

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

CRL.A.No. 6 of 2009 (A)

AGAINST THE JUDGMENT IN SC 147/2003 of ADDL.SESIONS COURT FAST
TRACK -III (ADHOC), MANJERI DATED 29-11-2008

APPELLANTS/ACCUSED 7, 8, 11, 16:

1. SREEDHARAN @ KUTTAN, S/O. CHELIL,
CHINGAMPATTA HOUSE, MAMPAD, NILAMBUR TALUK.
2. ABDUL MAJEED, S/O. MOHAMMED,
KAKKUNDIL HOUSE, MAMPAD, NILAMBUR TALUK.
3. ABDUL JALEEL, S/O. ABDU, VALLIKADAN HOUSE,
MAMPAD, NILAMBUR TALUK.
4. ABDUL BASHEER, S/O. MOHAMMED,
KANNIYAN HOUSE, PULLIPADAM, MAMPAD,
NILAMBUR TALUK.

BY ADV. SRI.P.SHAMSUDIN

RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE
CIRCLE INSPECTOR OF POLICE NILAMBUR
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY SMT. LILLY LESLIE, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
11-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.6 OF 2009

Dated this the 11th day of November, 2015.

J U D G M E N T

As many as 16 accused persons faced trial for the offences punishable under Sections 143, 147, 148, 332, 307 read with Section 149 of Indian Penal Code and Section 3(1) of Prevention of Damage to Public Property Act. Among them, 1st and 5th accused died during the pendency of the proceedings and therefore charge against them stood abated. The 2nd accused absconded and was not available for trial and therefore his case was split up. After trial, accused Nos.7, 8, 11 and 16 were found guilty of the offences under Sections 143, 147, 149 and 332 IPC and Section 3(1) of PDPP Act. They were therefore convicted for the said offences and were sentenced to suffer simple imprisonment for two months each for the offence punishable under Sections 143, 147 and 149 IPC and 6 months for the offence punishable under Section 332 IPC and rigorous imprisonment for three months and fine of Rs.1,000/- each with

default clause of simple imprisonment for 15 days each for the offence punishable under Section 3 of PDPP Act. The substantive sentences were directed to run concurrently. Set off as per law was allowed.

2. The incident in this case occurred on 03.04.2001 in the midnight. PW10 along with other officers were on patrol duty and when they reached a market at Mampad, they received reliable information that in a place near M.E.S college at Mampad, a teak wood log is lying. When PW10 seized the same and was about to transport it to his jeep, 1st accused came to the place and took up quarrel with one of the officers. At the call of 1st accused, about 10 persons came to the spot and restrained the officials and beat them up causing injuries to them. One of the officers who sustained severe injury was taken to Medical College Hospital. PW4, on receipt of information, went to the hospital where PW10 was admitted and took his statement which is marked as Ext.P3. On the basis of the said statement, he registered Crime No.197/2001 as per Ext.P4 First Information Report.

3. Investigation was taken over by the then Circle Inspector of Police who prepared the scene mahazar Ext.P1. In the meanwhile, the injured transported to the hospital and PWs 15, 16 and 17 attached to the hospital concerned examined the persons and issued Exts.P15 to P21 wound certificates. The investigator then in charge took statement of the witnesses and have scene plan prepared and seized the article found at the place of occurrence. He 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 under Section 307 IPC is exclusively triable by a Court of Sessions, committed the case to Sessions Court, Manjeri. The said court made over the case to Additional Sessions Fast Track Court-III (Ad hoc), Manjeri for trial and disposal. The latter court, on receipt of records and on appearance of the accused, framed charges for the offences punishable under Sections 143, 147, 148, 332, 307 read with Section 149 IPC and Section 3(1) of PDPP Act. To the charge, accused pleaded not guilty and claimed

to be tried.

5. The prosecution therefore had PWs 1 to 18 examined and Exts.P1 to P21 marked. M.O.s 1 to 4 were got identified and marked. On the side of the defence, Exts.D1 and D1(a) were marked.

6. After the close of the prosecution evidence, accused were questioned under Section 313 Cr.P.C. They denied all the incriminating circumstances brought out in evidence against them and said that they are all innocent. The 7th accused stated that they are wild life guards of the locality and they had good relationship with the forest officials. The present case was a result of personal animosity between some of the officers and accused persons. The other accused persons were also stated that they were falsely implicated.

