

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

CRL.A.No. 942 of 2004 (B)

-----  
AGAINST THE JUDGMENT IN SC 147/1999 of ADDL. DISTRICT &  
SESSIONS COURT (ADHOC-I), KOLLAM, DATED 21-05-2004.

APPELLANT(S)/ACCUSED:

-----

BINU, AGED 22 YEARS,  
S/O. RAVEENDRAN,  
THUNDIL VEEDU, MARUTHOOR KULANGARA THEKKUMMURI,  
AYANIVELIKULANGARA VILLAGE.

BY ADVS.SRI.PRATHAPACHANDRAN C.  
SRI.N.K.BALASUBRAMANIAN  
SRI.C.A.CHACKO  
SMT.C.M.CHARISMA  
SMT.SONIYA.M

RESPONDENT(S)/COMPLAINANT:

-----

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

BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10-12-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SS

**K. RAMAKRISHNAN, J.**

-----  
Crl. Appeal No.942 of 2004  
-----

Dated this the 10<sup>th</sup> day of December, 2015

**JUDGMENT**

Accused in S.C.147/1999 on the file of the Additional Sessions Court (Adhoc-I), Kollam, is the appellant herein. The appellant was charge-sheeted by the Sub Inspector of Police, Karunagappally police station in Crime No.144/1998 under Section 307 of the Indian Penal Code.

2. The case of the prosecution in nut shell was that, on 17.03.1998 at about 8.30 p.m., the accused on account of his previous enmity with the defacto-complainant with an intention and knowledge to cause death, inflicted as stab injury with a knife on the left side of his abdomen below navel causing grievous hurt, from the southern side of the public road in front of the Kozhissery Mahavishnu Temple in Vadakkum mury of Karunagappally

Village and thereby he had committed the offence punishable under Section 307 of the Indian Penal Code,

3. After investigation final report was filed before the Judicial First Class Magistrate Court, Karunagappally, where it was taken on file as C.P.61/1998. After complying with the formalities learned magistrate committed the case to Sessions Court, Kollam, under Section 209 of the Code of Criminal Procedure (hereinafter called the Code). After committal, the case was taken on file by the learned Sessions Judge as S.C.No.147/1999 and it originally made over to Principle Assistant Sessions Court, Kollam and thereafter it was withdrawn and made over to Additional Sessions Court (Adhoc-I), Kollam, for disposal.

4. When the accused appeared before the court below, after hearing both sides charge under Section 307 of the Indian Penal Code was framed 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 9 were

examined and Exts.P1 to P11 and MOs 1 and 2 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. He had further stated that he had not committed any offence and 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 guilty under Section 307 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for three years. Set off was allowed for the period of detention already undergone by him under Section 428 of the Code of Criminal Procedure. Aggrieved by the same, the present

appeal has been preferred by the appellant/ accused before the court below.

5. Heard Sri.C.A.Chacko, counsel appearing for the appellant/petitioner and Sri.Jibu P.Thomas, Public Prosecutor appearing for the State.

6. The counsel for the appellant submitted that there is difference in the name of the accused mentioned by PW1 in Ext.P1 and the report submitted by the investigating officer. PW1 did not mention the name of the accused to the doctor. Further there is no case for him that he had disclosed the name of the accused later to the investigating officer. There was no light in the place of occurrence and there is no possibility for PW1 to identify the accused in this case as the person who inflicted the injury. Further there is doubt regarding the recovery of weapon. According to PW3, PW5 the recovery witness, the knife was taken and produced by PW3 from whose house it was recovered and the accused was not present at that time. So it cannot be

said that it was recovered under Section 27 of the Evidence Act. Further except the interested testimony of PW1, there is no other independent witness supported the case of the prosecution and in such cases, it is not safe to rely on the interested testimony of PW1 alone to prove the case against the accused and that benefit must be given to the accused. So according to him, court below was not justified in convicting the appellant for the offence alleged.

7. On the other hand, learned Public Prosecutor submitted that the evidence of PW1 will go to show that he has prior acquaintance with the accused for the last one year prior to the incident and there was due to some incident between them earlier and on account of that enmity that this incident happened. Further considering the nature of injury, court below was perfectly justified in convicting the appellant for the offence alleged. Further court below was perfectly justified in believing the evidence of the investigating officer regarding the recovery that does

not call for any interference.

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

On 11.03.1998 at about 8.30 p.m., PW1 went to Kozhissery Mahavishnu Temple to witness the festival going on there and when he went to the byline for the purpose of passing urine, the accused came there and abused him and then took a knife and stabbed him stating that he will kill him and immediately he was taken to the hospital by the police officials available there and he was seen first by PW7, who issued Ext.P4 wound certificate and he was referred to Medical College Hospital as the injuries are grave in nature, where he was seen by PW8 who issued Ext.P5 discharge certificate. While he was in the hospital CW11 came to the hospital and recorded Ext.P1 statement and came to police station and prepared Ext.P1(a) body mahazar and come to police station and registered Ext.P6 first information report as Crime No.144/1998 against "Choondy" under Section

307 of the Indian Penal Code.

9. Investigation in this case was conducted by PW9. He went to the place of occurrence and prepared Ext.P2 scene mahazar in the presence of PW4 and another. He questioned the witnesses and recorded their statements. He arrested the accused and when he questioned him, he gave Ext.P3(a) statement regarding the place where he had concealed the knife and on the basis of the statement given by him and as led by him, he went to the house of PW3 and as taken and produced by the accused, he had seized MO2 knife as per Ext.P3 mahazar in the presence of PW5 and another. He seized MO1 pant produced by PW8, the father of PW1. He sent the articles to court along with Ext.P9 and P9(a) property list. As per his request the Village Officer prepared Ext.P11 sketch plan of the place of occurrence. He sent forwarding note with request to send the article for analysis and the same were sent to chemical examination and Ext.P10 report obtained. He completed the

investigation and submitted final report.

10. PWs 2 and 3 are alleged eye witnesses to the incident. Both PWs 2 and 3 have stated that they knew the accused and PW3 had even stated that he is his friend, but they have avoided the question put to them as to whether he is known in the name "Choondy". They denied having seen the incident but PW3 had stated that he came to know on the next day that somebody had stabbed PW1 from the temple compound. So it is clear from their evidence that they were trying to help the accused and that was the reason why they were not supporting the case of the prosecution and they want to help the accused as he is their friend.

11. Then the evidence available is that of PW1, the injured alone. He had categorically stated that on 17.03.1998 at about 8.30 p.m., he went to the temple to witness the festival and he went to the side road for the purpose of passing urine, the accused came there and

stabbed him by abusing him by stating “Vayil vaippukara” and also declared that he will kill him and then stabbed him on his abdomen below navel with a knife. Due to that he fell down and immediately police officials present there took him to the hospital. He had further stated that the knife was having a length of about  $\frac{3}{4}$  foot (1 chan). It is true that he had not given the correct name of the accused. But during investigation it was revealed that his name is Binu and PW9 had given Ext.P7 report showing the correct name and address of the accused. Merely because PW1 did not give the name of the accused to the doctor is not sufficient to disbelieve his case. Further though there is nothing mentioned about the light at the place of occurrence, on account of the acquaintance with the accused for PW1, there is no difficulty for him to identify him and he had also stated that the accused is known in his nick name “Choondy” and he did not know his real name. So giving the name of “Choondy” as the name of the accused by PW1

is quite natural, especially when he knew only his nick name and not the real name.

12. Further there is nothing to disbelieve the evidence of PW1 on this aspect as he has no personal grudge to grind against him as well. It is not a case where there is no independent witnesses examined on the side of the prosecution. But the independent witness examined happened to be the friends of the accused, though they witnessed the incident according to the prosecution, did not support the case of the prosecution. The law does not say that the evidence of injured/ interested witnesses cannot be relied on for the purpose of convicting the accused. If the court is satisfied with the evidence, there is nothing wrong for the court to rely on his evidence for this purpose. It is true that PW1 was not in a position to identify MO2 as a weapon used. If really he is a tuitioned witness or wanted to grind grudge against the accused, he would have easily identified the weapon also, which he did not do, which

shows the natural way in which he gave evidence regarding the incident, which inspired the confidence of the court so as to rely on his evidence to convict the accused.

13. It will be seen from the wound certificate/ Ext.P4 that he sustained incised wound and since the doctor felt that the intra abdominal injury could not ruled out, he was immediately referred to Medical College Hospital, from where he was seen by PW8, who issued Ext.P5 discharge certificate. The evidence of PW8 will go to show that the injury is fatal and on the fatal part. So from the nature of injury inflicted, it cannot be said that the accused has no knowledge, that it is likely to cause his death, so as to attract the offence under Section 307 of the Indian Penal Code.

14. It is true that there is some contradictions in the evidence of PW9, the investigating officer and PW5, the recovery witness. According to PW5, he went to the place on coming to know that police came there and according to

him police came to the house of PW3 and PW3 had taken and produced the knife, which is identified by him as MO2 and he had signed Ext.P3 mahazar to prove the seizure. He was not declared hostile of the prosecution. He had further stated that he did not see the accused there. So under the circumstances there is nothing to disbelieve his evidence regarding the absence of the accused at the time when recovery was effected, though court below had relied on the evidence of PW9 for the purpose of proving recovery. It may mentioned here, if the recovery witnesses turned hostile, then court can rely on the evidence of the investigating officer to prove the recovery. But when the recovery witness was not declared hostile in spite of the fact he had stated that, the accused was not present at the time when recovery was effected and the knife was produced by PW3 himself, then it is not safe to rely on the investigating officer for the purpose of proving the recovery.

15. Merely because the recovery could not be believed alone is not sufficient to acquit the accused especially when the evidence of the injured will go to show that he was stabbed by a knife and the evidence of doctor will go to show that these types of injury could be possible by using a sharp weapon. So under the circumstances court below was perfectly justified in coming to the conclusion that prosecution has proved beyond reasonable doubt that the accused had stabbed PW1 with an intention to kill him and thereby he had committed the offence punishable under Section 307 of the Indian Penal Code and rightly convicted him for the said offence.

16. The counsel for the appellant submitted that the sentence imposed is harsh and he was in jail for nearly six months. The court below has sentenced him to undergo rigorous imprisonment for three years. It will be seen from the report submitted by the investigating officer that the accused was aged only 16 years at that time of commission

of the crime. The prosecution had no case that he had any previous criminal back ground as well. It is true that showing undue leniency in imposing the sentence will give a wrong signal to the society and that may ultimately cause loss of confidence to the public in the criminal justice delivery system. But at the same time court can consider the age of the victim, his back ground and also possibility of reformation and those things can be taken as mitigating circumstance to show leniency in imposing him sentence. Considering the age of the injured and also nature of injury this court feels that reducing the substantive sentence to one year rigorous imprisonment and imposing the fine of ₹10,000/- and in default to undergo simple imprisonment for six months more and if fine amount is realised paying the fine to the injured as compensation under Section 357(1)(b) of the Code of Criminal Procedure will be sufficient and that will meet the ends of justice. So the sentence imposed by the court below is set aside and the same is modified as

follows:

The appellant is sentenced to undergo rigorous imprisonment for one year and also to pay a fine of ₹10,000/-, in default to undergo simple imprisonment for six months. If the fine amount is realised, the same be paid to PW1 as compensation under Section 357(1)(b) of the Code of Criminal Procedure. Set off is allowed for the period of detention already undergone by the appellant.

So the appeal is allowed in part. The order of conviction passed by the court below against the appellant under Section 307 of the Indian Penal Code is hereby confirmed. But the sentence of three years rigorous imprisonment imposed by the court below is set aside and the same is modified as follows:

The appellant is sentenced to undergo rigorous imprisonment for one year and also to pay a fine of ₹10,000/-, in default to undergo simple imprisonment for six months more. Set off is allowed for the period of detention

already undergone by him. If the fine amount is realised, the court below is directed to pay the same as compensation to PW1 under Section 357(1)(b) of the Code of Criminal Procedure

Office is directed to communicate this judgment to the court below at the earliest.

Sd/-  
**K. Ramakrishnan, Judge**

*// True Copy//*

*P.A. to Judge*

ss