

Johny vs State of Kerala

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Court : Kerala

Decided On : Mar-01-2024

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : Crl.Rev.Pet/175/2024

Appellant : JOHNY

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN FRIDAY, THE 1ST DAY OF MARCH 2024 / 11TH PHALGUNA, 1945 CRL.REV.PET NO. 171 OF 2024 AGAINST THE JUDGMENT DATED 29.11.2023 IN CRL.A NO.178 OF 2019 OF II ADDITIONAL SESSIONS COURT, THIRUVANANTHAPURAM ARISING OUT OF THE

JUDGMENT DATED 29.08.2019 IN SC NO.583 OF 2008 OF ASSISTANT

SESSIONS COURT, NEYYATTINKARA REVISION
PETITIONER/APPELLANT/ACCUSED: RAJAN AGED 60 YEARS S/O
SANKARAN NADAR, RESIDING AT CHRIST VIHAR, THIRUPURAM P.O,

NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT., PIN - 695133 BY ADV SUMAN CHAKRAVARTHY RESPONDENT/STATE: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 BY ADV.SRI C N PRABHAKARAN, SENIOR PUBLIC PROSECUTOR THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01.03.2024, ALONG WITH CrI.Rev.Pet.175/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN FRIDAY, THE 1ST DAY OF MARCH 2024 / 11TH PHALGUNA, 1945 CRL.REV.PET NO. 175 OF 2024 AGAINST THE JUDGMENT DATED 29.11.2023 IN CRL.A NO.180 OF 2019 OF II ADDITIONAL DISTRICT COURT, THIRUVANANTHAPURAM ARISING OUT OF THE JUDGMENT DATED 29.08.2019 IN SC NO.583 OF 2008 OF ASSISTANT SESSIONS COURT, NEYYATTINKARA REVISION PETITIONERS/APPELLANTS/ACCUSED NO.1,5 &6:

1 JOHNY AGED 48 YEARS S/O RETNAYYAN, RESIDING AT JOHNY BHAVAN PAZHAYAKADA, THIRUPURAM, NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT, PIN - 695121 2 SHIBU AGED 40 YEARS S/O GANGADHARAN NADAR, RESIDING AT KATTUVILA VEEDU, THIRUPPURAM, NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT, PIN - 695121 3 SHIJU AGED 41 YEARS S/O RAJ JOHN, RESIDING AT KALLUMUGHAM, S.R.NIVAS, THIRUPPURAM, NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT, PIN - 695121 BY ADVS. J.R.PREM NAVAZ SUMEEN S. MUHAMMED SWADIQ O.MOHAMED BASIL KOYA THANGAL

RESPONDENT/RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 BY ADV.SRI C N PRABHAKARAN, SENIOR PUBLIC PROSECUTOR THIS CRIMINAL REVISION PETITION HAVING COME

UP FOR ADMISSION ON 01.03.2024, ALONG WITH CrI.Rev.Pet.171/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Heard both sides.

2. It is against the judgment of conviction

concurrently by the trial court and the First Appellate Court for the offences punishable under Section 324, 143, 147 IPC r/w 149 IPC, the accused Nos.1,5,6 and accused No.7 came up separately by these two revisions.

3. The main offence alleged is under Section 324 IPC, in which the accused No.1 attacked the defacto complainant with a chopper. Corresponding injuries were noted in the wound certificates

drawn, Ext.P2 and Ext.P3, by the Doctor, who examined the victims, PW4. The allegation and the overt act specified against accused Nos.5, 6 and 7 is that they have pelted bricks and stones against the victims, for which also corresponding injuries were noted in the wound certificates by PW4, the Doctor, who attended the victim and had drawn

Exts.P2 and P3 wound certificates. During the course of cross-examination, a suggestion was put up as to whether these injuries could be possible by a fall, and it was answered affirmatively. But that will not take away the very cause of the injuries by pelting a stone, which was also spoken to by PW4, the Doctor. The existence of a different

hypothesis pertaining to the origin of the injuries hence is not fatal to the prosecution. PW2 and PW3 are the other two witnesses who have given sufficient corroboration to the oral testimony of PW1, besides the medical evidence tendered through PW3 and Exts.P2 and P3 wound certificates. The crime was registered without any inordinate delay, and it is evident from the FIR, which also gives sufficient corroboration to the main substratum of the prosecution case as spoken to by PW1 and PW2. It is, inter alia, contended by the learned counsel for

the revision petitioners that the weapon used for the commission of the offence

was not recovered, and it would subs

or recovery of the weapon used for the commission of offence, the chopper, may not vitiate or affect the evidence tendered, which was found to be reliable and acceptable by both the courts below.

4. At the fag end, it was submitted by the learned counsel for the revision petitioners that the main assailant is accused No.1 who used a chopper to inflict injuries on the victim. The other accused persons, accused Nos. 5,6 & 7, and their specific overt act is confined only to pelting stones against the victims. But, they have attacked the victim in furtherance of their common intention and participated in the crime, which facilitated the commission of offence. Necessarily, joint liability can be fastened against all the accused for the abovesaid offences. Necessarily, there is no reason not to concur with the concurrent findings of both the courts below and

judgment of conviction for the abovesaid offences.

The sentence awarded does not reflect a proper balance. The First Appellate Court has reduced the sentence for the offence under Section 324 IPC r/w Section 149 IPC to rigorous imprisonment for six months and a fine amount of Rs.5,000/- each, in default, to undergo rigorous imprisonment for four months each, and another rigorous imprisonment for

six months for the offence punishable under Sections 143 and 147 IPC with a direction to run the substantive sentence concurrently. The injuries alleged to have inflicted is on the vital part, head of the victim, the left pinna of the ear was chopped off by the attack. There is injuries to the skull also. The sentence awarded will stand modified for

the offence under Section 324 IPC r/w Section 149 IPC to single imprisonment for three months each and a fine amount of Rs.50,000/- each, in default, to undergo simple imprisonment for six months and another simple imprisonment for three months each for the offence punishable under Sections 143 and 147 IPC and a

fine of Rs.10,000/- each, in default, to undergo simple imprisonment for three months

each. The substantive sentence shall run concurrently. They are also entitled to set off of the period of pre-trial detention, if any, undergone. Fine amount on its recovery shall be released to the injured PW1 under Section 357 (1)

(b) Cr.P.C.

The Criminal Revision Petitions are allowed in part accordingly by modifying the sentence as above. Sd/- P.SOMARAJAN JUDGE SPV APPENDIX OF CRL.REV.PET 171/2024 PETITIONER ANNEXURES: ANNEXURE 1 TRUE COPY OF THE JUDGMENT DATED 29-08- 2019 IN S.C.NO. 583 OF 2008, IN THE FILE OF ASSISTANT SESSIONS COURT, NEYYATTINKARA ANNEXURE II A CERTIFIED COPY OF THE JUDGMENT DATED

29-11-2023 IN CRL. APPEAL NO. 178/2019 IN THE FILE OF ADDITIONAL SESSIONS COURT-II, THIRUVANANTHAPURAM RESPONDENTS ANNEXURES : NIL //TRUE COPY// PA TO JUDGE

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