

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

CRL.A.No. 247 of 2006

AGAINST THE JUDGMENT IN SC 2048/2004 of ADDL.SESIONS COURT FAST
TRACK III, THIRUVANANTHAPURAM DATED 27-01-2006

APPELLANT:ACCUSED:

MOHAN KUMAR, S/O. SUKUMARAN NADAR,
MECHANNOOR THADATHARIKATHU VEEDU, VETTINADU, VEMBAYAM.

BY ADV. SRI.M.SREEKUMAR

RESPONDENT:COMPLAINANT:

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

BY SMT. S. HYMA, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.247 OF 2006

Dated this the 9th day of December, 2015.

J U D G M E N T

The accused in this case was prosecuted for the offences punishable under Sections 307 and 323 of Indian Penal Code and Section 3(2) of PDPP Act. He was found guilty of the offence under Section 307 IPC and consequently he was convicted and sentenced to suffer rigorous imprisonment for six years and to pay a fine of Rs.15,000/- with default clause of rigorous imprisonment for one year. It was also directed that if the fine amount is realised, a sum of Rs.10,000/- shall be paid to PW2 as compensation.

2. The incident which gave rise to the case occurred on 21.08.1999 at 2'O clock in the dead of night. PW2, the injured in this case, along with PW1 and one Kannan were engaged in cable work of KSEB. The accused along with two or three persons came to the spot with a chopper and asked PW2 and others who had authorised them to do the job and shouted that they will be

done away with. The accused slashed the chopper which fell on the head of PW2 and he was injured. He fell down and lost his consciousness. Immediately the matter was informed to the contractor who came down and removed PW2 to the hospital. PW15 attended to PW2, the injured victim and issued Ext.P15 certificate. PW1 went to the Poojappura Police Station and lodged Ext.P1 First Information Station which was recorded by PW12 who registered case as per Ext.P9 First Information Report.

3. Investigation of the case was conducted by PW13 initially. He went to the place of occurrence and prepared Ext.P5 scene mahazar. He had the materials recovered from the site forwarded to the court as per Ext.P10 property list. The accused surrendered on 20.01.2000 and was arrested and taken into custody and report to that effect was filed before court which is Ext.P12. He recovered various items from the spot and forwarded it to the court. He had taken statement from most of the witnesses. PW14 completed the investigation and laid charge before court.

4. The court before which final report was laid took

cognizance of the offence and finding that the offence is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Thiruvananthapuram. The said court made over the case to Additional Sessions Court Fast Track-III, Thiruvananthapuram for trial and disposal. The latter court, on receipt of records and on appearance of accused, framed charge for the offences under Sections 307 and 323 IPC and Section 3(2) of PDPP Act. To the charge, accused pleaded not guilty and claimed to be tried.

5. The prosecution therefore had PWs 1 to 15 examined and Exts.P1 to P15 marked. M.O.1 series to M.O.3 series were got identified and marked.

6. After the close of the prosecution evidence, accused was questioned under Section 313 Cr.P.C wherein he denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent.

7. 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.

8. The court below, relying on the evidence of PW2, the injured victim and also the wound certificate Ext.P15 issued by PW15, came to the conclusion that the attack on PW2 was proved. Considering the nature of attack and number of injuries caused, court below came to the conclusion that it was with the intention of do away with the victim that attack was made. Accordingly, accused was found guilty of offence under Section 307 IPC and was convicted and sentenced as already mentioned.

9. The main crux of the argument of the learned counsel for the appellant was that there is no corroborative evidence and it will be hazardous to find the accused guilty solely based on the evidence of PWs 1 and 2. Further, it was contended that the weapon used for attack was not recovered. It was finally contended that at any rate, going by the evidence on record, offence under Section 307 IPC can never be attracted to the facts of the case. The court below has misconceived itself in approaching the offence committed by the accused.

10. Learned Public Prosecutor, on the other hand, spared

no efforts to sustain the conviction and sentence. It was contended that the attack made by the accused was on the vital part of the body of the victim i.e. on his head and he has as many as four injuries on the head. It is therefore clear that the intention was to do away with the victim. The court below, considering the nature of injuries, the manner of attack, method of attack and number of injuries, had drawn a reasonable conclusion that Section 307 IPC is attracted and therefore, no interference is called for.

11. Unfortunately for the victim, as rightly pointed out by the learned counsel for the appellant, he is left with his own evidence only. That he was working with PW1 is almost evident. But, he received no support from PW1. It would appear from the records that the reason for attack was that the union of which the accused was a member had called a strike of all the works undertaken by KSEB. However, union to which victim belonged was not a party to the strike for keeping away from work. The victim as well as two others were engaged in work in the dead of night and at that time accused appeared with a chopper in his

hand. PW2, the victim, narrates in detail what transpired thereafter. It is unnecessary to re-produce those facts. However, PWs 1 and 3 betrayed and turned hostile to the prosecution.

12. This Court is not forgetting the fact that First Information Statement was not given by the victim but somebody else. There is an indication in the First Information Statement that the victim was not keeping well.

13. Coming to the question of corroboration, it is true that we have the evidence of PW2 only. But, one shall not forget that he is the injured witness. The injured witness normally is expected to say truth and when coupled with the injuries as proved by wound certificate, it will be imprudent on the part of the court to disbelieve him unless there are compelling reasons. PW2 has narrated the incident in detail about the attack made by the accused. It is well settled that the evidence of injured witness is entitled to considerable weight.

14. PW2, the victim, has stated that a chopper was used to inflict injuries on him and when the doctor was examined as

PW15, he categorically stated that the injury found on the body of the victim would be effected as alleged.

15. Coming to the injuries suffered by the victim, Ext.P15 shows as follows:

- (1) A lacerated wound of 6x2cm on left parietal region of scalp.
- (2) A lacerated wound of 4x2 cm in right occipital side of scalp.
- (3) A lacerated wound of 2x1cm on scalp.
- (4) Abrasion on left shin.

16. Of course, all the four injuries are on the vital part of the body. But, neither PW8 nor PW15 doctors say that they were serious injuries. Whatever that be, the fact is well established that PW2 was attacked by the accused with a chopper and injuries were caused to him. The finding of the court below to that effect need not be interfered with.

17. The next question is what is the offence committed by the accused. The court below, for reasons already stated, came to the conclusion that offence under Section 307 IPC is made out. It is extremely difficult to accept the finding of the court below in this connection. The requisite intention or knowledge cannot be

attributed to the acts committed by the accused. It is no doubt true that injuries were caused on the vital part of the body. But, none resulted in a severe injury. From the records, it would appear that the intention of accused was only to frighten the victim and to keep him away from the work and it is difficult to believe that the accused had the intention or knowledge to do away with the victim. Merely because accused might have shouted to do away with the victim need not necessarily end in Section 307 IPC. A reading of the provision will clearly show that it does not take in a situation of the kind proved in this case. Therefore, even though the finding of the court below that hurt has been caused to PW2 by the act committed by the accused is sustainable, conviction and sentence awarded under Section 307 IPC seems to be unsustainable. However, that is not to say that accused is entitled to acquittal. The act committed by the accused falls within the ambit of Section 324 IPC.

For the above reasons, this appeal is partly allowed. The conviction and sentence passed by the court below for the offence under Section 307 IPC are set aside and instead the

accused is found guilty of the offence under Section 324 IPC and is convicted of the said offence and sentenced to suffer rigorous imprisonment for one year and to pay compensation of Rs.25,000/- under Section 357(3) of the Code of Criminal Procedure to PW2, the victim in default of payment of which, he shall suffer simple imprisonment for three months. Set off as per law is allowed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.