

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

CRL.A.No. 62 of 2009

AGAINST THE JUDGMENT IN SC 100/2006 of I ADDITIONAL SESSIONS
COURT, ERNAKULAM DATED 06-12-2008

APPELLANT/ACCUSED:

JOHNNY, S/O.POULOSE, NARIYELY VEEDU,
NEAR PANCHAYAT WELL, PRALAYAKKAD KARA,
VENGOOR WEST VILLAGE.

BY ADVS.SRI.S.GIRISH
SRI.HARIDAS

RESPONDENT/COMPLAINANT:

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

BY SMT. LILLY LESLIE, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.62 OF 2009

Dated this the 3rd day of November, 2015.

J U D G M E N T

The accused was prosecuted for the offence punishable under Section 308 of Indian Penal Code. He was found guilty and was therefore convicted and sentenced to suffer imprisonment for three years. Set off as per law was allowed.

2. Incident in this case occurred on 18.10.2005 at about 7.15 p.m. PWs 1 to 3 and the accused are all neighbours. On the date of incident, at about 7.15 p.m, while PW1 was walking through the main road near his house, after he passed the house of the accused namely, Johny, the accused came from behind and inflicted a cut injury on the head of PW1 with a chopper. Receiving the injury, he fell on the road and cried aloud. Hearing his cries, PWs 2 and 3 reached the place. At that time, the accused ran away with the chopper in his hand to his house.

PW2, Thampi removed PW1 to the hospital. PW4, the Doctor attached to Taluk Head Quarters, Perumbavoor attended to the victim and prepared Ext.P2 wound certificate. PW6, at the relevant time, was the Head Constable of Kuruppumpedi Police Station. On 09.10.2005, he received an intimation from Perumbavoor Taluk hospital about the injured victim and on getting information, he went to the place and recorded the statement of PW1. Ext.P1 is the said statement. He returned to the Station and on the basis of Ext.P1 registered Crime No.397/2005 as per Ext.P1(a) First Information Report.

3. PW7 took over investigation. He went to the place of occurrence and prepared Ext.P4 scene mahazar. After arrest, on the basis of the confession statement said to have been made by the accused, the weapon was seized as per Ext.P3 mahazar and Ext.P3(a) is the relevant portion of confession statement. Ext.P6 is the property list. PW7 recorded the statement of witnesses, 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, Ernakulam under Section 209 Cr.P.C after following necessary procedures. The said court made over the case to 1st Additional Sessions Court, Ernakulam for trial and disposal. The latter court, on receipt of records and on appearance of the accused, framed charge for the offence under Section 308 IPC. To the charge, accused pleaded not guilty and claimed to be tried.

5. The prosecution therefore had PWs 1 to 7 examined and Exts.P1 to P6 marked. M.O.1 was got identified and marked.

6. After the close of the prosecution evidence, 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. He also added that he runs a bunk shop in front of his house and PWs 1 and 2 used to get articles on credit from the shop. When he asked for money in front of the people, they felt ashamed and they had beaten him

up. He filed a complaint against them. Thereafter it is stated by the accused that PW1 entered his house and pulled him out and again beat him up. In the scuffle that followed, PW1 fell down and suffered injury on his head. He got himself admitted in hospital.

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 found the evidence of PWs 1 to 3, occurrence witnesses, as cogent and convincing enough and that their evidence regarding the incident was corroborated by medical evidence furnished by PW4 supported by wound certificate Ext.P2. Accordingly, the accused was found guilty of the offence alleged against him. He was convicted and sentenced as already mentioned.

9. The main ground on which the conviction is challenged is that the court below has omitted to note the contradiction in the evidence of PWs 1 to 3 which, according to the appellant, was not

taken proper note of by the court below. It was urged that there is no evidence to show that there was any light in the place of incident and therefore PW1 could not have recognised his assailant. It is also contended that no motive as such is established. Even though it is stated that accused is a nuisance in the locality and mass representation is filed against him, there is no evidence regarding the same. The inherent improbabilities of the case and the omission in the evidence of PWs 2 and 3 have not been properly appreciated. It is contended that on a close reading of the evidence of PWs 1 to 3, it can be easily seen that PWs 2 and 3 could not have actually seen the incident. Therefore, PWs 2 and 3 could not be said to be eye witness to the incident. These aspects have been omitted to be looked into by the court below and that vitiates the conviction.

10. Learned Public Prosecutor, on the other hand, contended that PWs 1 to 3 and accused are neighbours and are known to each other very well. There is no suggestion to PWs 1 to 3 that they had any reason to falsely implicate the accused.

The version given by the accused that in the scuffle, PW1 had fallen down and his head hit against a stone is belied by the wound certificate. In spite of cross examination of PWs 1 to 3, nothing is found out to show that there is any reason to falsely implicate the accused. Further, the First Information Report came into existence soon after the incident and there is no delay regarding the same. The medical evidence also supports the prosecution case. In short, the court below has rightly found the accused guilty and no grounds are made out to interfere with the conviction.

11. After having gone through the records and also after having heard the learned Public Prosecutor, the stand taken by the learned Public Prosecutor seems to be fully justified. That PW1 suffered an injury on the date of incident is a fact which cannot be disputed in the light of medical evidence. Ext.P2 is the wound certificate. It shows that there is an incised wound 10 c.m long on the left parietal area of scalp. The evidence of PW4 doctor who treated PW1 is to the effect that the injury could be

by M.O.1 weapon.

12. The question therefore is whether it could be reasonably concluded that the injury found on the head of PW1 was caused as a result of M.O.1 weapon. The next question that arises for consideration is whether the evidence of PWs 1 to 3 are convincing to come to the conclusion that the accused had committed the offence.

13. One shall not forget the fact that PW1 is the injured witness. His evidence is entitled to considerable weight unless shown otherwise. The evidence of PW1 is to the effect that on 18.10.2005 at about 7.15 p.m, he was attacked by the accused. Receiving the injury, he fell down and cried aloud which brought PWs 2 and 3 to the place. He further says that he was taken to the Perumbavoor Taluk Hospital and the doctor attended to his wound. He would say that the accused was engaged in sale of illicit liquor and other clandestine activities and he was a nuisance in the locality. Therefore, local people had filed a mass petition against him before the Perumbavoor Police Station. PW1 was a

signatory to that petition. PW1 would say that it was that which had annoyed the accused which resulted in an attack on him. He further says that his statement was taken by the Police from the hospital and Ext.P1 is that statement.

14. PW2 is a Carpenter by profession. He would say that PW1 is his neighbour and so also the accused. On the date of incident, he would say that while he and PW3 were coming from a shop, PW1 was found walking in front of them. A short while thereafter PW1 crossed the house of the accused and they saw the accused coming outside his house with a weapon and inflicting injury on the victim. The slash using M.O.1 fell on the left side of the head of the victim. PW1 fell down and PW2 would say that he at once rushed to the aid of PW1. PW1 was taken to the hospital in an auto by PW2 and he was helped by PW3. He too would say that the accused was a drunkard and people come to his house to drink and he is a nuisance in the locality. Therefore, PW1 had taken interest to file a complaint against him before the Police. That had created ill will in the accused.

15. PW3 also claims to have seen the incident. He too claims that he is the neighbour of both the accused and the victim. He would say that when he got out from his house and entered into a road to go to shop, he saw PWs 1 and 2 going along and he claims to have seen the accused coming outside his house and no sooner than PW1 had passed the house of the accused, accused attacked him with a chopper and as a result of the attack when PW1 was about to fall down he was helped by PW3. He would also say that he called an auto and PW2 had taken the accused to the hospital. He too identified M.O.1 as the weapon used by the accused. He would say that a complaint had been filed against the accused by the inhabitants of the locality. PW1 had signed on the same. The accused drinks a lot and creates annoyance in the locality. All the three witnesses, PWs 1 to 3, do say about the same. The defence set up is that PWs 1 and 2 used to buy things on credit from the bunk shop run by the accused and when he sought for money in front of some people, PWs 1 and 2 felt humiliated. The accused would say that he was

beaten near his bunk shop and later on PW1 is said to have entered his house and pulled him out and again beaten him and there was a scuffle between them in which PW1 happened to fell down and his head hit against a stone and suffered a bleeding injury. Except for the statement made by the accused, there is no evidence regarding the above aspect. Further, recovery of M.O.1 based on the confession statement made by PW1 is yet another incriminating circumstance against the accused. As soon as intimation was received from the hospital, PW6 had registered a case and investigation was conducted by PW7.

16. It is significant to notice that all the three witnesses namely, PWs 1 to 3 do say about annoyance caused by the accused in the locality and also that the people were fed up with him. They say about having filed a complaint before Police and PW1 having signed on the same. Even though PWs 1 to 3 were cross examined at length, they stood by their ground and there is nothing to show that they had any reason to falsely implicate the accused. There is nothing brought out in their evidence to show

that they are not speaking truth. Further, as already stated, PW1 is the injured witness and unless it is shown that there are compelling reasons to disbelieve him, his evidence cannot be ignored. In this case, he gets support from other witnesses and so also from the medical evidence.

17. The court below was therefore perfectly justified in coming to the conclusion that the offence had been made out.

Result is that, no grounds are made out to interfere with the judgment of the court below and the appeal is only to be dismissed. I do so.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.