7. Finding that the accused could not be acquitted under Section 232 Cr.P.C, they were asked to enter on their defence. The defence chose to adduce no evidence.

8. The lower court greatly impressed by the evidence of PWs 10, 11 and 12, three injured persons, found accused Nos.7,

8, 11 and 16 guilty of the offences already made mention of while acquitting the others. Those who were found guilty were convicted and sentenced as already mentioned. The said conviction and sentence are assailed in this appeal.

9. Learned counsel appearing for the appellants pointed out that there has not been proper analysis of the evidence and had it been done, it could be seen that if at all the incident had occurred, it could not have been as alleged by the prosecution. May be three witnesses namely, PWs 10 to 12 might have received injuries. But that is not a reason to fasten liability on the accused. It is significant to notice, according to the learned counsel, that Ext.P1 scene mahazar has been given a total go bye in this case and had it been referred to by the lower court, it would have revealed that the incident had occurred not as alleged by the prosecution. Learned counsel, referring to the evidence of PWs 10 to 12, pointed out that their definite case was that the incident has occurred in the open ground when log was lying, brought in by somebody. Ext.P1 gives a totally different story and gives the picture of the house of the 1st accused having been

damaged and his household articles was seen thrown around.

10. Apart from the above fact, learned counsel appearing for the appellants pointed out that the incident even as alleged by the prosecution is that forest officials had come to the spot and had seized the log and while they were about to return, the 1st accused was found coming out of his house. He was asked about one Musthafa and he replied that Musthafa is none other than his brother. One of the witnesses namely, PW10 would say that then there occurred some exchange of words between one of the officers and 1st accused resulting in 1st accused calling for help and others joining him attacking the officers who had gone to seize the log. Of course, learned counsel pointed out that even though the prosecution would try to project the incident as a unilateral one committed by the accused persons, a close reading of the evidence of PWs 10 to 12 would clearly show that it was not so and there was some considerable provocation from the side of the officers also.

11. Learned counsel for the appellants pointed out that as regards the origin of the incident itself, there is difference

between the evidence of PWs 10 to 12. Learned counsel pointed out that the prosecution had no answer to the state of affairs found in the house of 1st accused and the description in Ext.P1 would clearly show that something serious had taken place inside the house of 1st accused. Learned counsel then pointed out that even going by the prosecution case, the incident happened suddenly and it was not a pre-planned and pre-intended one. It is extremely difficult in such circumstances, according to the learned counsel, Section 149 IPC could have been attracted at all. There is no case for the prosecution that the assailants knew that the officers would arrive at the place to seize the logs. The mere fact that only some of the officers had received injury does not mean that the prosecution version is correct especially when viewed in the light of Ext.P1. At any rate, according to the learned counsel, the question of applying Section 332 IPC does not arise for consideration because there was no obstruction for discharge of official duty. If we go by the evidence of PWs 10 to 12, the incident which resulted in injuries to PWs 10 to 12 had occurred much after the log had been seized and there is no case

for the prosecution that they are prevented from seizing the logs and all the attempt of the accused was to retain the logs. Even more strange, according to the learned counsel, is the finding regarding Section 3 of PDPP Act. The incident which gave rise to the said act is causing damage to the jeep in which the officials had arrived. It is significant to notice, according to the learned counsel, that PWs 10 to 12 have no case that any of the assailants who were now found guilty had anything to do with the damaging of the vehicle. As already stated, according to the learned counsel, Section 149 IPC can have no application and if that be so, smashing of the vehicle would be attributed to those persons who were engaged in such activities and it cannot be extended to persons who had no idea about the same. That act would be done by some of the miscreants. In short, according to the learned counsel, the lower court has simply carried away by the statement given by PWs 10 to 12 and did not bother to find out whether their versions could be accepted. According to the learned counsel, the conviction and sentence passed against accused Nos.7, 8, 11 and 16 cannot be sustained.

