

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

CRL.A.No. 1537 of 2003 ()

SC 82/2002 of ADDL.DISTRICT COURT (ADHOC-1), KOTTAYAM

APPELLANT/ACCUSED

BABU, S/O. KUTTAPPAN,
KALLUKUNNEL HOUSE,
AAZHAMMALA BHAGOM, CHERUMALA KARA,
EDDAKUNNAM

BY ADV. SRI.M.T.SURESHKUMAR

RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30-10-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SKV

K.RAMAKRISHNAN, J.

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Crl. Appeal No.1537 OF 2003

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Dated this the 30th day of October, 2015

JUDGMENT

The accused in SC No.82/2002 on the file of the Additional Sessions Court, (Adhoc-I) Kottayam is the appellant herein. The appellant was charge sheeted by the Sub Inspector of Police, Kanjirappally in Crime No.31/2001 of Mundakkayam Police Station under Sections 447 and 307 of the Indian Penal Code.

2. The case of the prosecution in nutshell was that on 13.2.2001, at 7 pm, the accused was armed with dangerous weapon and chopper and criminally trespassed into the court yard of the eastern side of the house of PW1 with an intention to murder her and inflicted injuries on her back with a chopper and caused fatal injury to her and thereby he had committed offence punishable under Sections 447 and 307 of Indian Penal Code.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court, Kanjirappally,

where it was taken on file and thereafter it was committed to the Sessions Court, Kottayam by the learned Magistrate under Section 209 of the Code of Criminal Procedure (hereinafter referred to as the Code). After committal, the learned Sessions Judge took cognizance of the case as SC No.82/2002 and thereafter, it was made over to Additional Sessions Court (Adhoc-1) Kottayam for disposal.

4. When the accused appeared before the court below, after hearing both sides, charge under Sections 447 and 307 of the Indian Penal Code was framed and same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 8 were examined and Exts.P1 to P7 and C1 and C2 were marked and MOs1 and 5 were identified on their side. After closure of the prosecution evidence, the accused was questioned under Section 313 of the Code and he denied all the incriminating circumstances brought against the appellant in the prosecution evidence. He had

further stated that he had not committed any offence and he has 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 was called upon to enter on his defence, but no defence evidence was adduced on his side. Considering the evidence on record, the court below found the appellant not guilty for the offence under Section 307 of the Indian Penal Code and acquitted him of that charge under Section 235(I) of the Code. But the court below found the appellant guilty under Sections 447 and 324 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for 3 months under Section 447 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for two years and also to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for 9 months under Section 324 of Indian Penal Code. It is further ordered that if the fine amount is realised, the same be paid to PW1 as compensation.

Set off was allowed for the period of detention already undergone by him under Section 428 of the Code. Aggrieved by the same, the present appeal has been preferred by the appellant/accused before the court below.

5. Heard Shri. Manu Thampi representing Shri M.T. Suresh Kumar, counsel appearing for the appellant and Shri. Jibu P. Thomas learned Public Prosecutor appearing for the State.

6. The counsel for the appellant submitted that except the interested testimony of PWs1 and 2, there is no other evidence to prove the incident and further there is no possibility to PW2 to witness the incident as claimed. So it is not safe to rely on the interested testimony of PW1 alone to convict the accused in the absence of any corroboration from independent witnesses. He had further argued that there is discrepancy in the nature of weapon used as stated by the injured before the doctor and in the first information statement and recovery was

not properly proved as well. So under the circumstances, court below was not justified in convicting the appellant for the offence alleged and he is entitled to get acquittal. He had further submitted, if for any reason this Court is not inclined to interfere with the conviction entered by the court below, he prayed for leniency as the accused is a first offender and injury sustained is not so grave.

7. On the other hand, the learned Public Prosecutor submitted that the court below had properly appreciated the evidence of PWs1 and 2 and rightly convicted the accused for the offence alleged. Further since there was no proper light, the possibility of mistaking the weapon cannot be ruled out and in the further statement, the injured had correctly stated that she was attacked by a chopper. Further it was brought out in the evidence of PW1 that there are no houses nearby and there is no possibility of eye witness to the incident as well. So under the circumstances, the court

below was perfectly justified in convicting the appellant for the offence alleged and considering the nature of offence, the manner in which it was committed, the sentence imposed was also proper and no interference was called for.

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

PW1 was residing in the house in the property along with her 8 year old daughter and her sister PW2 is residing in the same property on the eastern side. On 13.2.2001, at about 7 pm, she went to temple along with her daughter and came back to her sister's house first and thereafter when she was going to her house leaving her daughter there. At that time the accused who was concealing himself in the court yard of the house flashed torch on her face and then abused her with obscene language and shouted that he would not allow her to live in the earth and inflicted blow on her back with axe according her in the first information statement. When he

again attempted to inflict injury there was scuffle occurred between them and hearing her cry, her sister PW2 came and she tried to remove the accused and in that process she fell down and both of them made hue and cry. When people came there, he ran away from the place with the weapon in his hand. Thereafter she was taken to the hospital and when she was undergoing treatment in the medical college hospital, PW6, the Head Constable attached to the Kanjirappally Police Station came to hospital and recorded Ext.P1 statement and he came back to Police Station and registered Ext.P5 First Information Report as Crime No. 31/2001 against the accused under Sections 447 and 307 of the Indian Penal Code. She was first taken to Government Hospital, Kanjirappally from where she was seen by PW3, who issued Ext.P2 wound certificate and thereafter as referred from there, she was taken to Medical College Hospital, Kottayam.

9. The investigation in this case was conducted by

PW7, the Circle Inspector of Police Kanjirappally. He went to the place of occurrence and prepared Ext.P5 scene mahazar in the presence of witnesses. He collected Mos 2 to 5 from that place. He arrested the accused on 20.2.2001 and when he questioned him, he gave Ext.P4 (a) statement regarding the place where the weapon was concealed and accordingly, as lead by him on the basis of the statement, he went to the place of concealment and as taken and produced by him, he seized MO1 chopper as per Ext.P4 seizure mahazar in the presence of PW4 and another. He questioned the witnesses and recorded their statements. He produced the article seized before court along with Ext.C1 and C2 property list. As per his request PW4 Village Officer prepared Ext.P3 sketch plan of the place of occurrence. Further investigation in this case was conducted by PW8 who verified the investigation conducted by PW7 and completed the investigation and submitted final report.

10. There was no independent witness to incident.

PW1 was the injured in this case. She had categorically stated that on that day evening, she went to temple and after coming back, she went to the house of her sister, PW2 and thereafter she went to her house through the short cut way. At that time the accused who was concealing himself in the courtyard of the house, shouted at her with obscene words and said that he would not allow her to live on the earth and then gave a blow with a weapon like axe. Later she deposed that she identified the weapon as chopper. She had further stated that she was living alone with her daughter in the house and accused used to trouble her. So she made complaint to the Sub Inspector of Police and thereafter to the Deputy Superintendent of Police and on account to that enmity, he had committed the crime. The suggestion given to her was that when she entered the property, they saw some thief and there was some scuffle occurred in which she sustained injuries. No such suggestion was given to PW2 or PW4, the husband of PW2 whom according to the

accused had scuffled with the thief at that time. So it is clear from the evidence that the suggestion given is only an after thought. There is no such suggestion given to the doctor to the effect that the injury could have happened in a scuffle between her and some thief.

11. It is true that in the wound certificate she had given the nature of weapon as knife first and thereafter axe (kaikodali). But what was seized was a chopper. But she had categorically stated that since while she was engaged in scuffle to avoid further attack, she could not properly identify the weapon used. But PW3 the doctor had categorically stated that the injury could be caused by using weapon like MO1.

12. Further the evidence of PW2, her sister also shows that PW1 had come to her house on her way back to temple, while she was going to her house, she had seen the accused attacking her and when the accused tried to attack PW1 again, she interfered and she was pulled by the accused and she fell down after hitting with

the stone and she experienced pain. It is true that no document has been produced to prove that she sustained injuries in the incident. It is brought out in the evidence of PW1 that there are no houses situated near to the place of occurrence, except the house of PW2 her sister. So there could not be any independent witness to inform the incident. In such circumstance, the natural witnesses will be the injured and the relative who is residing near the house. Further, the accused is known to both PWs 1 and 2. So there is no possibility of misidentifying the accused as well. The fact that a complaint was given to Sub Inspector of Police and Deputy Superintendent of Police regarding the harassment made by the accused was not challenged in cross examination as well. So under the circumstances, the court below was not perfectly justified in coming to the conclusion that the accused had trespassed into the residential compound of PW1 and inflicted injury on her with a dangerous weapon like chopper and he had committed offence punishable

under Sections 324 and 447 of the Indian Penal Code.

