Sajeevan Vs. State of Kerala

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Court : Kerala

Decided On : Apr-10-2015

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Sajeevan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE10H DAY OF APRIL201520TH CHAITHRA, 1937 Crl.Rev.Pet.No. 1085 of 2002 ( ) ---------- AGAINST THE

JUDGMENT
IN CRL.A1402000 of IIIRD ADDITIONAL SESSIONS (ADHOC) FAST TRACK COURT NO.I, THRISSUR DATED2105-2002 AGAINST THE

JUDGMENT
IN SC2031998 of PRL.SUB COURT,THRISSUR DATED0304-2000 REVISION PETITIONERS/APPELLANTS/ACCUSED NOS.1 TO3: ---------- 1. SAJEEVAN, S/O. SANKARAN, THOTTPURATH HOUSE, KARAYAMUTTOM, VALAPPAD VILLAGE, THRISSUR DISTRICT.

2. MANOJ, S/O. VASU, NJATTUVETTY HOUSE, ANAVIZHUNGI, VALAPPAD VILLAGE, THRISSUR DISTRICT.

3. DAS @ KANNAN, S/O. KUMARAN, PUTHUVEETIL HOUSE, ANAVIZHUNGI, VALAPPAD VILLAGE THRISSUR DISTRICT. BY ADVS.SRI.T.P.VARGHESE SRI.THOMAS T.VARGHESE RESPONDENT/RESPONDENT/COMPLAINANT:: ---------- STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, REPRESENTING THE CIRCLE INSPECTOR OF POLICE, VALAPPAD. P.P.SMT.V.H. JASMINE THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON252.2015, THE COURT ON1004-2015 PASSED THE FOLLOWING: K. RAMAKRISHNAN, J.

..... Crl.R.P.No.1085 of 2002 ..... Dated this the 10th day of April, 2015.

ORDER

Accused 1 to 3 in S.C.No.203/1998 on the file of the Principal Sessions Judge, Irinjalakuda are the revision petitioners herein. The revision petitioners along with another accused were charge sheeted by the Circle Inspector of Police, Valappad in Crime No.130/1997 of Valappad police station alleging offences under sections 341 and 307 read with section 34 of the Indian Penal Code.

2. The case of the prosecution in nutshell was that, on 8.5.1997 at about 5 p.m on the public road near Sreekrishna temple at Karayamvattom, accused 1 to 4 wrongfully restrained the injured-PW2 and in furtherance of their common intention to commit murder, attacked him with swords on vital parts like head and hands and the 4th accused by bringing them to the place of occurrence in his auto rickshaw knowing their intention helped them to commit the offences and thereby all of them have committed the above said offences.

3. After investigation, final report was filed for the offences Crl.R.P.No.1085 of 2002 2 under sections 341, 324 and 307 read with section 34 of the Indian Penal Code and it was taken on file as C.P.No.25/1998 on the file of the Judicial First

Class Magistrate Court, Kodungallur. The case was committed to the Sessions Court by the Magistrate under section 209 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and after committal, it was taken on file as S.C.No.203/1998 on the file of the Sessions Court, Thrissur and thereafter it was made over to the Principal Assistant Sessions Court, Irinjalakuda for disposal.

4. When the accused persons including the revision petitioners appeared before the court below, after hearing both sides, the Assistant Sessions Judge framed charge under sections 341 and 307 read with section 34 of the Indian Penal Code against accused 1 to 3 and under section 307 read with section 109 of the Indian Penal Code against the 4th accused and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, Pws 1 to 15 were examined and Exts.P1 to P10, P1(a), P3(a), P4(a) and Mos 1 to 4 were marked on the side of the prosecution.

5. After closure of the prosecution evidence, the accused Crl.R.P.No.1085 of 2002 3 were questioned under section 313 of the Code and they denied all the incriminating circumstances brought against them in the prosecution evidence. They have further stated that they have not committed any offence and they have been falsely implicated in the case on account of political enmity. Since evidence in this case did not warrant an acquittal under section 232 of the Code, the Assistant Sessions Judge directed the revision petitioners to enter on their defence. Except marking Ext.D1 through PW15, no other evidence was adduced on their side in defence. After considering the evidence on record, the learned Assistant Sessions Judge found the 4th accused not guilty of the offence under section 307 read with section 109 of the Indian Penal Code and acquitted him of that charge giving him the benefit of doubt under section 235 (1) of the Code. But the learned Assistant Sessions Judge also found the present revision petitioners not guilty of the offence under section 341 of the Indian Penal Code and acquitted them of the charge under section 235 (1) of the Code but found them guilty of the offence under section 307 read with section 34 of the Indian Penal Code and convicted them thereunder and sentenced them to undergo Crl.R.P.No.1085 of 2002 4 rigorous imprisonment for four years each and also to pay a fine of `.20,000/- each, in default to undergo rigorous imprisonment for two years each. It

is further ordered that, if fine amount is realized from accused 1 to 2, the same be paid to PW2 as compensation under section 357 (1)(b) of the Code. Set off was also allowed for the period of detention undergone by them under section 428 of the Code.

