

**Shaji vs State of Kerala**

**Shaji vs State of Kerala**

**SooperKanoon Citation :** [sooperkanoon.com/1346207](https://sooperkanoon.com/1346207)

**Court :** Kerala

**Decided On :** Dec-22-2023

**Judge :** Honourable Mr. Justice G.Girish

**Appeal No. :** Crl.Rev.Pet/863/2005

**Appellant :** SHAJI

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE G.GIRISH FRIDAY, THE 22ND DAY OF DECEMBER 2023 / 1ST POUSHA, 1945 CRL.REV.PET NO. 863 OF 2005 AGAINST THE JUDGMENT IN CRL.APPEAL NO.337/2003 DATED 28.02.2005 OF THE FILE OF ADDITIONAL DISTRICT & SESSIONS JUDGE (AD-HOC) FAST TRACK COURT-II, PATHANAMTHITTA CHALLENGING THE JUDGMENT IN CC NO. 209/2001 OF CHIEF JUDICIAL MAGISTRATES COURT, PATHANAMTHITTA REVISION PETITIONER/APPELLANTS/ACCUSED: 1 SHAJI, S/O.BABY THOMAS, PALA NILKUNNATHIL HOSUE, CHIRAKKALA, ELANTHOOR,, KIZHAKKUM MURI, ELANTHOOR VILLAGE. PTA. 2 PONNACHAN

S/O.YOHANNAN, KOCHETHU HOUSE, CHIRAKKALA, ELANTHOOR KIZHAKKUM, MURI, ELANTHOOR VILLAGE. 3 SHIBU MATHEW S/O MATHEW, KOCHETHU HOUSE, CHIRAKKALA, ELANTHOOR KIZHAKKUM MURI,, ELANTHOOR VILLAGE. BY ADV SRI.V.PHILIP MATHEW RESPONDENT/RESPONDENT/COMPLAINANT: STATE OF KERALA PUBLIC PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM. PP SRI. SANAL P RAJ THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 23.11.2023, THE COURT ON 22.12.2023 DELIVERED THE FOLLOWING:

**G.GIRISH, J.**

----- Crl.R.P.No.863 of 2005 ----- Dated this the  
22nd day of December, 2023 -----

## **ORDER**

This revision is directed against the concurrent findings of conviction and sentence by the Chief Judicial Magistrate, Pathanamthitta and Additional Sessions Judge (Adhoc) Fast Track-II, Pathanamthitta upon the petitioners for the commission of offence under Sections 323 and 325 I.P.C read with Section 34 I.P.C.

2. The prosecution case is that on 27.05.2001, at

about 3.30 p.m, the petitioners, in furtherance of their common intention, inflicted voluntary grievous hurt upon PW1 and PW2 by hitting with a granite stone, and also by beating and kicking, at a place near the residence of PW1. It is stated that, as a result of the above physical assault of the petitioners, PW1 sustained fracture upon his right wrist, and PW2 sustained fracture upon his left ring finger.

3. On the basis of the final report filed by the Sub

Inspector of Police, Pathanamthitta in Crime No.370/2001, the learned Chief Judicial Magistrate took cognizance of the offence under Sections 323, 324 and 326 I.P.C read with Section 34 I.P.C, and proceeded with the trial in which seven witnesses were examined as PW1 to PW7 and six documents marked as Exts.P1

to P6 from the part of the prosecution. From the part of defence, two witnesses were examined as DW1 and DW2 and one document marked as

Ext.D1. After an evaluation of the above evidence and hearing both sides, the learned Chief Judicial Magistrate found the petitioners guilty of commission of offence under Sections 323 and 325 I.P.C read with Section 34 I.P.C, and convicted them thereunder. They were sentenced to fine Rs.500/- each under Section 323 I.P.C and simple imprisonment for three months each and fine Rs.500/- each under Section 325 I.P.C. A default sentence of simple imprisonment for 15 days each were provided for non- remittance of fine.

4. Though the petitioners preferred

Crl.A.No.337/2003 against the above conviction and sentence, the learned Additional Sessions Judge (Adhoc) Fast Track-II, Pathanamthitta, who heard the appeal, declined to interfere with the above conviction and sentence, and dismissed the said appeal.

5. In the present revision petition, the petitioners challenge the above verdicts of the trial court and the appellate court.

6. Heard the learned counsel for the revision petitioners and the learned Public Prosecutor.

7. As already stated above, the petitioners faced

trial for their alleged act of inflicting voluntary grievous hurt upon PW1 and PW2, by hitting with a granite stone in addition to beating and kicking, at a place near the residence of PW1, on 27.05.2001. The courts below evaluated the evidence tendered by PW1 and PW2 in respect of the above criminal acts attributed to the petitioners, and arrived at the finding that it would convincingly establish the crime of causing voluntary grievous hurt upon PW1 and PW2 in furtherance of the common intention of the petitioners. However, it was observed that the offence under Section 326 I.P.C could not be brought out since the prosecution did not produce the dangerous weapon (granite stones) alleged to have been used by the petitioners.

8. It is true that the petitioners had adduced

defence evidence through DW2, the District Police Surgeon, to the effect that many of the injuries sustained by PW1 and PW2, as borne out from the medical records, were unlikely to be caused as a result of hits with granite stones. However, the courts below have repelled the above contentions of the defence by elucidating cogent reasoning.

9. The scope of interference by a court of revision upon concurrent findings of fact of the trial court and the appellate court, after evaluation of the evidence in detail, is very limited. In the absence of manifest illegality or impropriety in the impugned verdicts, the revisional court

**is not expected to unsettle the concurrent findings on facts**

of the trial court and the appellate court. As far as the present case is concerned, I am unable to find any such apparent illegality, impropriety or irregularity in the impugned judgments of the courts below.

10. The proposition of law upon the scope of

interference in revision, is well settled by a catena of decisions of the Hon'ble Supreme Court. In *State of Kerala v. Jathadevan Namboodiri* : AIR 1999 SC 981, the Hon'ble Supreme Court held as follows:

Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

11. In *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke & Anr* : 2015 (3) SCC 123, it has been

## **held by the Hon'ble Supreme Court as follows:**

Revisional power of the court under Sections 397 to 401 of Cr.PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.

12. Referring the above dictums, the Apex Court has observed in *Kishan Rao v. Shankargouda* : 2018 (8) SCC 165 as follows: Another judgment which has also been referred to and relied by the High Court is the judgment of this Court in *Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao*

### **Phalke and others, 2015 (3) SCC 123. This Court held**

that the High Court in exercise of revisional jurisdiction shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. Following has been laid down in paragraph 14: 14.....Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 Cr PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be

perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.

13. Therefore, there is absolutely no reason to

interfere with the findings of courts below leading to the conviction of the petitioners for the commission of offences under Sections 323 and 325 I.P.C read with Section 34 I.P.C. However, taking into account of the fact that the crime involved in this case took place more than two decades ago when the petitioners 1 and 3 might have been under the influence of the vagaries of their youthhood, and the second petitioner being emboldened by his middle age, I feel that the incarceration of the petitioners in prison has to be

avoided if they are prepared to pay exemplary compensation to PW1 and PW2 who are the victims of this crime. Such a modification of the sentence appears to be necessary, also in view of the fact that the records of the case would reveal that the first petitioner had also sustained injuries in the incident, requiring hospitalisation for about three days. Therefore, the sentence of simple imprisonment for three months and fine Rs.500/- imposed by the trial court upon the petitioners for the commission of offence under Section 325 I.P.C is liable to be modified as imprisonment till the rising of court and fine Rs.10,000/- each, with a default clause of simple imprisonment for three months.

14. In the result, the revision is allowed in part as follows:

(i) The conviction of the petitioners for the commission of offence under Sections 323 and 325 I.P.C, and the sentence of fine Rs.500/- imposed under Section 323 I.P.C, by the courts below stand confirmed.

(ii) The sentence imposed by the courts below

for the commission of offence under Section 325 I.P.C is modified as imprisonment till the rising of court and fine Rs.10,000/- (Rupees ten thousand

only) each. In default of payment of fine as directed above, the petitioners will undergo simple imprisonment for three months.

(iii) The fine amount so realised from the petitioners shall be paid equally to PW1 and PW2, or their legal heirs, as compensation under Section 357(1)(b) Cr.P.C.

(iv) The petitioners shall appear before the Chief

Judicial Magistrates Court, Pathanamthitta on or before 15.02.2024 for undergoing the sentence as directed above. Transmit a copy of this order along with the case records to the trial court for enforcement of sentence as stipulated. (sd/-)  
G.GIRISH, JUDGE jsr

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**