

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

CRL.A.No. 33 of 2006 (A)

**AGAINST THE JUDGMENT IN SC 211/2005 of ADDITIONAL DISTRICT AND SESSIONS
FAST TRACK COURT (ADHOC)-II, KOTTAYAM DATED 06-12-2005**

APPELLANT(S)/ACCUSED.:

**DILEEPKUMAR @ MADHU,
S/O.KUNJUKUTTAN, NIKARTHU PUTHEN VEEDU, MOONNAR KARA
KALLARA VILLAGE.**

**BY ADVS.SRI.C.P.PEETHAMBARAN
SMT.SONIYA.M**

RESPONDENT(S)/COMPLAINANT.:

**STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
REPRESENTING SUB INSPECTOR OF POLICE
KADUTHURUTHY POLICE STATION.**

BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 33 of 2006

Dated this the 14th day of September, 2015

J U D G M E N T

The accused in this case was prosecuted for the offences punishable under Sections 341, 326 and 308 of the Indian Penal Code. He was acquitted of the charges under Sections 341 and 308 but was found guilty of the offences under Sections 324 and 326 of IPC. He suffered conviction for those offences and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹5,000/- with a default clause of six months for the offence punishable under Section 326 of IPC. It was also directed that if the fine amount was realized, a sum of ₹4,000/- would be given to PW2, the injured as compensation.

2. The incident is said to have taken place on 11.01.2005 at about 7.15p.m.. While the injured namely PW2 was coming along the road by the side of a canal to go to the market to purchase household articles, as he reached

near the house of Kunjukutty, a person came from his opposite direction and stabbed him. The first of the stabs fell behind the left ear and when he cried aloud, he was repeatedly stabbed. He suffered injuries on his thighs and also the torso. He fell down at the spot. Those persons, who had come to the spot on hearing his cries, took him to the hospital. In fact, PW3 was one among them. In the hospital, he was attended to by the doctor, who was then in duty and who issued Ext.P12 wound certificate. Ext.P8, intimation was given to the Police. PW8, the head constable then in charge of the Police Station, on receipt of intimation, went to the Kottayam Medical College Hospital and recorded Ext.P1 First Information statement furnished by PW2, the injured. He returned to the Police Station and registered crime as per Ext.P8 FIR. Ext.P7 is the intimation received by him.

3. Investigation was taken over by PW9. He went to the place of occurrence and prepared Ext.P4 scene mahazar.

On the very same day, he seized MOs 2 and 3, the shirt and dhoti worn by the injured as per Ext.P5 mahazar. He recorded the statements of witnesses. According to him, on 17.03.2005, the accused voluntarily appeared before him in the Police Station and surrendered MO1 weapon which he is alleged to have used for the commission of offence was seized by Ext.P6 mahazar. Finding that the offence under Section 326 is made out, he filed Ext.P9 report to incorporate the same. He filed Ext.P10 report showing the details of the accused. PW10 completed investigation and laid charge before court.

4. The Judicial First Class Magistrate Court, Vaikom before whom final report was laid took cognizance of the offence and finding that the offence is exclusively triable by a Court of Sessions, committed the case to Sessions Court, Kottayam under Section 209 of Cr.P.C. after following the necessary procedures. The said court made over the case to the Additional District and Sessions Court - II, Kottayam for

trial and disposal. That court, on appearance of the accused and receipt of records and after hearing both sides, framed charges for the offences punishable under Sections 341, 324, 326 and 308 of IPC.

5. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution therefore had PWs 1 to 11 examined and Exts.P1 to P12 marked. MOs 1 to 3 were got identified and marked. From the defence side, Ext.D1 was marked.

6. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C.. He denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. He claimed that he has been falsely implicated due to the grudge against him. Finding that the accused could not be acquitted under Section 232 Cr.P.C.. he was asked to enter on his defence. He chose to adduce no evidence.

7. Finding the evidence of PW2 and PW11 to be convincing enough, though the other occurrence witnesses PWs 1, 3 and 4 turned hostile, the court below came to the conclusion that the offences under Sections 324 and 326 have been made out. Thus, conviction and sentence as already mentioned followed.

8. Assailing the said conviction and sentence, the learned counsel appearing for the appellant contended that there has not been a critical evaluation of the evidence in the case and the court below has mechanically acted in a manner as if everything is admitted. The evidence of PW2, the injured has not been properly considered by the court below. Going by the evidence of PW2, it would appear that the accused was familiar to him, but at the time of giving First Information Statement, he told PW8 that a person who is identifiable on sight had attacked him. Referring to Ext.P12, the wound certificate, the learned counsel pointed out that there the version given by the doctor is entirely

different. The version is that a few people had attacked him. It was then pointed out that even though PW2 had stated that he did not know the accused and only could identify him, no identification parade was conducted and PW2 had categorically stated in his deposition that after the date of incident, he was seeing the accused for the first time in the dock.

9. Referring to Ext.P12, the learned counsel went on to point out that going by the injuries as disclosed from that document, offence under Section 326 of IPC can never be attracted. Reliance placed on Ext.P11 has no legal sanction. That is issued at the time of discharge and that has no comparison to Ext.P12. The learned counsel pointed out that even assuming that the so called fracture was detected after he was admitted and after the wound certificate was prepared, that should be reflected in some document and can only be in the case sheet of the injured. For the reasons best known to the prosecution, they did not produce the

case sheet which would have revealed the true state of affairs and that lacuna was not taken note of by the court below. The learned counsel also referred to, to the fact that even though the accused is alleged to have appeared in the the Police Station and produced MO1 which was seized on 17.03.2005, the document and the weapon is seen produced before the Court on 07.06.2005. Even more interesting is the fact that according to the learned counsel, the report showing the identity of the accused is dated 13.01.2005 whereas, it is seen received by the court on 26.07.2005.

10. There is no case for the prosecution that the accused was ever identified by the injured. In the light of the above infirmities in the evidence, it could not be said that the prosecution has established the case against the accused beyond reasonable doubt and if that be so, the benefit should go to the accused.

11. The learned Public Prosecutor on the other hand pointed out that the lower court has considered it proper

and fit to rely on the evidence of PW2, the injured who is the best person to speak about the incident and there is no reason as to why he should be disbelieved. His evidence is supported by the injuries shown in the wound certificate and merely because the case sheet is not produced, it does not lead to the inference that the prosecution story is false. PW11, the doctor concerned has spoken about the fracture suffered by the injured and that is sufficient to attract Section 326 of the IPC. At any rate, according the learned Public Prosecutor, the lower court, which had the opportunity to watch the demeanour of the witnesses, placed the faith on PW2, the injured witness and there is no reason as to why this Court should take a different view. It is therefore contended that no grounds are made out to interfere with the conviction and sentence.

12. The less said the better about the investigation. PW9 is the Investigating Officer. He simply narrates certain facts. It is significant to remember that while giving Ext.P1

First Information Statement, the incident as spoken to by PW2 is that while he was coming along the road, the accused came from the opposite direction and stabbed him. He said he knew the person who has stabbed him and the weapon used by him. However, he did not name the person in the FIR. While giving evidence as PW2, the injured said that the accused came from behind and attacked him. Receiving the injuries, when he cried aloud, people gathered at the spot and he was taken to the hospital. Strangely enough, he says that after he was stabbed repeatedly, the accused asked ₹10 from him and this witness is definite that it was not because he had refused to pay the amount that he was attacked. In cross examination, he admitted that he had never named the accused to the Police. He also deposed that after the incident he was seeing the accused for the first time in court. He was also confronted with the statement seen in Ext.P12 document regarding the person who had attacked him. He denied having stated so to the

doctor.

13. It is not clear from the evidence on record whether the accused was familiar to the injured. If as a matter of fact, the accused was familiar, there was no reason as to why he should not have been named or his identification details should not have been given to the Police Officer when Ext.P1, First Information Statement was laid. There is nothing in Ext.P1 document to show that the victim was familiar with the accused or that there was sufficient descriptions which would enable the Investigating Officer to identify the accused. At any rate, one thing is very clear that after the incident, the accused was never shown to the victim and the victim had never identified him. This would be very clear from the evidence of PW2 who says that after the incident, he was seeing the accused for the first time in the dock.

14. Unfortunately for the prosecution, PWs 1, 3 and 4 who the prosecution claims to be the occurrence witnesses

turned hostile and denied having seen the incident. Of course, PW3 does say that he was the person who had taken steps to remove the injured to the hospital. Even PW2 has no case that he had told anyone of those persons namely PWs 1, 3 and 4 that the accused had stabbed him.

15. PW12 is the wound certificate which shows the following injuries:

- “(1) I.W. Over the Lt. Scapula 1x3 cms
- (2) I.W. Over the lateral aspect of Lt. thigh 1x3 cms.
- (3) I.W. 1X2 cm over his Lt. side
- (4) I.W. 0.5x0.5cm over the medial aspect of Lt. arm”

16. Ext.P11 is the discharge certificate. That shows the following description:

- “(a) x-ray and other special investigation showed Fracture 3rd rib. Left side #emothorax (L)
- (b) The following surgeons and specialists were concerned in the treatment of the case. Orthopaedic surgeon, Thoracic surgeon”

17. It was mainly based on Ext.P11 that the court below came to the conclusion that the offence under Section 326 is made out. But it is significant to notice that there is considerable difference between the entries in Exts.P11 and P12 and surprisingly enough, as rightly pointed out by the learned counsel for the appellant, the case sheet of the victim namely, PW2 was not produced at all. The evidence shows that he was in the hospital for 10 days and had undergone treatment there. Had those record been produced, one could have understood as to what exactly were the injuries suffered by the accused at the time of the alleged attack. In the light of the disparity in entries in Exts.P11 and P12, it becomes difficult to accept the version that the accused had suffered a fracture at the time of the incident.

18. Even more shocking is the delay in sending the report to court regarding the identity of the accused. From the records it is seen that a report which was drawn up

namely, Ext.P10 dated 13.01.2005 reaches the court on 26.07.2005 along with final report. No explanation is offered for this inordinate delay in filing report.

19. It is also significant to notice that there is no suggestion to PW11, the doctor who was examined Exts.P11 and P12 that by the use of MO1 weapon fracture could have been caused. MO1 is a small knife which is a sharp edged weapon. It was for the prosecution to establish that by the use of such a weapon, fracture could have been caused. There was no such effort from the side of the prosecution at all.

20. In the light of the above infirmities in the evidence of prosecution, it becomes hazardous to venture a finding that the prosecution has established the case beyond reasonable doubt and it was the accused who had committed the offence. It is also very significant to notice that PW2 suggests no motive for the attack. It is difficult to believe that somebody would simply come from behind and

simply stab a person.

21. For the above reasons, this Court is unable to concur with the finding of the court below that the prosecution has established the case against the accused that he is guilty of the offences levelled against him.

This appeal is allowed. Conviction and sentence passed against the accused are set aside and it is held that he is not guilty of the offences levelled against him. His bail bond shall stand cancelled and he is set at liberty.

Sd/-
P.BHAVADASAN
JUDGE

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//True copy//

P.A. to Judge