6. Aggrieved by the same, they filed Crl.A.No.140/2000 before the Session Court, Thrissur and it was made over to the Third Additional Sessions Court (Adhoc-I) for disposal and the learned Additional Sessions Judge by the impugned judgment dismissed the appeal confirming the order of conviction and sentence passed by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioners/accused 1 to 3 before the court below.

7. Heard Smt. Monisha K.R, the learned counsel appearing for the revision petitioners and Smt.V.H. Jasmine, the learned Public Prosecutor appearing for the respondent State.

8. The counsel for the revision petitioners submitted that there are lot of discrepancies in the evidence of Pws 1 and Crl.R.P.No.1085 of 2002 5 2 regarding the manner in which the incident occurred and also the manner in which it was described in Ext.P1 statement given by PW1. In fact, PW1 had given a go bye to his statement given in Ext.P1 regarding the manner in which the incident happened. Further, the evidence of PW1 will go to show that he knew only the names of the accused persons and he did not mention their house name or address and in Ext.P1 it contained all the details. Further, the First Information Report was registered on 8.5.1997, but it reached the court on 12.5.1997, after a delay of four days and there is no explanation forthcoming for the delay. So there is a possibility of deliberation, discussion and false implication of accused in the case. The counsel had relied on the decision reported in Jang Singh and Others v. State of Rajasthan (2001 (9) SCC704. Further the case of the prosecution was that PW2 after sustaining injury went to the house of PW6, who informed the same to the police and immediately the Assistant Sub Inspector of Police and party came and took the injured to the hospital. But, that Assistant Sub Inspector was not examined and no reason was given for non examination of that police officer, who Crl.R.P.No.1085 of 2002 6 took the injured to the hospital and possibility of

injured disclosing the manner in which the incident occurred to him cannot be ruled out. Further, the medical evidence do not tally with the evidence of ocular witness regarding the nature of injury sustained and that creates doubt regarding the genuineness of the prosecution case. Further, it is a crowded place and it is near the temple and it cannot be believed that no other persons except Pws 1 to 3 alone will be available at that place. So, non-examination of persons, who are likely to be available at that place is also fatal especially when Pws 1 and 2 are interested witnesses and the evidence of Pws 6 and 3 cannot be believed as well. Recovery of weapons is also doubtful and as such, the entire prosecution evidence will go to show that the case of the prosecution is not believable or probable and the courts below should not have relied on their evidence to come to the conclusion that the prosecution has proved the case against the accused beyond reasonable doubt so as to convict them for the offence under section 307 of the Indian Penal Code. Further, the nature of injury sustained will go to show that none of the injuries were on the vital parts and if at Crl.R.P.No.1085 of 2002 7 all any offence is committed, it will not amount to offence under section 307of the Indian Penal Code, but only under section 326 of the Indian Penal Code. The learned counsel submitted that the sentence imposed is also harsh.

9. On the other hand, the learned Public Prosecutor submitted that the evidence adduced on the side of the prosecution, namely Pws 1 and 2, proved the involvement of the present revision petitioners in the commission of the crime. Further, PW3 had deposed that PW2 was attacked by two or three persons with sword though he could not identify those persons. He had asserted that PW2 was attacked by some persons with sword. To that extent, his evidence can be relied on. Further, the evidence of the doctor and the wound certificate will go to show that there is no discrepancy in the nature of injury sustained and there is no discrepancy in the medical evidence and in the ocular evidence as stated by the counsel for the revision petitioners. Further, the delay in sending the First Information Report in court is not fatal, if investigation has been started in the meantime in the case. This was so held in the decisions reported in Dharamveer and Crl.R.P.No.1085 of 2002 8 others v. State of Uttar Pradesh (2010 (4) SCC469 and Brahm Swaroop v. State of U.P (AIR 2011 SC280 and, according to the learned Public Prosecutor, no illegality has been committed by the courts below in

convicting the revision petitioners, and sentence imposed is also proper considering the circumstances of the case.

