

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

CRL.A.No. 808 of 2003 ()

AGAINST THE ORDER/JUDGMENT IN SC 323/2000 of ADDITIONAL DISTRICT COURT
(ADHOC), ERNAKULAM DATED 07-05-2003

APPELLANT:

CHANDY, S/O. ULAHANNAN, AGED 76 YEARS,
MANDOTHUKUZHY, PAMPRAKARA, MANEED P.O,
ERNAKULAM DISTRICT

BY ADVS.SRI.T.D.ROBIN
SRI.K.S.ANIL

RESPONDENT:

STATE OF KERALA REP.BY THE
PUBLIC PROSECUTOR,
HIGH COUART OF KERALA,
ERNAKULAM.
(CRIME NO.105/98 OF PIRAVOM POLICE STATION)

BY P.P.SMT SEENA RAMAKRISHNAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. RAMAKRISHNAN, J.

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Crl.A.No.808 of 2003
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Dated this the 1st day of September, 2015.

JUDGMENT

The third accused in SC.No.323/2000 on the file of the Additional Sessions Court (Adhoc-I), Ernakulam is the appellant herein. The appellant along with two others were charge sheeted by the Circle Inspector of Police, Piravam in Crime No.76/1998 of Piravom police station under section 302 read with section 34 of the Indian Penal Code.

2. The case of the prosecution in nutshell was that on 18.4.1998 at about 12 noon there was a clash in connection with the location of new public tap on the side of a road and as a result of the altercation and consequential clash, the wife and son of deceased George sustained injury and they were admitted in a hospital. On knowing about the same, deceased George came to the house of the accused persons and asked about the incident and on account of that previous enmity and with an intention to murder him on 18.4.1998 at about 7.45 p.m at the court yard of Building No.8/366 A situated at Pampara in Haneed village, the first accused inflicted three

stab injuries and while the deceased was scuffling with the first accused, second accused also stabbed him with a Malappuram knife and again on his chest and back and while he was moving there from staggering, the third accused had beaten him with MO3 pathal (stick) and consequent to the injuries, he died from the spot and thereby all of them have committed the offence under section 302 read with section 34 of the Indian penal Code.

3. After investigation, final report was filed before the Judicial First Class Magistrate-II, Muvattupuzha and it was taken on file as CP.No.76/1998 and thereafter it was committed to the Sessions Court, Ernakulam where it was taken on file as SC.323/2000 and thereafter it was made over to the Additional Sessions Court (Adhoc-I), Ernakulam for disposal.

4. When the accused appeared before the court below, after hearing both sides, charge under section 302 read with section 34 of the Indian Penal Code was framed 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 19 were examined and Exts.P1 to P27, P2(a) to P2(i), P7(a), P11(a),

P12(a), P13(a) were marked on the side of the prosecution and MOs 1 to 14 were identified on the side of the prosecution. After closure of the prosecution evidence, the accused were questioned under section 313 of the Code of Criminal Procedure (hereinafter referred to as '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. Since the evidence in this case did not warrant an acquittal under section 232 of the Code, the accused were directed to enter on their defence but no defence evidence was adduced on their side except marking contradictions and Exts.D1, D1(a) to (i), D2, D2(a), D3(a) and D3(b). After considering the evidence on record, the court below found accused 1 to 3 not guilty of the offence under section 302 read with section 34 of the Indian Penal Code and acquitted them of that charge. But the court below found the third accused, who is the appellant herein guilty for the offence under section 324 of the Indian Penal Code and convicted him for the same and sentenced him to undergo simple imprisonment for one year

and also to pay a fine of Rs.10,000/- in default, to undergo simple imprisonment for six months. Aggrieved by the same, the present appeal has been preferred by the appellant/third accused before the court below.

5. Heard T.D. Robin, learned counsel appearing for the appellant and Smt. Seena Ramakrishnan, learned Public Prosecutor appearing for the State.

6. Counsel for the appellant submitted that having disbelieved the evidence of prosecution witnesses regarding the main incident and also Ext.P1, the court below should not have convicted the third accused for the offence under section 324 of the Indian penal Code. Further, PW1 had given a go-by from his earlier statement but court below had come to the conclusion that he is now trying to help accused 2 and 3 as he had mentioned about the involvement of the third accused in Ext.P1. It is on that basis alone the court below formed an opinion that the accused had committed the offence and convicted him for the said offence which is unsustainable in law.

7. On the other hand, learned Public Prosecutor

supported the findings arrived at by the court below.

8. The case of the prosecution was that on 18.4.1998 at 12 noon there was some clash occurred between two groups of persons in which the mother and elder brother of PW1 sustained injuries and they were admitted in a hospital and during night when the deceased George, father of PW1 came and came to know about the incident, he went to the house of the accused persons to enquire about the same. At that time there was some scuffle occurred, in which accused 1 and 2 stabbed him and when he was moving from that place after receiving the stab injuries, the third accused independently had beaten him with the stick and he fell down and succumbed to injuries is the case of the prosecution. The court below had disbelieved the evidence of Pws1, 2, 4 and 6 regarding the main incident of accused 1 and 2 stabbing the deceased and also came to the conclusion that the evidence of PW1 as mentioned in Ext.P1 cannot be believed regarding the incident as narrated by him and given the benefit of doubt to accused 1 to 3 and acquitted them for the offence of murdering the deceased. But the court below carved out a portion of the

statement given by PW1 in Ext.P1 which he did not support at the time of evidence and convicted the appellant for the offence under section 324 of the Indian Penal Code as it was stated by PW1 in Ext.P1 that he had seen the third accused beating the deceased with a pathal while he was staggering along the road after receiving the stab injuries. It may be mentioned here that PW1 did not support that portion of the statement given in Ext.P1 and he denied having stated that statement. None of the prosecution witnesses examined had stated about any overt act alleged to have been made by the third accused on the deceased. Further the court below also came to the conclusion that there was no possibility of light at the place of occurrence for PW1 to witness the incident as claimed by him as well. Further the court below also came to the conclusion that Ext.P1 was a concocted one as it had reached the court only on 20.4.1998 and there was no explanation for the delay in sending the same to court in time and on that basis came to the conclusion that the possibility of allegation regarding the incident made in Ext.P1 being fabricated by the prosecution so as to suit against accused Nos. 1 and 2 cannot be ruled out. So

under the said circumstances, the court below was not justified in relying on a portion of the statement said to have been given by PW1 in Ext.P1 regarding the overt act alleged to have been committed by the third accused/appellant herein on deceased George so as to convict him for the offence under section 324 of the Indian Penal Code especially when the witness did not support that statement when he was examined before court.

9. It is settled law that the statement in Ext.P1 is not a substantive evidence and allegations made in the First Information Statement is not a substantive evidence and unless it is corroborated by the maker, it does not have any evidenciary value and that can be only used for the purpose of contradiction or for the purpose of corroboration either by the prosecution or by the defence against the maker. In this case, the maker of Ext.P1 himself had disowned the statement given by him regarding the alleged overtact said to have been made by the appellant on the deceased. Under such circumstances, the court below was not justified in convicting the appellant for the offence under section 324 of the Indian Penal Code especially when the court below had disbelieved

prosecution witnesses regarding the main incident of murder of the deceased by the accused persons sharing common intention. So the finding of the court below that appellant had committed the offence under section 324 and consequential conviction entered by the court below against the appellant for the said offence is unsustainable in law and the same is liable to be set aside. The appellant is entitled to get acquittal of the charge for which he was convicted giving him the benefit of doubt. In view of the fact that the appellant was acquitted by this Court for the offence alleged, the sentence imposed is also not proper and the same is also set aside.

In the result, the appellant succeeds and the appeal is allowed. The order of conviction and sentence passed by the court below against the appellant under section 324 of the Indian Penal Code are hereby set aside and the appellant is acquitted of the charge under section 324 of the Indian Penal Code giving him the benefit of doubt and he is set at liberty. The bail bond executed by him will stand cancelled. The fine amount, if any deposited by him is directed to be returned to him on making necessary application for this purpose before the

court below.

Office is directed to communicate a copy of this judgment to the concerned court immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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K. RAMAKRISHNAN, J.

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Crl.A.No.808 of 2003

.....

1st September, 2015.

JUDGMENT