12. Learned Public Prosecutor, on the other hand, attempted in vain to support the findings of the court below. According to the learned Public Prosecutor, PWs 10 to 12 are injured witnesses and their evidence is entitled to considerable weight. It is evident that they had suffered injury in the incident and some incident had taken place at that point of time. There is nothing to show that there was any act from the side of the officials to commit an offence. The evidence of PWs 10 to 12 show that they are indiscriminately attacked by the assailants and injuries caused. This fact is clearly evident from the wound certificates issued by the respective doctors. Learned Public Prosecutor pointed out that there is no suggestion to any of these witnesses that the incident had occurred as a result of any act committed by the officials. It is also significant to notice, according to the learned Public Prosecutor, that no one from the array of accused had suffered any injury in the incident. There is no reason to disbelieve PWs 10 to 12 and the court below was therefore justified in relying on their evidence and finding accused Nos.7, 8, 11 and 16 guilty of the offences. According to

the learned Public Prosecutor, there are no grounds made out to interfere with the findings of the court below.

13. The prosecution case rests on the evidence of PWs 10 to 12. PW10 says that he got reliable information on 03.04.2001 and on that basis he had come to the market at Mampad. He then understood that the very same message has been sent to Deputy Ranger also. They were doing their usual patrol duty. They also reached the market with few other officers of the Forest Department and also of the Police Department. They then reached an open ground on the southern side of the road. They stopped their vehicles there and lit their torch. They found a teak wood log lying at the place and they also found a cut down palm tree. PW10 says that mahazar was prepared and log was taken into their custody. He then says they continued search for any other log being found at the place. At that time, according to PW10, a person came out from the nearby house and official asked his name. He replied that his name was Ashraf. He was asked whether he knew a person by name Musthafa. He told to the officials that Musthafa is none other than his own brother.

PW10 then says that the message which is received was that Musthafa was engaged in some clandestine acts of transportation of forest produces and that is the reason for asking about Musthafa. When PW10 proceeded to further search of the area, it is stated that Ashraf picked up quarrel with one watcher Kunjalen. Ashraf then shouted for help and then a group of people came running from the western side of the open ground. He then says that they were indiscriminately beaten and suffered injuries. He also speaks about the threat meted out by the persons who came there and also about the severe consequences followed by the attack.

14. PW11 is yet another injured witness. Regarding the origin of the incident and such other matters, he goes in tune with PW10. According to him, he received a secret information regarding Musthafa attempted to transport forest produces illegally. On his way, PW11 would say that he had occasion to meet PW10 also. His version is also to the effect that they reached the open ground and took the log into custody. Rest of his version regarding the incident is almost similar to the version

given by PW10. He was able to identify only the 11th accused and then it was permitted to declare him as hostile. Learned Public Prosecutor was allowed to question him at the time of cross examination. What is significant is that in the cross examination of this witness, quite contrary to the evidence of PW10, what he would say is that when they reached the place where log was lying, PW10 and his party was already there.

15. Next is the evidence of PW12 who is also an injured witness. He speaks about the incident in chief examination as spoken to by PWs 10 and 11. But, what is significant is that in chief examination he says that the issue began when Ashraf i.e. 1st accused, who is no more, questioned the act of one of the officers lighting a torch at his face. His further version is also significant in the sense that he says that there was exchange of words between Ashraf and the officer which brought others to the place. It may be noticed here that PW12 makes a departure here from the evidence of PWs 10 and 11 who say that it was on a call made by Ashraf that others were come to the place. Whatever that be, the evidence of PWs 10 to 12 which, the court below

found impressive, is uniform in the sense that they do speak about the incident in which they were injured.

16. The question is whether the version given by the prosecution is true. Here, one has to refer to the scene mahazar. Ext.P1 is the said scene mahazar. The following statements contained in the said document are relevant.

"..... വീടിന്റെ പടിഞ്ഞാറു ഭാഗം മറ്റുത്ത് അടുക്കള വാതിലിനു സമീപം സ്റ്റേപ്പിനോടു ചേർന്ന് ഒരു പഴയ ഇരുമ്പ് കസേര മറിഞ്ഞു കിടക്കുന്നതായും സ്റ്റേപ്പിലും അടുക്കളയിലുമായി അടുക്കള വാതിലിന്റെ ഒരു പൊളി വീണു കിടക്കുന്നതായും കാണുന്നു..... ടി വാതിലിന് തൊട്ടു കിഴക്കു ഭാഗം അടുക്കളയും അടുക്കളയിൽ ഒരു മേശയും ഇരുമ്പു കസേരയും മറിഞ്ഞു കിടക്കുന്നതായും പാത്രങ്ങളും പച്ചക്കറികളും മറ്റും ചിതറിക്കിടക്കുന്നതായും കാണുന്നു..... ടി വാതിലിന് കിഴക്കു ഭാഗം തറയിൽ 70cm നീളവും 4½ cm വീതിയും ഉള്ളതും ഒരു ഭാഗത്ത് 11 ആണികളുള്ളതും ആയ ഒരു പട്ടിക കഷ്ണവും അതിനടുത്തായി സുമാർ 70½ cm നീളവും 4½ cm വീതിയും ഉള്ളതും ഒരു ഭാഗത്ത് 11 ആണികളുള്ളതുമായ മറ്റൊരു പട്ടിക കഷ്ണവും കാണുന്നു. ടി പട്ടിക കഷ്ണങ്ങൾ രണ്ടും അടുക്കളവാതിലിൽ അവശേഷിച്ച ഭാഗത്ത് മുകളിലും മദ്ധ്യത്തിലും അടർന്നു പോന്ന പാടുകളും കാണുന്നു. അവശേഷിച്ച വാതിലിന്റെ അറ്റത്ത്

6 ആണികൾ പുറത്തേക്ക് വളഞ്ഞും നിൽക്കുന്നതായും ടി വാതിലിന്റെ അടിഭാഗം അതേ അളവിലുള്ള മറ്റൊരു പട്ടിക കഷ്ണം അടിച്ചു റൂപ്പിച്ച നിലയിലുണ്ടാകാണെന്നും. ടി അടുക്കളയിൽ മറിഞ്ഞു കിടക്കുന്ന മേശക്ക് സമീപത്തായി നാലു മുളവടികൾ കിടക്കുന്നതായി കാണുന്നു. അവ പരിശോധിച്ചതിൽ യഥാക്രമം സുമാർ 95½ cm നീളവും മദ്ധ്യഭാഗം സുമാർ 9cm വണ്ണവും, 105½ cm നീളവും മദ്ധ്യഭാഗത്ത് സുമാർ 9cm വണ്ണവും, സുമാർ 91cm നീളവും 9½ cm വണ്ണവും, സുമാർ 79½ cm നീളവും മദ്ധ്യഭാഗത്ത് 9½ cm വണ്ണവും ഉള്ളതായും രണ്ടാമത്തെ പടിയിലൊഴികെ മറ്റുള്ളവയിൽ രക്തക്കറ പുരണ്ടതായും കാണുന്നു....”.

17. The description in scene mahazar indicates that a good portion of the incident has taken place in the house of 1st accused. The utensils were seen lying scattered and the household articles were seen damaged and a few of the bamboo pieces were recovered from his house. Recalling the evidence of PWs 10 to 12 if we accept their version that no portion of the incident could have taken place in the house of 1st accused, Ext.P1 belies their version. Significantly enough, scene mahazar prepared does not refer to the open ground alone as the place of

occurrence. Therefore, it is quite evident that the incident has not taken place as alleged by the prosecution. Of course, an incident did take place at the place of occurrence but not in the manner as is put forward by PWs 10 to 12. Something else happened there and there was an attack of the house of the 1st accused. This aspect of the case has been lost sight of by the court below.

18. Apart from the above fact, there is also considerable force in the submission made by the learned counsel for the appellants that it is difficult to accept the finding of the court below that Section 149 IPC is attracted. Learned counsel for the appellants is right in his submission that the assailants had no clue or information that the officials were arriving at the spot to seize the log. It is also significant to notice that the origin of the incident as spoken to by PWs 10 and 12 varies and the version given by PW10 that after picking up a quarrel with one of his officers, 1st accused shouted for help cannot be readily accepted in the light of the version given by PW12.

19. It is sad that few officers of the Government did suffer

injuries in the incident. But, that by itself is not a ground to make somebody liable for the same. At any rate, it is found that there is reasonable doubt regarding the origin, development and culmination of the incident. If that be so, benefit of doubt should certainly go to the accused.

For the above reasons, this appeal is allowed. The conviction and sentence passed by the court below against accused Nos.7, 8, 11 and 16 for the offences under Sections 143, 147, 149, 332 IPC and also Section 3 of PDPP Act are set aside and it is held that the said accused persons are not guilty of the offences. They stand acquitted of the charges levelled against them. Their bail bonds shall stand cancelled and they are set at liberty.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A to Judge.