

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

CRL.A.No. 1945 of 2004 (C)  
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SC 609/2000 of ADDL.SESIONS COURT (ADHOC-II), THALASSERY

APPELLANT(S)/ACCUSED:  
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CHEMMARAM KAYYIL MOOSA  
S/O.ABDUL RAHIMAN, CHEMMARAM KUYIL HOUSE  
PAYYANNUR AMSOM, PUNCHAKKAD.

BY ADVS.SRI.C.KHALID  
SRI.N.GOPINATHA PANICKER

RESPONDENT(S):  
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1. CIRCLE INSPECTOR OF POLICE,  
PAYYANNUR.
2. STATE, REP. BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY . PUBLIC PROSECUTOR SHRI. JIBU P. THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-12-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRL.A.No. 1945 of 2004 (C)

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## APPENDIX

### PETITIONERS EXHIBITS

ANNEXURE I: COPY OF THE AFFIDAVIT FILED BY THE RESPONDENT DATED 20.10.2015

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

K.RAMAKRISHNAN, J.

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Crl. Appeal No. 1945 OF 2004

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Dated this the 9<sup>th</sup> day of December, 2015

JUDGMENT

The accused in SC 609/2000 on the file of the Additional Sessions Court, Thalasserry is the appellant herein. The appellant was charge sheeted by the Circle Inspector of Police, Payyannur in Crime No.231/1999 of that Police Station alleging offence punishable under Section 341, 326 and 307 of Indian Penal Code.

2. The case of the prosecution in nutshell was that on 26.6.1999, at about 12 noon, when PW1 belonging to Indian Union Muslim League and Panchayat President of Ramanthali Panchayat was standing near the railway gate at Payyannur Railway Station, due to political enmity towards PW1, accused belonged to Marxist Party came in an autorickshaw and with an intention and knowledge of committing murder, inflicted injuries on him with an umbrella and thereafter stabbed him with a knife on his

head and thereby he had committed the offence punishable under Sections 341, 326 and 307 of Indian Penal Code.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court-Payyannur, where it was taken on file as CP 145/2000. After complying with the formalities, the learned Magistrate committed the case to Sessions Court, Thalassery under Section 209 of Code of Criminal Procedure (hereinafter referred to as the Code). After committal, the Sessions Judge took cognizance of the case as SC 609/2000 and originally made over to Assistant Sessions Court, Payyannur for disposal. Thereafter it was withdrawn by the Sessions Judge and made over the case to Additional Sessions Court (Adhoc-II) Thalassery for disposal.

4. When the accused appeared before the court below, after hearing both sides, charge under Section 341, 326 and 307 of the Indian Penal Code was framed and 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 8 were examined and Exts.P1 to P8 and P1(a) and MOs 1 to 3 were marked on their side. After closure of the prosecution evidence, the accused was questioned under Section 313 of the Code 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. On account of political enmity, 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, 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 Sections 307, 326 and 341 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for three years and also to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for one year under Section 307 of Indian Penal Code and further sentenced to undergo rigorous imprisonment for three years and also to pay a

fine of Rs.5000/- in default to undergo simple imprisonment for six months under Section 326 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for one month and also to pay a fine of Rs.500/- in default to undergo simple imprisonment for 10 days under Section 341 of the Indian Penal Code and directed the substantive sentence to run concurrently. Set off was allowed for the period of detention already undergone by him under Section 428 of the Code. It is further ordered that if the fine amount is realised, an amount of Rs.5000/- be paid to PW1 as compensation under Section 357 (1)(b) of the Code (wrongly noted as 357(3) of the Code). Aggrieved by the same, the present appeal has been preferred by the appellant/accused before the court below.

5. During the pendency of the proceedings, the appellant filed Crl.M.A No.6865/2015 under Section 482 of the Code to quash the proceedings invoking Section 482 of the Code. It is alleged in the petition that after the incident due to the intervention of the mediators, now the

matter has been settled and the defacto complainant had filed an affidavit stating that he has been compelled to give evidence against the appellant due to political pressure and he did not want him to send to jail as the appellant is now repenting for what he had done and he is having serious diseases as well. But it may be mentioned here that once conviction is entered by the court below, then there is no question of invoking 482 of the Code arises for quashing the proceedings on the basis of settlement between the parties. Further it is settled law that even if the matter is settled between the parties, in respect of offence under Section 307 of the Indian Penal Code, court is not expected to invoke the power under Section 482 of the Code and quash the proceedings. So the prayer of the petitioner cannot be considered for quashing the proceedings on the ground of settlement that too for the reason stated by the defacto complainant in the affidavit said to have been filed by him, as it may amount to deviating from statement which has already given before the court when he was examined in court.

So petition is dismissed.

6. Heard the learned counsel for the appellant Shri. C. Khalid and learned Public Prosecutor Shri. Jibu P. Thomas appearing for the State.

7. The counsel for the appellant submitted except the interested testimony of PW1, there is no other evidence to prove the actual incident. Further PW2 is a Congress worker and Congress Party is a constituent of United Democratic Front and having allegiance with the Indian Union Muslim League as its political partner. PW3 is also a relative of PW1. There were shops near the place of occurrence and no independent witnesses have been examined to prove the incident. Further the weapon of offence alleged to have been used viz. umbrella as well as knife have not been recovered. The doctor's evidence will go to show that there is no grievous injuries except the fracture to the little finger and there is no possibility of any injury being caused by using a knife as claimed by PW1. Further the evidence of doctor will go to show that only a blunt weapon would cause the injury noted on the

head of PW1. Further there is nothing to show that it was a pre-meditated incident and he had with an intention to cause death, caused such an injury to him. So the offence under Section 307 of the Indian Penal Code is not attracted. Further if for any reason this court found that the conviction is proper, then the sentence imposed is harsh and he is aged more than 70 years now and suffering from severe diseases and prayed for leniency.

8. On the other hand, the learned Public Prosecutor argued that the evidence of PW1 and PW2 will go to show that the accused had attacked the injured and caused injuries and there is political enmity between them as it was spoken to by PW1. It can be inferred that he had done with an intention to cause murder. So according to the learned Public Prosecutor, court below was perfectly justified in convicting the appellant for the offence alleged.

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

PW1 was the then Panchayat President of

Ramanthali Panchayat and worker of Indian Union Muslim League. According to the prosecution, accused belonged to Marxist Party and he has got some grudge against PW1 as there was a misunderstanding that he was responsible for arraying some Marxist Party workers as accused in a criminal case. On account of that enmity, he had done this. PW1 had come to Ramanthali and he was waiting for the bus to go to Payyannur near the Payyannur railway gate and at that time the accused came in an autorickshaw and stopped the autorickshaw and came there and caught hold of his shirt and took away the umbrella from his hand and beat him which he warded off, thereafter the accused took a knife from his waist and stabbed on the middle of the head. When people gathered, he left the place in the same autorickshaw. Thereafter he was taken to hospital by PW2 Krishnan and one Kunji Moideen and he was taken to BKM Hospital, from where he was seen by PW4, doctor who issued Ext.P3 wound certificate. Originally the Sub Inspector who recorded the First Information Statement and

registered First Information Report was not examined and later he was sited as PW8 and he was permitted to be examined under Section 311 of the Code. PW8, on getting intimation regarding the admission of PW1 in the hospital went to the hospital, recorded Ext.P1 statement of PW1, prepared his body mahazar and thereafter came to Police Station and registered Ext.P1(a) First Information Report as Crime No.231/1999 of Payyannur Police Station originally under Sections 341, 324 and 307 of the Indian Penal Code.

