

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

CRL.A.No. 24 of 2005 (C)

AGAINST THE JUDGMENT IN SC 289/2000 of ADDL.SESIONS JUDGE -I,
MAVELIKKARA DATED 20-12-2004

APPELLANT(S)/ACCUSED::

SHAJI, S/O.GANGADHARAN, PUTHENTHOPPIL
KIZHAKKETHIL, KARAKKAD MURI, MULAKUZHA VILLAGE
CHENGANNUR TALUK.

BY ADV. SRI.S.HARIKRISHNAN

RESPONDENT(S)/COMPLAINANT::

STATE OF KERALA, REP. BY THE SUB
INSPECTOR OF POLCIE, CHENGANNUR THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21.05.2015,
THE COURT ON 05.06.2015 DELIVERED THE FOLLOWING:

P.UBAID, J.
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**Crl.A No.24 of 2005**  
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Dated this the 5th June, 2015

J U D G M E N T

The appellant herein challenges the conviction and sentence against him under Sections 452 and 308 of Indian Penal Code. He faced trial before the learned Additional Sessions Judge-I, Mavelikara in S.C No.289 of 2000 on the allegation that due to some previous enmity on a misapprehension that one Raju, a toddy shop salesman, had given intimation to the police against him regarding his illicit trade in arrack, he trespassed into the toddy shop No.35/98 at about 1.45 p.m on 10.6.1998 with a dagger and inflicted injuries on the body of the said Raju with the full knowledge of consequence that the injuries he inflicted may cause death.

2. The appellant pleaded not guilty to the charge framed against him by the learned trial Judge under Sections 452 and 308 I.P.C. The prosecution examined ten witnesses in the trial court including the injured Raju and also marked Exts.P1 to P14 documents. When examined

under Section 313 Cr.P.C also, the accused denied the incriminating circumstances and maintained a defence of total denial. He further contended that this is a false case foisted against him at the instance of one Rajan and one Vijayan. On witness was examined on the side of the accused in defence. The dress materials of the injured seized during investigation were marked as MO1 and MOII. The weapon of offence could not be seized or recovered during investigation because the accused vanished from the locality immediately after the incident and he came at the locality much after the final report was submitted by the police in court.

3. On an appreciation of the evidence adduced by the prosecution and the defence, the learned trial Judge found the accused guilty under Section 452 and 308 I.P.C. On conviction thereunder, he was sentenced to undergo rigorous imprisonment for five years and to pay a fine of ₹ 10,000/- under Section 308 I.P.C and to undergo rigorous imprisonment for three years and to pay a fine of ₹ 5000/- under Section 452 I.P.C by judgment dated 20.12.2004.

Aggrieved by the conviction and sentence, the accused has come up in appeal.

4. The points for decision in this appeal are (1) whether PW3 Raju had sustained serious injuries in the alleged incident, and whether those injuries will ordinarily cause death, or whether the injuries are sufficient to cause death (2) whether those injuries were inflicted by the appellant herein with the knowledge of consequence that the injuries may cause death. (3) whether the appellant herein had committed house trespass with preparation to cause hurt on the body of PW3.

5. Of the ten witnesses examined by the prosecution. PW3 is the injured Raju. PW1 and PW2 are the Doctors examined to prove the injuries sustained by PW3. The injured was first examined in the Government Hospital, Chengannur from where he was referred for expert management to the Medical College Hospital, Kottayam. Pws4 and 5 examined as independent witnesses turned hostile to the prosecution. PW6 is the Sub Inspector, who only verified the final report and PW7 is the Sub Inspector,

who registered F.I.R in this case. The case was investigated by PW10. PW9 is the licensee of the toddy shop, where the incident happened.

6. PW3 has given definite evidence consistent with the medical evidence and also the statements in Ext.P7 First Information Statement given by PW8 Rajan, regarding the incident that happened at the toddy shop, and also regarding the injuries sustained by him. PW3 was first examined by PW1 at the Government Hospital, Chengannur. This Doctor proved the Ext.P1 wound certificate, wherein, a stab wound of 5 cm length, 2 cm width and 5 cm depth on the left renal angle was noted. PW3 was later admitted in the Medical College Hospital, where he underwent expert treatment for the serious injuries. Ext.P2 is the discharge certificate issued from the Medical College Hospital by PW2, and Ext.P3 is the discharge card. These documents contain the details of the injuries and also the details of the treatment given to PW3 at the Medical College Hospital. The patient was admitted on 10.6.1998, and was discharged on 19.6.1998. He had undergone surgery under the general

anesthesia. Of course, it is true that the patient was admitted by one Dr.Binny John. The discharge certificate was issued by PW2 on the basis of the hospital entries. Regarding the nature of the injuries sustained by PW3, the evidence of PW2 is that the injury was directed anteriorly, cutting the muscles, and passing through perirenal fat and cutting the tip of 12th rib. Kidney was found normal, but a small injury to the peritoneum just lateral to the kidney was noted. Exploration of the stab injury was done under general anesthesia on 10.6.1998. The Doctor is definite in evidence that the injury noted on the body of PW3 and recorded in the hospital records, is likely to cause death due to loss of blood, if not properly and promptly attended medically. Thus the medical evidence given by PW2 proves that the injuries sustained by PW3 in the alleged incident can cause death in the ordinary course due to loss of blood, if not properly and promptly attended to. In normal circumstances, a person who inflicted such an injury will definitely have the knowledge of consequence that such an injury inflicted with a dagger may cause death in the

ordinary course. Medical evidence shows that the weapon had gone upto the kidney, but fortunately for the injured the weapon did not damage the kidney.

7. PW3 is definite regarding the incident in which he sustained injuries. His evidence is that while he was working in the toddy shop of PW9, the accused came there with a dagger in his hands and the accused stabbed him with the said dagger, asking whether he had informed the police about his illicit arrack trade. He is definite that it was with a dagger the accused stabbed on his body. Immediately he was taken to the hospital by the persons who came there. The First Information Statement was given by PW8. This Statement given by PW8 is definite regarding the incident, and the statements therein are well consistent with the versions of PW3 in evidence. But during trial, he turned hostile. However, he admitted his signature in the F.I.S. His cross-examination by the learned Public Prosecutor will show that PW8 had in fact witnessed the whole incident, but during trial he turned hostile to help the accused.

8. It is true that the material witnesses turned hostile, but PW3, the victim of offence is definite and consistent in his versions regarding the alleged incident. His evidence well satisfies the court that the serious injury sustained by him was inflicted by the accused in this case with a dagger. PW9 is the licensee of the toddy shop, who came to the scene on getting information. However, his evidence shows that PW3 had sustained some injuries at his toddy shop. PW8 has no satisfactory explanation as to how, or in what circumstance he happened to give the Ext.P7 F.I.S, and he has no case that he was in any manner threatened or compelled by anybody to give such a statement. Thus, I find that the First Information Statement was voluntarily given by PW8 to the police with the full knowledge of the things that actually transpired at the toddy shop. That the accused inflicted injuries on the body of PW3 stands well proved by the evidence of the victim himself. The nature and consequence of the injuries stand proved by the evidence of PW2, the Doctor.

9. As discussed and analysed above, I find that the victim of offence in this case sustained injuries at the toddy shop of PW9, while he was engaged in the sale of toddy there, that the accused came there armed with a dagger, and he voluntarily inflicted injuries on the body of PW3. This is a clear case of house trespass with preparation to cause hurt. Accordingly, I find that the conviction under Sections 452 and 308 I.P.C is only to be confirmed in appeal.

10. On an appreciation of the evidence given by the victim of offence, and also the medical evidence given by PW2 and PW1, regarding the nature and consequences of the injuries, I find that the serious injury found by the Doctors on the body of PW3 was inflicted by the appellant herein with a dagger. I also find that the appellant had the full knowledge of consequence that the the injury inflicted by him with such a weapon may cause death in the ordinary course, if not properly and promptly attended medically.

11. One important aspect argued by the defence is that the Police has not seized the weapon of offence in this case. Weapon of offence is one of the materials and

circumstances for proving the prosecution case. Just because of the police could not seize the weapon during investigation, the accused cannot escape from the clutches of law if the alleged incident constituting a definite offence committed voluntarily and intentionally stands otherwise proved on facts by satisfactory evidence. In this case, the police could not seize the weapon of offence because the accused vanished from the locality immediately after the incident. He remained outside for months, and he came back after the police submitted final report in court. In such cases, the police cannot wait indefinitely to submit final report. The accused, who destroyed or abandoned the weapon of offence, and conveniently absconded from the locality for months, thereby obstructing the recovery of the weapon of offence, cannot be heard to contend later, that failure on the part of the police to recover the weapon of offence is suspicious, and the benefit of that failure must be given to the accused. Here is a case where the accused either abandoned or destroyed the weapon of offence, and vanished from the locality. In such a situation, the police

could not have recovered the weapon of offence. In this case, the appellant cannot be allowed to plead the benefit of such failure on the part of the police when the accused himself was responsible for such failure.

12. Use of a weapon of offence stands well proved in this case, and the medical evidence is also that such a weapon will cause the injuries found on the body of PW3. The defence has no explanation that such an injury which is serious in nature can be caused otherwise, and the defence has no explanation as to how PW3 sustained such a serious injury, if not as alleged by the prosecution. It is really impossible to believe that PW3 sustained such injuries during a scuffle. Such a scuffle suggested by the defence during trial does not stand in any manner probalised. PW3 has no reason to foist a false case against the accused. I find no reason or ground to interfere in the findings made by the court below. My definite finding on a re-appreciation of the evidence in this case is that the prosecution has well proved the offences punishable under Sections 452 and 308 I.P.C.

13. The sentence imposed by the court below under Section 452 I.P.C is rigorous imprisonment for three years and the sentence under Section 308 I.P.C is rigorous imprisonment for five years. As regards the fine sentence, I find no scope for interference because there is a direction to pay the fine amount as compensation to the victim of offence. Such a direction is found necessary to do substantial justice to the victim of offence. However, in the particular facts and circumstances, I feel that a total term of imprisonment for two years will be adequate and just sentence in this case. The incident happened in 1998 and now we are in June, 2015. The long lapse of 17 years also will have to be considered by the court, in deciding the question of sentence now. Accordingly, I am inclined to reduce the sentence under Section 452 I.P.C to rigorous imprisonment for one year and to reduce the sentence under Section 308 I.P.C to rigorous imprisonment for two years. To this limited extent, this appeal can be allowed in part.

In the result, this appeal is allowed in part to the limited extent of modifying and reducing the sentence imposed by the court below. The conviction against the appellant in S.C No.289 of 2000 of the learned Additional Sessions Judge-I, Mavelikara will stand confirmed in appeal. However, the sentence imposed by the court below under Section 452 I.P.C will stand modified and reduced to rigorous imprisonment for one year, and the sentence imposed under Section 308 I.P.C will stand modified and reduced to rigorous imprisonment for two years. The two jail sentences will run concurrently. The fine sentence imposed by the court below is maintained, and the direction to pay compensation is also maintained. The court below will take immediate steps to enforce the sentence and recover the amount of fine.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge