

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

CRL.A.No. 334 of 2006 ()

**AGAINST THE JUDGMENT IN SC 250/2005 of ADDITIONAL DISTRICT & SESSIONS
COURT FAST TRACK (ADHOC)-II, KOTTAYAM DATED 07-02-2006**

APPELLANT(S)/ACCUSED:

**ABHILASH, S/O.APPUKUTTAN,
THAZHCHAYIL HOUSE, ORAVACKAL BHAGOM, PAIPADU.**

**BY ADVS.SRI.GEORGE BOBAN
SRI.LIJI.J.VADAKEDOM**

RESPONDENT(S)/STATE (COMPLAINANT):

- 1. STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

***ADDL. R2. KARUNAKARAN, AGED 72 YEARS,
S/O. GIVINDAN, VAIYALVARAM HOUSE,
PALLICKACHIRA P.O., PAYIPPADU,
CHANGANACHERRY.**

**(ADDL. R2 IS IMPEADED AS THE 2ND RESPONDENT AS PER ORDER DATED
22.12.2015 IN CRL.M.A. NO. 7448/2015 IN CRL.A. NO. 334/2006)**

**ADDL. R2 BY ADV. SRI.D.KISHORE
BY PUBLIC PROSECUTOR SMT. LILLY LESLIE**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 334 of 2006

Dated this the 22nd day of December, 2015

J U D G M E N T

The accused was prosecuted for the offence punishable under Section 308 of the Indian Penal Code. He was found guilty. He was therefore convicted and sentenced to suffer rigorous imprisonment for five years.

2. The prosecution story runs thus:

PW2 is the victim. The incident occurred on 13.03.2005. PW2 is the victim and his brother PW1 was working in the Railways. He reached his house on the previous day of incident. PW2 was the President of S.N.D.P. Sakha No.325. As a part of Gurupooja celebration, procession was taken out under the leadership of PW2, the victim. The procession started at about 7.00 p.m.. By about 8.00 p.m., there was a commotion in front of the procession and someone was removed to the hospital in an autorikshaw. It was then that PW1 enquired about and he

came to know that his brother PW2 had been stabbed. The victim was first taken to St. Reetha's Hospital and from there to the Pushpagiri Medical College. The motive attributed for the attack is that PW2 had effectively prevented the accused from taking part in the meeting of 'ayalkoottam'. On receiving intimation from the hospital, PW10 went to the hospital and found the victim to be in a helpless condition and therefore, he recorded the statement of PW1 which is marked as Ext.P1. He returned to the Station and on the basis of Ext.P1, he registered crime as per Ext.P7 FIR. In the meanwhile, PW6 attended to the victim and she prepared Ext.P2 wound certificate. Investigation was taken over by PW11. After registration of the crime, he went to the scene of occurrence and prepared Ext.P3 scene mahazar. He recorded statements of witnesses. The weapon surrendered by the autorikshaw driver in which the victim was carried to the hospital was recovered as per Ext.P4 mahazar. The accused was arrested on 13.04.2005 and after completing

investigation, he laid charge before court.

3. The court before which the final report was laid, took cognizance of the offence and finding the offence to be 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 Additional District and Sessions Court, Fast Track (Adhoc)-II, Kottayam for trial and disposal.

4. The latter court, on receipt of records and appearance of the accused before the said court, framed charge for the offence punishable under Section 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 had Exts.P1 to P7 marked. MO1 was got identified and marked.

6. After the close of 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.

7. Finding that he could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his defence. The defence examined DWs 1 and 2 and had Exts. D1 and D2 marked.

8. The court below found the evidence of PWs 2 and 3 to be clinching enough to come to the conclusion that the prosecution has succeeded in establishing the case against the accused. He was found guilty and he was therefore convicted and sentenced as already mentioned.

9. Assailing the conviction and sentence, the learned counsel for the appellant pointed out that the motive alleged by the prosecution is not established and that shows that the defence of private set up by the accused is probalised. This aspect of the case has been lost sight of by the court below and has not considered this in proper perspective. There is no proof of longstanding enmity between the accused and the victim and from a reading of the evidence,

it can be seen, according to the learned counsel, that it was a sudden and spontaneous act on the part of the accused and that would show that there was no premeditation or intended to inflict the injury which was caused to the accused. At any rate, according to the learned counsel, the sentence imposed is very harsh and considering the age and the passage of time, if this Court is inclined to uphold the conviction, leniency may be shown with regard to the sentence.

10. The learned Public Prosecutor on the other hand contended that the evidence is clinching to the effect that there is deliberate act committed by the accused with the intention of causing death of the victim and it was lucky that the victim survived. The learned Public Prosecutor pointed out that the ocular evidence furnished by PWs 2 and 3 are sufficient to show that the offence has been committed. According to the learned Public Prosecutor, there are no grounds to interfere with the finding of the court below.

