

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

CRL.A.No. 1396 of 2003 ()

AGAINST THE JUDGMENT IN SC 72/1999 of ADDL.DISTRICT COURT (ADHOC-I),
KOZHIKODE DATED 23-07-2003

APPELLANTS/ACCUSED 1 TO 3:

1. JAGADEESH, S/O. KELAPPAN,
VANNAM KUNNUMMAL, KARUVOTH
MOYPPOTH (PO), (VIA), MEPPAYYUR.

2. PRAMOD,
KARUVOTH
MOYPPOTH (PO), (VIA), MEPPAYYUR.

3. ADBUL SALAM,
MANIYAN KUNNUMMAL
MOYPPOTH (PO), (VIA), MEPPAYYUR.

BY ADVS. SRI.M.T.SURESHKUMAR
SRI.R.RANJITH
SRI.MANU THAMBI

RESPONDENT(S) :

STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15-10-2015,
ALONG WITH CRA. 1436/2003, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.A.Nos.1396 & 1436 of 2003

.....
Dated this the 15th day of October, 2015.

JUDGMENT

The accused 1 to 3 in S.C.No72/1999 on the file of the Additional Sessions Court (Adhoc-I), Kozhikode are the appellants in Crl.A.No.1396/2003, while the 4th accused in the same case was the appellant in Crl.A.No.1436/2003. These appellants were charge sheeted by the Circle Inspector of Police, Payyoli in Crime No.92/1997 of Meppayur police station under sections 143, 147, 148, 324, 341 and 307 read with section 149 of the Indian Penal Code.

2. The case of the prosecution in nutshell was that on 9.9.1997, at about 7 p.m, when PW1 alighted from a bus in the town near Kelu Ettan Memorial Reading Room and when he saw some people gathered in front of the reading room, he went there to enquire about the same and at that time, the accused persons along with others without any provocation formed themselves into an unlawful assembly with deadly weapons with the common object of committing murder of PW1 on account of the political enmity with him as he

belongs to Bharathiya Janatha Party and accused belongs to Communist Party of India (Marxist), first accused stabbed him with a knife and when he escaped, he was chased by accused 2 and 3 and they caught hold of him and at that time the 4th accused shouted to do away with him and stabbed him with a knife and thereafter he was surrounded by 10 to 15 persons belonging to Communist Party of India (Marxist) and beaten and kicked him and thereby, all of them have committed the offences punishable under sections 143, 147, 148, 341, 307 read with section 149 of the Indian Penal Code.

3. After completing the investigation, final report was filed before the Judicial First Class Magistrate Court, Perambra where it was taken on file as C.P.No.12/1998 and after complying with the formalities, learned Magistrate committed the case to Sessions Court, Kozhikode where it was taken on file as SC.No.72/1999 and it was originally made over to the Assistant Sessions Court, Koyilandy for disposal. Thereafter the case was withdrawn by the Sessions Court and made over to the Additional Sessions Court (Adhoc-I), Kozhikode for disposal.

4. When the accused appeared before the court below, after hearing both sides, charge under sections 143, 147, 148, 341, 324 and 307 read with section 149 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 14 were examined and Exts.P1 to P11, P1(a), P2(a), P2(b), P8(a) were marked on the side of the prosecution. After closure of the prosecution evidence, the accused were questioned under section 313 of the Code and they denied all the incriminating circumstances brought against them in the prosecution evidence. Further they have stated that 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 accused were called upon to enter on their defence. The doctor, who examined accused 1 and 2 was examined as DW1 and Exts.D1 and D2 were marked on their side. After considering the evidence on record, the court below found the appellants not guilty of the offences under sections 143, 147, 148, 307 and 149 of the

Indian Penal Code and acquitted them of those charges but found accused 1 and 4 guilty under section 324 of the Indian Penal Code and accused 2 and 3 under section 341 of the Indian Penal Code and convicted them thereunder and sentenced accused 1 and 4 to undergo rigorous imprisonment for two years each and also to pay a fine of Rs.5,000/- each and accused 2 and 3 were sentenced to undergo simple imprisonment for one month each and also to pay a fine of Rs.500/- each. It is further ordered that if fine amount is realized, an amount of Rs.3,000/- be paid to PW1 as compensation under section 357(1)(b) of the Code. Set off was allowed for the period of detention already undergone under section 428 of the Code. Aggrieved by the same, the above appeals were filed by the respective appellants/respective accused in the lower court.

