

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

CRL.A.No.604 of 2004 ()

AGAINST THE JUDGMENT IN SC 79/2002 of SESSIONS COURT,
THODUPUZHA, DATED 09-03-2004

APPELLANT(S)/ACCUSED:

RAJAPPAN, S/O.KUNJUKUTTAN,
KOLLIYIL HOUSE, ILAMDESOM KARA,
VELLIYAMATTOM VILLAGE,
THODUPUZHA TALUK.

BY ADVS.SRI.C.K.VIDYASAGAR
SRI.P.CHANDY JOSEPH

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY DEPUTY
SUPERINTENDENT OF POLICE, THODUPUZHA,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SS

K. RAMAKRISHNAN, J.

Crl. Appeal No.604 of 2004

Dated this the 28th day of September, 2015

JUDGMENT

Accused in S.C.No.79/2002 on the file of the Additional Sessions Court, Thodupuzha, is the appellant herein. The appellant was charge-sheeted by the Dy.S.P., Thodupuzha, in Crime No.204/1998 of Kanjar police station under Section 307 of the Indian Penal Code and Section 3(1)(x) and 3(2)(v) of Scheduled Caste and Scheduled Tribes Prevention of Atrocities Act.

2. The case of the prosecution in nut shell was that, on 11.09.1998 at about 04.30 p.m., while PW3 injured was engaged in fishing from nearby 'thodu' and at that time the accused came there seeing a stump coming through the 'thodu' which PW3 had taken, when he demanded for the same accused did not give the same, so he abused him by calling his caste name as he belongs to 'Mala Araya'

community, a scheduled tribe with an intention to humiliate him in public and hit him with a stump and also with a stone on the back of his head and beat him on his chest with an intention to murder and thereby he had committed the offence punishable under Section 307 of the Indian Penal Code and Section 3(1)(x) and 3(2)(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court-II, Thodupuzha, where it was taken on file as S.C.No.79/2002 (Special Court for trying cases under the Scheduled Caste and Scheduled Tribes Prevention of Atrocities Act), Thodupuzha, for the above said offences.

4. When the accused appeared before the court below, after hearing both sides, charge under Section 307 of the Indian Penal Code and Section 3(1)(x) and 3(2)(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act were framed against him and the 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 10 were examined and Exts.P1 to P13 were marked on their side. After closure of the prosecution evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence and he had further stated that, he had not committed any offence. PW3 and he were in enimical terms. So 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 of Criminal Procedure, the accused was called upon to enter on his defence. But no defence evidence was adduced on his side. After 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 Section 3(1)(x) and 3(2)(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and acquitted him of that charge under Section 235(1) of the Code of Criminal Procedure. But court below found the

appellant guilty under Section 323 and 324 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for three months and also to pay a fine of ₹1,000/-, under Section 323 of the Indian Penal Code and further sentence to undergo simple imprisonment for one year and also to pay a fine of ₹ 9,000/-, in default of payment of fine, to undergo simple imprisonment for one year and four months respectively. Aggrieved by the same, the present appeal has been preferred by the appellant/ accused before the court below.

5. Heard Sri.Chandy Joseph, counsel appearing for the appellant and Sri.Jibu P.Thomas learned Public Prosecutor appearing for the State.

6. The counsel for the appellant submitted that except the interested testimony of PWs 2 and 3, there is no other evidence adduced on the side of the prosecution to prove the incident. PW1 had no direct knowledge about the incident. PW4 had not seen the incident. So under the circumstances, court below was not justified in convicting

the appellant for the offence alleged without corroboration from independent witnesses. He had also argued that, the weapon of offence alleged to have been used for the commission of the crime has not been recovered. So according to him the court below was not justified in convicting the appellant for the offence alleged. He had also submitted that, if this court is not inclined to interfere with the conviction, then the sentence imposed is harsh considering the nature of injury sustained and he prayed for leniency.

7. On the other hand, learned Public Prosecutor submitted that the evidence will go to show that he sustained head injury and the court below was perfectly justified in relying on the evidence of PWs 2 and 3 and rightly convicted him for the offence alleged.

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

On the fateful day, the injured PW3 was engaged in fishing from the 'thodu' running at the place of

occurrence. At that time the accused came there, on seeing a wooden stump coming through the stream which PW3 had taken. There was some quarrel ensued between PW3 and the accused regarding the stump and when PW3 did not give the same, he forcefully took the stump from PW3 and gave a blow on his chest and when PW3 abused him with obscene language and also by calling his caste name, took a stone and hit on the back side of head, due to that, he became unconscious and fell on the 'thodu'. On seeing this PW2 reached there and with the help of PW1 his mother and PW4, they took the injured who fell in the 'thodu' to avoid drowning. Thereafter he was taken to Taluk Head Quarters Hospital, Thodupuzha, from where he was seen by PW9 who issued Ext.P9 wound certificate. On getting Ext.P6 intimation from the hospital, he went to Taluk Head Quarters hospital, but the injured was not there and it was revealed that he was taken to Medical Mission Hospital, Kolencherry, immediately he went there and he found that the injured was in the Intensive Care Unit and he was not in

a position to give statement. So he recorded Ext.P1 statement of PW1/ the mother of the injured and came back to police station and registered Ext.P7 first information report as Crime No.204/1998 of Kanjar police station against the accused under Section 324 of the Indian Penal Code alone. Thereafter as instructed by the higher officials, he had undertaken investigation of the case and he went to the place of occurrence and prepared Ext.P2 scene mahazar in the presence of PW5 and another. He questioned the witnesses and recorded their statements. During investigation it was revealed that offence under Section 307 of the Indian Penal Code and Section 3(1)(x) and 3(2)(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act was committed. So he gave Ext.P8 report to add those sections also and thereafter sent the file to Deputy Superintendent of police, Thodupuzha, for further action.

9. Thereafter PW10 had undertaken the investigation. On the basis of his request, PW6 the Village

Officer prepared Ext.P3 scene plan of the place of occurrence on the basis of Ext.P2 scene mahazar. As requested by him, PW7 the Tahsildar gave Ext.P3 caste certificate of PW3 and Ext.P5 caste certificate of the accused, which will go to show that PW3 belongs to 'Mala Araya' community, a Scheduled Tribe and accused belongs to 'Ezhava' community. PW10 collected Ext.P12 wound certificate prepared by CW11, the Medical Officer at Kolencherry Medical Mission Hospital and also collected Ext.P13 discharge certificate issued by CW12. During his investigation, it was revealed that the accused had committed the offence punishable under Section 307 of the Indian Penal Code and Section 3(1)(x) and 3(2)(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and he gave Ext.P11 report to add those sections as well. He completed the investigation and submitted final report.

10. PW1 is the mother of the injured who was not an eye witness to the incident. On the basis of the

heresay knowledge obtained from PWs 2 and 3, when PW8 came, she gave Ext.P1 statement. On the basis of Ext.P7 first information report was registered. On hearing the hue and cry, PW1 went to the spot, and saw PW3 lying unconscious and fell in the stream and she along with PW2 and 4 took him out of the stream. Thereafter they took him to Government Hospital, Thodupuzha, from where he was taken to Kolencherry Medical Mission Hospital.

11. PW3 is the injured. He had deposed that, while he was engaged in fishing from the stream, the accused came there. PW3 had taken the stump coming through the stream and the accused demanded for the same and he told that he was not the owner of the stump and at that time, the accused forcefully took the stump from his hand and beaten him on his chest. When he quarreled with the accused, he abused him by calling his caste name and took a stone and hit on his back, due to that, he fell unconscious. He regained conscious from the hospital. He denied the suggestion that there was no such incident

occurred and due to previous enmity, he filed a false complaint. PW2 is none other than the brother of PW3 and according to him, on hearing the sound when he came, he saw the accused beating PW3 with stump and hitting him with a stone and also abused him by calling his caste name. Due to the hit, his brother became unconscious and fell into the stream and he was floated through the water for some distance. Thereafter with the help of PW4 and PW1, he had taken him to the bank of the stream. Thereafter he had taken to hospital. Though PWs 2 and 3 were cross examined at length, nothing was brought out to discredit their evidence regarding this aspect. It is true that weapon of offence was not recovered, that alone is not sufficient to acquit the accused. A stone which caused injury to the head resulted in unconsciousness of the injured will sufficient to come to the conclusion that it is a dangerous weapon as described in Section 324 of the Indian Penal Code. So under the circumstances, the court below was perfectly justified in convicting the appellant for the offence under Section 323

and 324 of the Indian Penal Code and the finding on this aspect does not call for any interference.

12. As regards the sentence is concerned, the court below had sentenced him to undergo simple imprisonment for three months and also to pay a fine of ₹1,000/-, in default to undergo simple imprisonment for one month under Section 323 of the Indian Penal Code and further sentenced him to undergo simple imprisonment for one year and also to pay a fine of ₹9,000/-, in default to undergo simple imprisonment for four months more. Considering the nature of injury sustained, the court below was perfectly justified in not invoking the Probation of Offenders Act in this case.

13. The court below did not rely on Ext.P12 and P13 wound certificate and discharge certificate issued from Medical Mission Hospital, Kolencherry, as the medical officer who prepared the same was not examined. However it shows that some head injury was sustained by the injured, but the court below relied on the evidence of PW9 the

doctor and Ext.P9 wound certificate to come to the conclusion that the injury sustained is simple in nature. However there is no evidence to show that it caused any disability to the injured as well. Further it was not a preplanned incident and it happened due to some sudden provocation caused on account of not giving the stump which floated through the stream. So under the circumstances, this court feels that imprisonment is not necessary and imposing fine and granting compensation out of fine to the injured will be sufficient and that will meet the ends of justice. So the substantive sentence of imprisonment and fine imposed for the offence under Section 324 of the Indian Penal Code imposed by the court below are set aside and the sentence is modified as follows:

The appellant is sentenced to pay a fine of ₹1,000/-, in default to undergo simple imprisonment for one month under Section 323 of the Indian Penal Code and further sentenced to pay a fine of ₹15,000/-, in default to undergo simple imprisonment for six months under Section

324 of the Indian Penal Code. If the fine amount is realised, an amount of ₹10,000/- paid to PW3 as compensation under Section 357(1)(b) of the Code of Criminal Procedure.

In the result, the appeal is allowed in part. The order of conviction passed by the court below under Section 323 and 324 of Indian Penal and sentenced him to pay a fine of ₹1,000/- imposed by the court below with default sentence of one month simple imprisonment for the offence under Section 323 of the Indian Penal Code are hereby confirmed, but the substantive sentence and fine imposed with default sentence for the offence under Section 323 and Section 324 are set aside and the same is modified as follows:

The appellant is sentenced to pay a fine of ₹1,000/-, in default to undergo simple imprisonment for one month under Section 323 of the Indian Penal Code and further sentenced to pay a fine of ₹15,000/-, in default to undergo simple imprisonment for six months under Section 324 of the Indian Penal Code. If the fine amount is realized,

an amount of ₹10,000/- is paid to PW3 as compensation under Section 357 (1)(b) of the Code of Criminal Procedure by the court below.

With the above medication of the sentence alone, the appeal is allowed in part and disposed of accordingly.

Sd/-

K. Ramakrishnan, Judge

//True Copy//

P.A. to Judge

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