10. Thereafter the investigation in the this case was conducted by PW7. He went to the place of occurrence and prepared Ext.P2 scene mahazar in the presence of PW3 and another. He recovered MO3 button found in the place of occurrence, after describing the same in the scene mahazar. He questioned the witnesses and recorded their statements. He seized MO1 and MO2 shirt and mundu worn by PW1 at the time of incident as per Ext.P4 mahazar in the presence of PW5 and another. Further he conducted the search of the shed in which the

autorickshaw in which the accused came was parked and seized the same as per Ext.P5 search list in the presence of PW5 and another. As requested by him, PW6 special Village Officer prepared Ext.P6 site plan of the place of occurrence on the basis of scene mahazar. He sent Ext.P7 forwarding note with a request to send the articles seized for chemical examination and it was sent from court and Ext.P8 chemical examination report obtained. The accused surrendered before him and he recorded his arrest and produced him before court. During investigation, it was revealed that offence under Section 326 of the Indian Penal Code was committed on seeing the wound certificate and he gave report to delete Section 324 of Indian Penal Code and to add Section 326 of Indian Penal Code. He completed the investigation and submitted final report.

11. PW1 is the injured in this case. He had deposed that on 26.6.1999, at about 12 noon, he came from Kanjangad Hospital to Ramanthali along with his sister and child. But he got down at Payyannur railway gate

and waited for an autorickshaw and at that time the accused came in an autorickshaw and stopped there and came towards him and told that he was waiting for him and he would not let him free on that day and snatched away the umbrella in his hand and beat him on his thigh and right shoulder which he warded off. Then he took a knife from his waist and stabbed on the vertex of his head (middle of the head). When PW2 Krishnan and Muhammed Kunji came, he left the place in the autorickshaw. He was taken to hospital by Krishann and others. While he was in the hospital he gave Ext.P1 statement.

12. It is true that there is some discrepancy in his evidence. But those discrepancies are not material to disbelieve the evidence regarding the incident. Further in Ext.P3 wound certificate he had given the cause of injury as assault at Payyannur railway gate at 12.05 pm, by C.K. Moosa, who is the accused in the case. There was no scope for any deliberation or discussion for PW1 to give the name of the accused to the doctor at that time, as it

was immediately after the incident that he reached the hospital and the cause of injury was disclosed to the doctor. Further it is also seen from Ext.P3 wound certificate that he was brought to hospital by Krishnan, the neighbour who is none other than PW2 in this case.

13. PW2 had deposed that he was waiting at a distance for the bus and at that time he happened to see the accused beating PW1 with umbrella. When he reached there, the accused left the place. But he did not see the accused stabbing him with a knife. But PW1 told him that he was stabbed by knife also. When he reached there, he saw bleeding coming from his head. Immediately he took him to the hospital. Merely because he is a neighbour or he is a Congress worker alone is not sufficient to disbelieve his evidence regarding the incident or his witnessing the incident as well. Further the fact that it was he, who had taken PW1 to hospital as seen from Ext.P3 wound certificate will go to show that he was present at the time when the incident occurred and that was the reason why he was able to take him to the

hospital immediately. He was giving true version of the incident which he had seen and he had no intention to improve the manner in which the incident occurred as well. So under the circumstances, it can be safely concluded that prosecution has proved beyond reasonable doubt that the accused had wrongfully restrained PW1 and beat him with umbrella and also caused injury on his head with a weapon like knife.

14. It is true neither the umbrella nor the knife was seized. But it was spoken to by PW7 the investigating officer that since the accused told, when he was questioned that those articles were thrown in the river and since there was heavy flow of water in the river, they did not make any attempt to search for the same. Further the evidence of PW4, doctor will go to show that the injuries on head could be possible by using a blunt weapon. Further it was clarified by the doctor that it is not always necessary that there must be incised or penetrating injury caused, if stabbed by a knife, that will depend upon the force that has been used. If really the

attack was made with a blunt portion of the knife, the possibility of causing lacerated wound cannot be ruled out.

15. it is settled law that in order to attract Section 307 of Indian Penal Code, it is not necessary that injury must be grave in nature and on vital part as well. But it depends upon the intention of the assailant who made the injury. In this case though PW1 had stated that the accused had shouted something and he started attacking him, the nature of evidence given is not sufficient to hold that it was pre-meditated incident. From the nature of injury sustained also, it cannot be inferred that the accused had an intention to commit murder as observed by the court below so as to attract the offence under Section 307 of Indian Penal Code. Only minor injury caused to head and that was not fatal as well. So the finding of the court below that accused had committed offence punishable under Section 307 of Indian Penal Code is unsustainable in law and same is liable to set aside and the accused is entitled to get acquittal of that

charge giving him the benefit of doubt.

16. As regards the offence under 326 of Indian Penal Code is concerned, it will be seen from Ext.P3 wound certificate that he sustained fracture to his little finger which is a grievous injury as defined under Section 320 of Indian Penal Code punishable under Section 326 of Indian Penal Code. It is also deposed by PW1 that the accused had caught hold of his shirt and prevented from moving and then started beating him and court below was perfectly justified in convicting the appellant for the offence under Section 341 of the Indian Penal Code. So the conviction entered by the court below against the appellant for the offence under Sections 326 and 341 of Indian Penal Code are perfectly justifiable and it does not call for any interference.

17. Since this court has found that the accused is entitled to get acquittal under Section 307 of Indian Penal Code, the sentence imposed by the court below for the said offence is not proper and the same is set aside. The court below had sentenced him to undergo rigorous

imprisonment for three years and also to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months under Section 326 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for one month and also to pay a fine of Rs.500/- in default to undergo simple imprisonment for 10 days under Section 341 of Indian Penal Code and directed the substantive sentences to run concurrently and it is further ordered that if the fine amount is realized, an amount of Rs.5000/- be paid to PW1 as compensation under Section 357 (1)(b) of the Code.

18. Considering the nature of injury sustained, this court feels that it is not a fit case to invoke the provisions of Probation of Offenders Act in favour of the appellant. Further since it is not a pre-meditated incident and also considering the nature of injury and also the fact that the accused was an aged person and suffering from some illness now, this court feels that some leniency can be shown in imposing sentence. But at the same time, showing undue leniency will only give a wrong signal to

the society and that will however cause loss of confidence for the public in the criminal justice delivery system. Considering these aspects, this court feels that sentencing the accused to undergo simple imprisonment for three months and also to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for three months under Section 326 of Indian Penal Code and further sentenced him to pay a fine of Rs.500/- in default to undergo simple imprisonment for 10 days under Section 341 of Indian Penal Code and directing the entire fine amount if realized, be paid to PW1 as compensation under Section 357(1) (b) of the Code will be sufficient and that will meet the ends of justice as far as the both of the parties are concerned. So the sentence imposed by the court below is set aside and the same is modified as follows:-

The appellant is sentenced to undergo simple imprisonment for three months and also to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for three months under Section 326 of Indian Penal Code and further sentenced to pay a fine of Rs.500/- in default

to undergo simple imprisonment for 10 days under Section 341 of Indian Penal Code and if the fine amount is realized, the same be paid to PW1 as compensation under Section 357(1)(b) of the Code. Set off was allowed for the period of detention already undergone under Section 428 of the Code.

In the result appeal is allowed in part. The order of conviction and sentence passed by the court below against the appellant under Sections 307 of Indian Penal Code is set aside and he is acquitted of that charge giving him the benefit of doubt. But the order of conviction passed by the court below against the appellant under Section 326 and 341 of Indian Penal Code are hereby confirmed. But the sentence imposed for those offences are set aside and the same is modified as follows:

The appellant is sentenced to undergo simple imprisonment for three months and also to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for three months under Section 326 of Indian Penal Code and further sentenced to pay a fine of Rs.500/- in default

to undergo simple imprisonment for 10 days under Section 341 of Indian Penal Code and if the fine amount is realized, the same be paid to PW1 as compensation under Section 357(1)(b) of the Code. Set off was allowed for the period of detention already undergone under Section 428 of the Code.

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

Sd/-  
K.RAMAKRISHNAN, JUDGE

SKV