran near the scene of occurrence and he saw the accused and some others assembled on the side of the road in front of "Kelu Eettan Smaraka Grandhalayam." He also saw PWs.1 and 2 proceeding along the road from west to east. He stated that when PWs. 1 and 2 reached in front of Kelu Eettan Smaraka Grandhalayam someone shouted " ". At that time, the first petitioner ran towards PW1 with a knife in hand and stabbed PW1, seeing which PW1 turned about and he sustained a stab

injury on his back. At that time, the petitioners 2 to 4 beat PW1 with hands and sticks and during the commotion, PW2 slipped into the drain on the side of the road and hearing the cries of PW1, others came running to the scene and the accused persons escaped from there. Thereafter PW3 and others helped PW1 to the nearby hotel and after giving water and tying his wound with a piece of cloth, PW1 was taken to the hospital by PWs 3 and 8. PW3 also stated that at the time of the incident, there was petromax light and electric light in the nearby shops and he identified the accused in that light. He has also stated that PW1 was attacked on account of political enmity. PW3 is an independent witness. He gave evidence perfectly in tune with the evidence of PWs 1 and 2. Despite elaborate cross examination, the petitioners could not make any dent into the evidence of PWs 1 to 3, except some minor discrepancies. The medical evidence also corroborates the evidence of PWs 1 to 3. As such, I do not find any perversity in the appreciation of evidence by the courts below so as to interfere with the judgments of the courts below.

Therefore, there is no merit in this Criminal R.P. and accordingly the same is dismissed.