5. Heard Adv. Sri. Manu Thambi representing Sri. M.T. Suresh Kumar, counsel for the appellants in Crl.A.No.1396/2003 and Sri.T.K. Sandeep, representing Sri. Sreedharan Pillai, counsel appearing for the appellant in Crl.A.No.1436/2003 and Sri. Jibu P. Thomas, Public Prosecutor appearing for the State.

6. Counsel for the appellants argued that the evidence of Pws 1, 2 and 9 cannot be believed and the nature of evidence adduced will go to show that the incident could not have occurred as claimed by the prosecution. Further, the medical evidence do not tally with the nature of overtact alleged by PW1. Further the court below itself had come to a conclusion that there was embellishment in the evidence of Pws 1 and 2 regarding the manner in which the incident occurred. Further the evidence adduced on the side of the accused namely evidence of DW1 coupled with the evidence of hostile witness namely Pws 3 and 4 will go to show that there was some commotion going on in which several persons sustained injuries and accused 1 and 2 also sustained injuries. All these things will go to show that the prosecution has suppressed the genesis of the incident and that benefit ought to have been given by the court below in favour of the accused persons. The reason given by the court below are not sustainable to sustain the conviction entered by the court below. The counsel also argued that the sentence imposed is harsh.

7. On the other hand, learned Public Prosecutor submitted that there is no acceptable evidence adduced on the side of the accused to prove that PW1 was an aggressor to the incident. On the other hand, the evidence will go to show that even at the time when PW1 came there, there was some incident going on and when he asked about the incident, without any provocation the accused persons have attacked him. So it cannot be stated that it is a case of private defence as claimed by him or accidental injury being caused in a commotion as rightly observed by the court below. So, according to the learned Public Prosecutor, the court below was perfectly justified in convicting the appellants for the offences alleged.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:

On 9.9.1997 at about 7 p.m, PW1 alighted from a bus in the town near Kelu Ettan Memorial Reading Room. While he was going towards his house, he saw some people gathered in front of that reading room. Being a reporter of 'Rashtradeepika' daily, he went to enquire about the reason for assembling there and at that time, without any provocation,

persons gathered there belonging to Communist Party of India (Marxist) formed themselves into an unlawful assembly with common object to commit murder of PW1, who belongs to Bharatheeya Janatha Party, first accused with that common object, stabbed him with a knife and when he escaped from there, he was chased by accused 2 and 3 and they caught hold of him and at that time, the 4th accused shouted to do away with him and stabbed him with a knife and thereafter 10 to 15 persons surrounded him and beat and kicked him and he somehow escaped and ran away from the place and by going for some distance fell down due to injury and he was taken to Government Hospital, Perambra where he was seen by PW6 who issued Ext.P5 wound certificate. Since she felt that better treatment is required, he was referred to Medical College Hospital, Calicut and he was treated there by PW7, who issued Ext.P6 discharge certificate. On getting intimation regarding the admission of PW1 in the hospital, PW10, the police constable attached to Meppayur police station went to the hospital and recorded Ext.P1 statement of PW1 and came to the police station and handed over the same to PW11, who

registered Ext.P1(a) First Information Report as Crime No.92/1997 of Meppayur police station originally for the offences under sections 143, 147, 148 and 307 read with section 149 of the Indian penal Code. Thereafter, earlier part of the investigation was conducted by PW12, the Circle Inspector of Police, Payyoli. He went to the place of occurrence and prepared Ext.P3 scene mahazer in the presence of Pw4 and another. He questioned PW2 and thereafter investigation was conducted by PW13, the Sub Inspector of Police, Meppayur. He seized MO1 shirt produced by PW1 as per Ext.P4 mahazer in the presence of PW5 and another. He questioned the witnesses and recorded their statements. He arrested accused 1 to 4 on 18.9.1997 at 9.40 p.m. Though he made attempts to recover the weapon used for the alleged commission of the offence, he could not succeed in that attempt. He produced the property before court along with Ext.P9 property list and sent Ext.P10 forwarding note with request to send the article for chemical analysis and it was sent from court to Chemical Examiner's Laboratory and Ext.P11 chemical report obtained. He questioned Pws 1, 3, 4, 5, 6 and 9 and recorded their statements. Since it

was revealed that offences under section 324 of the Indian Penal Code was also committed, he gave a report to add section 324 of the Indian Penal Code in the offence column. Thereafter investigation was conducted by PW14 , the Circle Inspector of Police, Payyoli. He verified the investigation conducted by PW13. He questioned some more witnesses and recorded their statements. He collected wound certificate and discharge certificate of the injured and produced the same before court. He completed the investigation and submitted final report.

9. The prosecution relies on the evidence of Pws 1, 2 and 9 and also to some extent the evidence of Pw3 and medical evidence of Pws 6 and 7 coupled with Exts.P5 and P6 to prove the case. PW1 is the injured in this case. He had categorically stated that he was working as a reporter of 'Rashtradeepika daily' and on that day, he alighted from a bus near the place of occurrence at about 7 p.m and when he was going towards his house, he saw some people gathered in front of Kelu Ettan Memorial Reading room. He reached there and enquired about the reason for the gathering and at that time, without any

provocation, the first accused came and stabbed him by abusing him and when he ran away from the place, second and third accused chased him and caught hold of him and 4th accused came behind by shouting to do away him and stabbed him with a knife. At that time, several people surrounded him, beat and kicked him. When people gathered there, the accused persons left the place and he ran towards his house. After going for some distance, he fell down and thereafter he was taken to hospital. He had admitted that persons gathered there were workers or sympathizers of Communist Party of India (Marxist) and he belongs to Bharatheeya Janatha Party. It was in a way admitted that there was some discussion regarding the dispute of storing cement in the reading room which was occupied by the Communist Party of India (Marxist). So it is clear from that it is a fractional fight between two political groups. Further both were known to each other as they belong to same locality. Further in Ext.P5 wound certificate he had given the name of the first accused as the person who stabbed him first and at that time when he gave Ext.P1 statement, he gave the name of other two accused persons

also and gave description of 4th accused as son of Raghvan and he had stated that later he gave name when he was questioned again by the police. So there is no possibility of mistaken identity of the accused persons by PW1. Further the nature of evidence adduced on the side of the accused by producing Exts.D1 and D2 wound certificates of accused 1 and 2 along with the evidence of DW1, the doctor, also will go to show that they were also present at that place. Further no suggestion was given to PW1 that none of the accused persons were there at the time of the alleged commission of the offence. So that will in a way indicate that all the accused persons were present at the time when the incident occurred.

10. PW2, an eye witness to the incident, had corroborated the evidence of PW1 regarding the manner in which the incident occurred and how the accused persons have attacked PW1 and inflicted injuries on him. It is true that though he went near the injured, he did not take any steps to take him to hospital. It may be mentioned here that since it was an incident involving two political groups, it is quite natural that people will be afraid of getting themselves involved in such incident

and they will not be dare to take the injured to hospital or interfere in the matter. The reaction of PW2 in not preventing the incident or taking steps to take PW1 to hospital cannot be taken as a ground to disbelieve his evidence. Further he had no enmity against accused persons also to give any false evidence against them. The evidence of PW9 also will go to show that the accused have attacked PW1 and caused stab injures. But his case was that there was a commotion and in that commotion persons belonging to both groups sustained injury. But he was a hostile witness. So his evidence as such cannot be taken to disbelieve the prosecution case but his evidence to the extent supporting the case of the prosecution can be considered by the court while considering other evidence available to support the case of the prosecution. So from the nature of evidence adduced, it is not possible to infer that PW1 had done anything against the accused persons so as to draw an inference that accused persons inflicted injury in exercise of their private defence. Further no suggestion was given to PW1 that he was an aggressor and he attacked the accused persons and in defence of that attack, they have to

attack the injured as well. So under such circumstances, even assuming that accused 1 and 2 have sustained some injury, it is not a ground to come to the conclusion that they sustained injuries in exercise of their right of private defence in an attack made by PW1. Further the nature of injuries sustained by first and second accused is not grievous injuries as well as deposed by DW1. So under the circumstances, non explanation of any injury sustained by accused 1 and 2 is not a ground to disbelieve the case of the prosecution as such. So from the over all circumstances and also the nature of evidence adduced, the finding of the court below that the first and second accused have attacked PW1 and stabbed him with a knife and caused injuries and second and third accused wrongfully restrained him and thereby they cannot be mulcted with criminal liability of causing injury to PW1 cannot be said to be unsustainable in law.

11. The other contention raised by the counsel for the appellants was that the First Information Statement was recorded at 5 a.m on 10.9.1997 and it reached the court on 11.9.1997 at 12 noon. So the delay in sending the First

Information Report to court will indicate that there was a possibility of deliberation and discussion to falsely implicate the accused persons. It may be mentioned here that the incident occurred on 9.9.1997 at 7 p.m and PW1 was taken to a local hospital first and thereafter he was taken to Medical College hospital. It was after intimation from the Medical College Hospital that the statement was recorded on 10.9.1997 at 5 p.m. Thereafter the person who recorded the First Information Statement came to the police station namely Meppayur police station which is situated at a distance of more than 40 kms and the First Information Report was registered at 10.9.1997 at 11.40 a.m. It was sent to the court on the next day itself. So it cannot be said that there was any undue delay in sending the First Information Report to court so as to infer that it was anti timed so as to help the injured for false implication of accused persons as claimed. So, under the circumstances, the court below was perfectly justified in convicting accused 1 and 4 for the offence under section 324 of the Indian Penal Code and accused 2 and 3 for the offence under section 341 of the Indian Penal Code and the finding of

the court below on that aspect do not call for any interference.

12. As regards the sentence is concerned, accused 1 and 4 were sentenced to undergo rigorous imprisonment for two years and also to pay a fine of Rs.5,000/- each and accused 2 and 3 were sentenced to undergo simple imprisonment for one month each and also to pay a fine of Rs.500/- each and it is further ordered that if fine amount is realized, an amount of Rs.3,000/- be paid to PW1 as compensation under section 357(1)(b) of the Code. It may be mentioned here that it cannot be said to be a premeditated or calculated assault on PW1 and it was so observed by the court below also and that was the reason why the accused were acquitted for the offences under sections 143, 147, 148 and 307 read with section 149 of the Indian Penal Code. Further the medical evidence will go to show that the injuries are not grievous injuries as well as he was discharged from hospital within three days of admission in the hospital. It is seen from the records that accused 1 and 4 were arrested on 18.9.1997 and they were released on 18.10.1997 while accused 2 and 3 were arrested on 18.9.1997 and released on 20.11.1997. So considering the nature of injury

sustained, this Court feels that the substantive sentence can be restricted to imprisonment already undergone along with fine already imposed and that will meet the ends of justice especially when the court below had awarded compensation of Rs.3,000/- considering the nature of injury sustained. So, under the circumstances, this Court feels that the substantive sentence imposed by the court below can be set aside and the same can be reduced to imprisonment already undergone by the accused.

So these appeals are allowed in part. The order of conviction entered by the court below against the appellants and also fine imposed against accused 1 and 4 for the offences under section 324 of the Indian Penal Code and against accused 2 and 3 for the offences under sections 341 of the Indian Penal Code are hereby confirmed. But the substantive sentence of two years rigorous imprisonment imposed against accused 1 and 4 for the offences under sections 324 of the Indian Penal Code and simple imprisonment for one month imposed against accused 2 and 3 are set aside and the same are reduced to imprisonment already undergone

as under trial prisoners in this case.

With the above modification of the sentence alone, appeals are allowed in part and disposed of accordingly.

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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