10. The case of the prosecution as emerged from the prosecution witnesses was as follows: On 8.5.1997, PW1 went to the house of PW2 as they wanted to see one Ramakrishnan to collect some amount and for that purpose, they were proceeding in their respective motor cycle and when they reached near Sreekrishna temple at Karayamuttam, accused 1 and 3 first jumped in front of the motor cycle driven by PW2 and immediately the second accused also jumped in front of them and all of them were holding sword in their hands and the second accused exhorted to kill him and accordingly the first accused inflicted cut injury on him with the sword. Thereafter, the second and third accused also inflicted injuries on him and when he fell down, they again attacked him and inflicted cut injuries on his back. He somehow got up Crl.R.P.No.1085 of 2002 9 and ran away from the place and the second accused had followed him. Thereafter, he went to the house of PW6, who informed the police station and accordingly the Assistant Sub Inspector and party came and took him to the Medical College Hospital from where he was seen by PW13 and issued Ext.P9 wound certificate. Thereafter, he went to the Heart Hospital, from where he was seen by PW10, who issued Ext.P7 wound certificate.

11. PW1 on seeing the incident, got frightened and went to the house of PW2 and informed the same to his brother and thereafter on the same day evening, he went to the Valappad police station and gave Ext.P1 statement, which was recorded by PW11, the Sub Inspector of Police of that police station and registered Ext.P1(a) First Information Report as Crime No.130/1997 of Valappad police station under sections 341, 324 and 307 read with section 34 of the Indian Penal Code against Madhu and three identifiable persons. PW2 was treated by PW14 which is seen by Ext.P10 case sheet. The investigation in the case was conducted by PW15, the Circle Inspector of Police, Valappad. He went to the place of occurrence and prepared Crl.R.P.No.1085 of 2002 10 Ext.P6 scene mahazer in the presence of PW9 and another. He had seized MO4 series chappals and MO3 mundu seen from the place of occurrence after describing the same in the scene mahazer, which belong to PW2. He had seized the motor cycle with Reg.No.No.KRE244in

which PW2 had travelled on that day after describing the same in the scene mahazer. Thereafter the same has been given to the registered owner as per kaichit. He had questioned the witnesses and recorded their statements. During investigation, it was revealed that four accused persons including the revision petitioners have involved in the commission of the crime and so he had given Ext.D1 report to add their names in the accused column. Since the accused persons were absconding and he was engaged in the investigation of another case, he had entrusted the investigation to PW11, the Sub Inspector of Police, Valappad police station. On 28.5.1997 at about 10.30 p.m he arrested accused 1 and 2 from room No.28 of Kalpana lodge at Chalakudy. When he questioned them, the first accused gave Ext.P3(a) statement and second accused gave Ext.P4(a) statement regarding the place where they have concealed the weapon of offence used Crl.R.P.No.1085 of 2002 11 for the commission of the crime. On the basis of Ext.P3(a) statement and as led by the first accused, they went to Aanavizhungi near an old arrack shop and from that property, he had removed the earth and took MO1 sword and handed over the same to PW11 which he seized as per Ext.P3 mahazer in the presence of PW7 and another. On the basis of Ext.P4(a) statement and as led by the second accused, he went to the property where an old arrack shop was situated at Aanavizhungi and he also removed the mud and took MO2 sword and handed over the same to PW11 which was seized as per Ext.P4 mahazer in the presence of PW7 and another. Thereafter, he produced them before court and produced material objects before court along with the property list. Further investigation in the case was conducted by PW15 himself from 30.5.1997 onwards. As per the request of the investigating officer, PW12 - the Village Officer prepared Ext.P8 sketch plan of the place of occurrence on the basis of the scene mahazer. PW15 had seized the auto rickshaw with No.KL8 8745 in which the revision petitioners had come to the place of occurrence and driven by the fourth accused as Crl.R.P.No.1085 of 2002 12 per Ext.P5 mahazer in the presence of PW8 and another and returned the same to the owner of the vehicle as per a kaichit. Though he applied for the document showing treatment of PW2 in the medical college, since it could not be traced out, he could not get copy of the same and produce the same before court. Later it was revealed that he was treated in Heart Hospital by PW10 and obtained Ext.P7 wound certificate. He

completed the investigation and submitted final report before court.