13. Further it is seen from the evidence that on the basis of Ext.P4 confession statement given by the accused, PW7 had recovered MO1 chopper as taken and produced by him which was proved through PW4 witness to Ext.P4 mahazar as well. It is true that PW4 is none other than the husband of PW2. That alone is not sufficient to disbelieve the seizure of weapon effected said to have been used for the commission of the offence. It is true that MO1 was not sent for chemical examination to find out whether there was any blood stain in the weapon. But PW1 and 2 have identified MO1 as the weapon used for commission of the offence and doctor had deposed that injury could be possible by using weapon like MO1 weapon as well. So under the circumstances, the court below was perfectly justified in relying on the recovery and coming to the conclusion that MO1 was used for commission of the crime and rightly convicted the accused for the offence under Sections 447 and 324 of the

Indian Penal Code and that finding does not call for any interference.

14. As regards the sentence is concerned, court below had sentenced him to undergo rigorous imprisonment for 3 months under Section 447 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for 2 years and also to pay a fine of Rts.10,000/- and in default to under go simple imprisonment for 9 months under Section 324 of the Indian Penal Code and substantive sentence were directed to run concurrently. Set off was allowed for the period of detention already undergone.

15. Considering the nature of offence and manner in which it was inflicted, court below was perfectly justified in not invoking the provisions of Probation of Offenders Act in this case. Considering the sentencing policy evolved by the Supreme Court, showing undue leniency in cases of grave nature will only give wrong message to the society and people will loose confidence in

the criminal justice delivery system. But at the same time, court can take into consideration the background of the accused, his criminal antecedent and possibility of reformation as well before imposing sentence as well as mitigating circumstances to show leniency and imposing sentence. The accused was aged only 42 years at the time of incident and he is having wife and children to be looked after. Prosecution has no case that he has got any criminal antecedent. So considering the circumstances, this court feels that substantive sentence imposed under Section 324 of the Indian Penal Code can be reduced to a minimum enhancing the fine and payment of compensation out of fine to the victim will be sufficient and that will meet the ends of justice. So considering the overall circumstances, this court, while confirming the sentence imposed under Section 447 of the Indian Penal Code, feels that sentencing the accused to undergo rigorous imprisonment for 6 months and also pay a fine of Rs.20,000/- in default to undergo simple imprisonment

for 3 months under Section 324 of the Indian Penal Code will be sufficient and that will meet the ends of justice. So the sentence imposed by the court below against the appellant under Section 324 of the Indian Penal Code is set aside and the sentence is modified as follows:-

The appellant is sentenced to undergo rigorous imprisonment for 3 months under Section 447 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for 6 months and also to pay a fine of Rs.20,000/- and default to undergo simple imprisonment for 3 months under Section 324 of the Indian Penal Code. The substantive sentences are directed to run concurrently. If the fine amount is realised, court below is directed to pay the entire amount as PW1 as compensation under Section 357 (I)(b) of the Code. Set off is allowed for the period of detention already undergone by him.

In the result appeal is allowed in part. The order of conviction passed by the court below against the

appellant under Sections 324 and 447 of the Indian Penal Code and sentence imposed under Section 447 of the Indian Penal Code are hereby confirmed. But substantive sentence and fine and default sentence imposed by the court below against the appellant under Section 324 of the Indian Penal Code is set aside and the same is modified as follows:-

The appellant is sentenced to undergo rigorous imprisonment for 3 months under Section 447 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for 6 months and also to pay a fine of Rs.20,000/- in default to undergo simple imprisonment for 3 months under Section 324 of the Indian Penal Code. The substantive sentences are directed to run concurrently. If the fine amount is released, the entire fine amount is directed to be paid PW1 as compensation under Section 35(I)(b) of the Code. Set off is allowed for the period of detention already undergone by him.

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

Sd/-

K.RAMAKRISHNAN, JUDGE

SKV