

## CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 677 OF 2011  
 [ARISING OUT OF SLP (CRIMINAL) NO.9327 OF 2010]

Dinesh Kumar .....Appellant

Versus

State of Kerala .....Respondent

## O R D E R

1. Leave granted.

2. Heard counsel for the parties.

3. In this case notice was issued on the question of sentence.

Hence, we take note of only such facts that are relevant to that limited purpose.

4. The appellant Dinesh Kumar is convicted under Sections 326, 324, 341 read with Section 34 of the Penal Code. For causing grievous hurt, he is sentenced to rigorous imprisonment for two years and a fine of Rs.1,000/- with the direction that in default of payment of fine he would undergo simple imprisonment for three months; for causing hurt he is sentenced to rigorous imprisonment for one year and for causing wrongful restraint, to rigorous imprisonment for three months.

5. There were two other accused (accused 2 and 3 respectively), who were similarly convicted and sentenced by the trial court and their conviction and sentence were also affirmed by the Appellate Court. They too had come to the High Court in revision along with the present appellant. The High Court though upholding

their conviction, greatly reduced their sentence and directed that they would undergo imprisonment only till the rising of the Court and pay a fine of Rs.5,000/- each. It directed that in

case of failure to pay the fine, they would undergo simple imprisonment for three months. Those two accused deemed fit to

let the matter rest at that and, thus, the appellant alone has come to this Court in this appeal.

6. According to the prosecution case, the appellant inflicted

sword injuries on the chest and face of the victim (PW.3). The  
second accused is alleged to have given sword blows to him  
causing injuries on left ear, left cheek and back of chest. The

third accused assaulted him with a stick. From the High Court  
judgment it appears that there were cut wounds on the chest and  
the arm of the victim and he was hospitalised for 23 days. The

High Court observed that in the injury report of the victim there  
is no mention of any cut injuries on his left ear, left cheek and  
back of chest and similarly there were no injuries that could be  
caused by a stick. In the earlier part of the judgment, though,

the High Court had noted that in the 'body-note' prepared by the  
Head Constable there were injuries on the left ear, left of cheek  
and back of chest and near the right scapular region. It,  
however, cited the injury report prepared by the doctor for

greatly reducing the sentence of accused 2 and 3 though  
maintaining their conviction even under Section 326 read with  
Section 34 of the Indian Penal code.

7. In the judgment of the High Court, the actual injuries  
suffered by the victim, and as noted in the injury report, are  
not quoted. But it appears that the victim had serious injuries  
on his chest and on the arm. It further appears that it was not

the nature of the injuries as such that attracted Section 326 of  
the Penal Code but the fact that the victim had to remain  
hospitalised for 23 days that brought the injury within the  
definition of grievous hurt as provided in the eighth clause to  
Section 320 of the Penal Code.

8. Having regard to the personal circumstances of the appellant  
as stated in the special leave petition/petition for bail and the  
overall facts and circumstances of the case and further in order  
to maintain some proportionality in the punishments meted out to  
the other two accused, we think it would meet the ends of justice  
if the sentence of imprisonment given to the appellant is reduced  
to one year. We, accordingly, modify the appellant's sentence  
under Section 326/34 Indian Penal Code to one year rigorous  
imprisonment. The other parts of the judgment and order of the

High Court remain undisturbed.

9. In the result, the appeal is disposed of subject to the reduction and modification in the appellant's sentence.

.....J.  
(Aftab Alam)

.....J.  
(R.M. Lodha)

New Delhi;  
February 28, 2011  
ITEM NO.43

COURT NO.12

SECTION II

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).9327/2010

(From the judgement and order dated 09/12/2009 in CRLRP No. 385/2002 of the HIGH COURT OF KERALA AT ERNAKULAM)

DINESH KUMAR

Petitioner(s)

VERSUS

STATE OF KERALA

Respondent(s)

(With appln(s) for bail and office report)

Date: 28/02/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM  
HON'BLE MR. JUSTICE R.M. LODHA

For Petitioner(s)

Mr. Harish Beeran, Adv.  
Mr. R.S. Jena, Adv.  
Mr. Amer Musthaq, Adv.

For Respondent(s)

Mr. G. Prakash, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The appeal is disposed of subject to the reduction and modification in the appellant's sentence.

(N.S.K. Kamesh)  
Court Master

(S.S.R. Krishna)  
Court Master

(signed order is placed on the file)