12. The main contentions raised by the counsel for the revision petitioners to assail the concurrent findings of the court below are:- (1). There was delay in sending the First Information Report registered to court and as such, it cannot be said that it was registered on the date on which it said to have been registered and there was possibility of discussion and deliberation before registering the First Information Report. (2). There are contradictions in the evidence of Pws1 and 2 regarding the manner in which the incident happened. PW1 had deviated from the statement given in Ext.P1 regarding the incident when he was examined before court and as such, it Crl.R.P.No.1085 of 2002 13 cannot be said that the prosecution has proved beyond reasonable doubt that the revision petitioners have committed the crime. (3). The nature of injuries sustained as stated by the occular witnesses do not tally with the medical evidence and there is no document collected by the investigating officer from the Medical College to prove the nature of injury sustained and the evidence of the doctor, who treated him later in the Heart Hospital, Thrissur, did not support the nature of injuries said to have been inflicted on the injured. That creates doubt regarding the genesis of the incident. (4). The evidence of PW4 is not believable as he did not inform the matter to anyone when he alleged to have seen the revision petitioners getting down from the auto rickshaw driven by the 4th accused with swords in their hands. (5). The recovery is not believable. (6). The Assistant Sub Inspector of Police, who took the injured to the hospital, was not examined, which is fatal. (7). Further, there is possibility of other eye witnesses in the alleged place of occurrence and no attempt was made to examine any such person by the prosecution and as such, it cannot be said that the prosecution has proved the case against the revision petitioners Crl.R.P.No.1085 of 2002 14 beyond reasonable doubt and that benefit must be given to them. (8). Even assuming that the entire case of the prosecution is believed, no offence under section 307 of the Indian Penal Code is attracted and, at the most, it may fall under section 326 of the Indian Penal Code or section 324 of the Indian Penal Code and (9) the sentence imposed is harsh.

13. The prosecution relies on the evidence of PWs 1 to 4 and 6 to prove the involvement of the revision petitioners in the commission of the crime and the

manner in which the incident happened and PWs10, 13 and 14 and Exts.P7, P9 and P10 to prove the injuries and Exts.P3(a), P3, P4(a) and P4 and the evidence of PW7 and PW11 to prove the recovery by MO1 and MO2. It is seen from the evidence of PW1 that immediately after the incident, he was frightened and left the place and went to the house of PW2 and informed the same to brother of PW2 and he with the help of PW5, took PW2 to Palat Hospital and from there to Heart Hospital, Thrissur and it is true that he is a relative of PW2. The fact that, on getting intimation PW7 sent the Assistant Sub Inspector and party to the place and they went to the house of PW6 and took the injured to the Crl.R.P.No.1085 of 2002 15 Medical College Hospital is proved through the evidence of PW6. Merely because PW2 did not disclose the names of the assailants to PW6, is not a ground to disbelieve his evidence that immediately after the incident he came to his house and he gave first aid and he told that somebody has attacked him and thereafter he informed the same to the police and police came and took the injured to the hospital. This fact was supported by the evidence of PW11, the investigating officer, as well.

14. Further, it will be seen from Ext.P1(a) that the First Information Report was registered on the basis of Ext.P1 statement given by PW1 within one hour of the incident. Further, in Ext.P1 he had only disclosed the name of second accused Madhu, who alone he knew, and also stated that other persons can be identified by him and so the case was registered against Madhu and three identifiable persons. If really delay in sending the First Information Report to court has caused the possibility of manipulation, they could have included all the names of the assailants in Ext.P1 and Ext.P1(a) itself. That itself shows that there was no manipulation or deliberation or Crl.R.P.No.1085 of 2002 16 discussion regarding the manner in which the incident occurred or falsification of including innocent persons in the First Information Report as claimed by the counsel for the revision petitioners. Further, it will be seen from the evidence of PW15, the investigating officer, that from the next day onwards he had started investigation and he questioned the witnesses and recorded their statements. It is true that in the decision reported in Jang Singh's case (cited supra), it has been observed that if there is delay in forwarding the First Information Report to the Magistrate and there was no explanation for the same, then the said delay is fatal. But in the

decision reported in Dharamveer's case (cited supra) it has been observed that the delay in receipt of the First Information Report by the Magistrate by itself not fatal to the prosecution case especially when the First Information Report was lodged immediately after the incident and the investigation started and the statement of witnesses recorded. Further, unless it is brought out that some prejudice has been caused to the accused on account of the same, that alone is not sufficient to disbelieve the case of the prosecution. The same was Crl.R.P.No.1085 of 2002 17 followed in the decision reported in Brahm Swaroop's case (cited supra). So, the submission made by the counsel for the revision petitioners that First Information Report was anti timed and it was the result of deliberation and discussion probablising false implication of innocent persons cannot be accepted.

15. It is true that there is some discrepancy in the evidence of PWs 1 and 2 regarding the manner in which the incident occurred and the overt act alleged to have been made by each accused. But a reading of the evidence of Pws 1 and 2 will go to show that they were consistent on the fact that accused 1 to 3, who are the revision petitioners herein, involved in the commission of the crime and they attacked the injured with Mos 1 and 2 swords. Further, the evidence of PW2 is in tune with the statement given by PW1 in Ext.P1. Merely because there was some discrepancy in the evidence of PW1, which is quite natural to happen on account of lapse of time from the date of incident till the date of examination, and it cannot be said that it affected the case of the prosecution and it can only be treated as a minor contradiction, which is not fatal to the case Crl.R.P.No.1085 of 2002 18 of the prosecution.

16. It is true that the investigating officer had failed to collect the wound certificate from the Medical College. But, later it was summoned at the instance of the prosecution and it was marked as Ext.P9 through PW13 and he had categorically stated about the nature of injury sustained and the treatment given. Further, the injuries noted in Ext.P9 extracted in the lower court judgment will go to show that it tallies with the injury said to have been inflicted as stated by Pws 1 and 2 on PW2. So merely because some of the injuries were not noted in Ext.P7 wound certificate of Heart Hospital through PW9 is not sufficient to come to a conclusion that no such injury as stated by the prosecution said to have been sustained by PW2 has

not been established and there is difference in the evidence of occular witnesses and the medical witnesses causing cloud of doubt in the prosecution case so as to reject the prosecution case in toto. It will be seen from the evidence of PW14 coupled with Ext.P10 case sheet that the injured was treated for the fracture and other major injuries and much importance was not given to the minor injuries sustained Crl.R.P.No.1085 of 2002 19 on the back of the injured, which was stitched from the Medical College Hospital. So, there is no merit in the submission made by the counsel for the revision petitioners that there is contradiction in the medical evidence and occular evidence regarding the nature of injury sustained and that will affect the prosecution case and that benefit must be given to the accused.

17. Non examination of the Assistant Sub Inspector of Police, who took the injured to the hospital, is not fatal in this case as the eye witness, PW1, gone to the police station and gave statement regarding the incident within one hour of the incident. He had stated about the reason for the delay in coming to the police station also. At the most, if the Assistant Sub Inspector was examined, it would have been brought to the notice that it was he who went to the house of PW6 and took the injured to the hospital and nothing more. So, non examination of the Assistant Sub Inspector is not fatal in this case.

18. Regarding the evidence of PW6, it will be seen that on the date of the incident while he was returning home after work and he reached near Sreekrishna temple, he saw three persons getting down from an auto rickshaw driven by the 4th accused Crl.R.P.No.1085 of 2002 20 and they were carrying swords in their hands. He felt that something is going to happen. But he did not inform the same to others including his family members. It will depend upon the perception of the person to inform the same to others merely because he did not inform the same to the police or to his family members is not sufficient to disbelieve his evidence regarding the factum of seeing the revision petitioners with weapons in their hands near the place of occurrence just prior to the incident.

19. Further, the evidence of PW3 will go to show that three or four persons had attacked PW2 with swords and he could not identify them and due to fear, he did

not go there. Though he was hostile to the prosecution, his evidence regarding the fact that the injured was attacked by three or four persons with swords is clearly proved by his evidence and to that extent, his evidence can be relied on by the court especially when it was corroborated by the evidence of PWs1 and 2 as well.

20. It is settled law that merely because the witnesses are relatives or interested witnesses is not sufficient to discard their evidence in toto. It is true that the court must be cautious while Crl.R.P.No.1085 of 2002 21 relying on their evidence when there is no other independent witnesses examined to prove the incident. In this case, the evidence of Pws 1 and 2 and the way in which it was appreciated by the courts will go to show that the court has taken all precautions before basing conviction on the basis of their evidence alone. The evidence of PW4 will go to show that except a lady sitting on the varanda of the house, he could not see anyone near the place of occurrence at that time. Further, no suggestion was given to Pws 1 and 2 that there were other persons. Further, PW3 is an independent witness, who had spoken about the incident, but he did not support the prosecution to the extent that it was the revision petitioners, who have inflicted injuries on PW2. So, under the circumstances, it cannot be said that the prosecution has not proved the case against the revision petitioners beyond reasonable doubt.

21. Further, the evidence of PW7 coupled with the evidence of PW11 will go to show that on the basis of Ext.P3(a) and P4(a) confession statements given by accused 1 and 2, Mos 1 and 2 were recovered as per Exts.P3 and P4 mahazers respectively. Though they were cross examined at length, Crl.R.P.No.1085 of 2002 22 nothing was brought out to discredit their evidence on this aspect. Further, though it was taken from the open place, it will be seen from the evidence that it was concealed under the earth and only on removal of the mud, they could be unearthed and that place will be known to the accused persons alone. So, under the circumstances, there is no merit in the submission made by the counsel for the revision petitioners that the recovery cannot be relied on to prove the involvement of the accused persons invoking the aid of section 27 of the Evidence Act.

22. It is seen from the evidence of Pws1 and 2 that dangerous weapons have been used for attacking PW2 and injuries have been inflicted on the vital parts like head, back etc. Further, the evidence of Pws 10, 13 and 14 will go to show that if blood from the injury is not stopped, it is likely to cause death as well. Further, the manner in which the incident occurred and the attack was made will go to show that they have got an intention to commit murder of the injured and it was with that intention that the attack was made. Further, it is settled law that it is not the nature of injury sustained, but the manner in which the attack was made, that has to be taken into consideration to Crl.R.P.No.1085 of 2002 23 consider the question of intention of the assailants as to whether the offence will fall under section 307 of the Indian Penal Code. This was so held in the decisions reported in State of Madhya Pradesh v. Imrat and another (2008 (11) SCC523, State of M.P. v. Saleem Alias Chamaru and another (2005 (5) SCC554 and Hari Mohan Mandal v. State of Jharkand (2004 (12) SCC220. So, there is no merit in the submission made by the counsel for the revision petitioners that the offence under section 307 of the Indian Penal Code has not been made out.

23. In view of the discussions made above, it can be safely concluded that the prosecution has proved beyond reasonable doubt that the revision petitioners have inflicted injuries on PW2 with an intention to commit murder and the courts below were perfectly justified in convicting the revision petitioners for the offence under section 307 read with section 34 of the Indian Penal Code and the concurrent findings of the court below on this aspect do not call for any interference.

24. As regards the sentence is concerned, the courts below had sentenced them to undergo rigorous imprisonment for four years each and also to pay a fine of `20,000/- each, in Crl.R.P.No.1085 of 2002 24 default to undergo rigorous imprisonment for two years each. It is further ordered that, if fine amount is realized, then the entire amount realized from accused 1 and 2 be paid to PW2 as compensation under section 357(1)(b) of the Code. Set off was allowed for the period of detention already undergone.

25. Under the sentencing policy it is settled law that when grave offences were committed, sentence must also be proportionate to the gravity of the offence, nature of the injury inflicted and the manner in which the attack was made etc. In this case, there is no evidence to show that the revision petitioners have got any previous criminal background. It is also settled law that imposing lessor punishments for grave offence also will give a wrong message to the society and it will, in fact, cause loss of confidence in the public on courts regarding the criminal justice delivery system as well. But, at the same time, courts will have to consider the circumstances under which the incident occurred, nature of injury sustained, the background of the assailants, who committed the crime, the possibility of reformation, if any, etc at the time of imposing sentence as well. In this case, there is no evidence adduced on Crl.R.P.No.1085 of 2002 25 the side of the prosecution that the accused persons have got any criminal background. Further, the incident occurred due to some political enmity and even according to the revision petitioners, they have been falsely implicated in the case due to political enmity as they belong to CPI(M) party, while the injured belongs to BJP. So considering the circumstances and also considering the fact that `20,000/- has been imposed as fine and Rs.40,000/- has been awarded as compensation to PW2, this Court feels that directing to pay the fine realized from the third accused also to PW2 as compensation and reducing the substantive sentence to rigorous imprisonment of three years and default sentence to six months rigorous imprisonment will be sufficient and that will meet the ends of justice. So the sentence imposed by the courts below is modified as follows: The revision petitioners are sentenced to undergo rigorous imprisonment for three years and also to pay a fine of `20,000/- each, in default to undergo rigorous imprisonment for six months each. If fine amount is realized, the entire amount of `60,000/-be paid to PW2 as compensation under section 357 (1)(b) of the Code. Crl.R.P.No.1085 of 2002 26 With the above modifications of the sentence alone, the revision petition is allowed in part and disposed of accordingly. Office is directed to communicate a copy of this order to the concerned court immediately. Sd/- K. RAMAKRISHNAN, JUDGE. cl /true copy/ P.S to Judge