11. As would be evident from the First Information Statement, PW1 is not an eye witness to the incident, though he is the brother of the victim. He was in the procession, but he had not witnessed the incident. He came to know that his brother has been taken in an autorikshaw having been injured as a result of the act committed by the accused. It is true that when PW10 came to the hospital, the victim was not in a position to give a statement and it was PW1, who had given Ext.P1 FIS to PW10.

12. PW2 is the victim in this case. He would say that festival was going on in Sree Narayana Gurudeva Temple at Payippad. He was the President of the Sakha. A procession was to be taken out and he was to lead the procession. As the procession was going along and PW2 was leading the same, according to PW2, all of a sudden, the accused came from a property on the northern side through its eastern side towards PW2. According to PW2, the accused came near him and shouted that he was searching for him and inflicted

the stab injury. After inflicting injury, the accused left the spot and PW2 would say that he pulled out the knife and handed it over to one Thankappan. He was taken to St.Reetha's Hospital and from there to Pushpagiri Medical College. In the meanwhile, as he became unconscious, he was subjected to an operation. He identified the MO1 as knife which was used to cause the injury. The victim would attribute to the motive as during the Onam celebration in that year, the accused was to take part in a programme. Each participant had three occasions to participate and even though the accused name was called thrice, he did not turn up and later when he turned up, he was prevented from participating in the function. He was nursing a grudge from then onwards.

13. PW3 is an eye witness. He claims to have seen the incident. He says that while the procession was proceeding towards the Kanikkamandapam, the incident took place on the left side. PW3 would say that he and the

victim were leading the procession. While they were standing on the road, the accused came shouting that he was searching for PW2 and inflicted the injury. It was PW3 who held PW2 from falling on receipt of the stab injury. He and CW3 claim to have removed the victim to St. Reetha's Hospital and while he was being taken to the hospital, the victim pulled out the knife and handed it over to him. He dropped it on the rear portion of the autorikshaw. The doctor in the St. Reetha's Hospital after noticing the injury and after realizing the seriousness, advised that the patient be taken to the Pushpagiri Medical College. He was taken to the Pushpagiri Hospital.

14. PW4 too claims to be an eye witness to the incident. Her daughter was taking part in the procession. She would say that she too was standing near the victim. She would say that she saw somebody passing from behind her and then she saw the accused stabbing the victim. Receiving the stab injury, she cried aloud that the accused

had stabbed him. Two or three persons who are by the side of the victim took him to the hospital.

15. The court below on analysing the evidence found the testimony of PWs 2, 3 and 4 to be convincing enough and came to the conclusion that the incident has been established beyond reasonable doubt.

16. A reading of the cross examination of these witnesses do not indicate that it was a sudden provocative act. The accused seems to have come from the side of the procession that was going on and seems to have inflicted injury on the victim.

17. PW6 is the doctor, who had attended to the victim. Her evidence is to the effect that the injuries found on the body of the victim would have been caused by the weapon like MO1 and she would also say that the injury was sufficient enough to cause death.

18. Taking the evidence of PWs 2, 3 and 4, it is quite evident that the incident has occurred as alleged by the

prosecution and taking the evidence of PW6, the doctor into consideration, it is clear that the injury is a grave and serious one.

19. It is not necessary to refer to the evidence of other persons because they are not very relevant for the present purpose. The court below has discussed all the items of evidence, but what is important is the evidence of PWs 2 to 4 and PW6 which have already been referred to.

20. On a reading of their evidence as a whole, there is nothing to indicate that the accused was exercising a right of private defence.

21. The court below was therefore perfectly justified in coming to the conclusion that the offence has been committed.

22. Before this Court, the victim has filed Crl.M.Appln.No.7448/2015 seeking to get himself impleaded. He seems to have gracious enough to pardon the accused and he would pray before this Court that this Court may, if it

is possible, acquit the accused.

23. Unfortunately, the offence under Section 308 of IPC is not compoundable. So the question of compounding does not arise for consideration. On the basis of the evidence of PWs 2, 3 and 4, it is not possible to acquit the accused because the offence is clearly made out.

24. But since the victim has come forward before this Court and has prayed for pardon the accused, it will be only appropriate to make the sentence lighter in order to do justice to the parties.

Therefore, this appeal is partly allowed. While confirming the conviction for the offence under Section 308 of IPC, the sentence imposed by the court below is set aside and the substantive sentence stands confined to the period of pre-trial detention already undergone by the accused and the accused is sentenced to pay a fine of ₹25,000 (Rupees Twenty Five Thousand only) within a period of two months from today, in default of payment of which he shall suffer

simple imprisonment for a period of three months. If the fine amount is realized, a sum of ₹17,500/- shall be paid to the victim as compensation.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge