

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

CRL.A.No. 1116 of 2014 ()

AGAINST THE JUDGMENT IN SC 173/2013 of SPECIAL COURT (ATROCITIES
AGAINST SC/ST), MANJERI DATED 30-09-2014

APPELLANT/ACCUSED:

AKBAR AGED 34 YEARS
S/O.ABDU, NEDUMBA HOUSE, CHEMBRASSERY AMSOM
SHAPPUMPADY, PERINTALMANNA TALUK, MALAPPURAM DISTRICT.

BY ADV. JOSWIN THAMBI KUNNATH (SATATE BRIEF)

RESPONDENT/COMPLAINANT:

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

BY ADV. PUBLIC PROSECUTOR:SMT.M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1116 of 2014

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Dated this the 15th day of December, 2015

JUDGMENT

The sole accused who faced the trial for offences punishable under Sections 341 and 307 of the Indian Penal Code and Section 3(2)(v) of SC/ST (POA) Act is the appellant herein.

2. The crux of the prosecution allegation was that on 16.09.2012 at about 2 p.m., while PW1 and PW2 were travelling in a motor cycle, the accused intercepted them, took out a knife and stabbed on the abdomen of PW2. He sustained grievous injuries and was immediately rushed to the nearby hospital. From there, he was taken to the Korambayil hospital, Manjeri and thereafter, taken to Moulana Hospital, Perinthalmanna. On the basis of the information lodged, FIR was registered and after investigation, final report was laid alleging commission of offences referred above. Before the trial court, the accused pleaded not guilty and demanded trial. On the side of the prosecution, PWs.1 to 15 were examined, Exts.P1 to P16 were marked and MOs.1 to 4 were identified. Court below, on an evaluation of the available materials, concluded that the offence under Section 3(2)(v) of the

SC/ST (POA) Act was not proved and acquitted him. Learned Sessions Judge found the accused guilty of offences punishable under Sections 341 and 307 of the IPC, convicted and sentenced him to undergo one month simple imprisonment for the offence punishable under Section 341 of IPC and for offence proved under Section 307 of IPC, to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.15,000/- and in default, to undergo simple imprisonment for three months. The accused, who is in jail, has preferred this appeal.

3. Since he was unable to defend himself through counsel of his choice, Adv.Joswin Thambi Kunnath was appointed as the counsel on State Brief who marshalled all available points on behalf of the accused. It was well defended by Adv.M.G.Lisha, learned Public Prosecutor. Examined the records.

4. The prosecution case is essentially sought to be proved through the evidence of PWs.1 and 2. PW1 was the person who was driving the motor cycle at the time of incident. He had given in detail the facts that ultimately led to the incident. The version of PW1 is specifically spoken to and corroborated by the version of PW2, the injured himself. Records reveal that he had sustained

two injuries. First one was a stab injury 3cm long in the left iliac forsa with bowel coming out of the wound. Second one was a lacerated wound 5cm x 2cm over back of chest and it was bleeding. Both the witnesses identified MO1 as the weapon used by the accused, who was standing in the dock. On the material parts, there is a general corroboration in the evidence.

5. The prosecution relied on the testimony of PW15, the doctor who had seen the patient on the relevant day. He had issued Ext.P4 wound certificate. In the wound certificate, there is a reference that the history of the injury was assault with knife by a known person around 2p.m. The doctor who had occasion to see MO1 in Court deposed that the injuries can be caused by a weapon like MO1. He further deposed that injuries are grievous in nature and had the patient not been given medical attention, death would have been caused.

6. The above evidence is further sought to be proved through the recovery of the weapon used. PW14 was the Investigating Officer. The Investigating Officer had deposed that pursuant to the statement given by the accused that he had concealed the knife at known place, accused was taken to the spot

from where MO1 was recovered. According to the prosecution, it was a blood stained knife kept wrapped in MO4 cover. Ext.P7 is the seizure mahazar and the relevant portion of the confession statement that specifically led to the recovery was marked as Ext.P10. Ext.P13 is the chemical analysis report which shows that both MOs.1 and 4 had blood stains which were of human origin. The evidence tendered by the Investigating Officer coupled with the recovery of MOs.1 and 4 appears to be free from any doubtful circumstances and is in accordance with Section 27 of the Evidence Act. There is no reason as to why that the evidence relating to recovery should be discarded as a tainted one.

7. Learned counsel for the accused vehemently attacked the prosecution case on several grounds. It was contended by the learned counsel that even though PW1 in his defence had deposed that the accused had slapped on the face of PW2 and thereafter, the accused caught hold of the neck of PW2 followed by stabbing, it is not seen recorded in the FIS. It was further contended that in the FIS, there is only reference to one stab injury on the abdomen. It is true that the second injury is not recorded in the FIS. It is further true that all the overt acts allegedly committed by the

accused also do not find a place in the FIS. It is pertinent to note that in the FIS, the specific and main overt act and the meticulous details of the incident are mentioned. It cannot be expected that FIS should contain all the material facts since only those essential facts that are sufficient to disclose the commission of a cognizable offence need only be disclosed in the FIS. Hence, I am not inclined to accept the contention of the learned counsel for the accused.

8. Learned counsel, further relying on the wound certificate as well as the evidence of PW15, doctor contended that the doctor had stated that the second injury can be caused by an assault. Regarding the first injury, it was suggested to the doctor that the weapon used looked like an axe blade on one side. With reference to that, a suggestion was put to PW15 that in case of use of a weapon like MO1, the injury should have corresponding marks. Doctor deposed that if such a weapon is used, rag like injury would be caused. However, doctor had not noted any rag like injury in the wound. It is true that the doctor has not clarified on this aspect further. However, there was also no further cross examination on that aspect. I am not inclined to give much credence to it since, the doctor had specifically stated that both the

injuries can be caused by a weapon like MO1. The doctor had opined so, only after seeing MO1.

9. Learned counsel further contended that even though PWs.1 and 2 had deposed that blood was oozing from the wound, neither the scene of occurrence nor the dress worn by the injured indicated that there was a trail of blood. It is true that none of the witnesses stated that there was trail of blood. Even though the lunki was seized, it was not sent for chemical analysis to confirm whether there was blood stains on it. The shirt worn by the injured at the time of the incident was also not seized. However, it is pertinent to note that even though the witnesses have stated that blood was oozing, the available materials indicated that the injured had covered both the wounds so as to prevent blood from oozing out. Even though he had run to a distance, there is nothing on record to show that blood fell on the ground. Hence, I am not inclined to accept the contention of the learned counsel that there was no trail of blood. Regarding lunki, there was no indication that it was blood stained. Even otherwise, the Investigating Officer had stated that he got information that lunki was washed after the incident. Regarding the non-recovery of the shirt, the explanation

of the Investigating Officer was that it was cut for the purpose of performing surgery on the body of the injured. Of course, production of that shirt would have further corroborated the case of the prosecution. However, non-production of it by itself does not reduce the quality of evidence marshalled by the prosecution.

10. Yet another contention of the learned counsel for the accused was that the doctors who had occasion to see the patient before he was taken to Moulana hospital, Perinthalmanna were not examined. It is true that the evidence indicate that the injured was taken to two other hospitals. Since he was not admitted or treated there in the hospital, non-examination of doctors will not cast doubt on the prosecution case.

11. Yet another contention marshalled by the learned counsel for the accused was that though the incident happened on 16.09.2012 and the material objects were recovered on the next day, it reached the Court only on 04.10.2012. The Investigating Officer has given a valid explanation for that. According to the Investigating Officer, since the injured was convalescing after the injury, he waited for identification by the injured before production in the Court.

12. The prosecution has a case that previous enmity was the cause for the commission of the offence. According to the prosecution, the accused was allegedly involved in other crimes. Thereafter, he started selling ganja in the locality. PWs.1 and 2 along with others had warned him. Learned counsel for the accused contended that the evidence also show that several persons in the locality had allegedly warned the accused and there was no reason why he should single out PW1, to attack. Learned counsel further contended that even though PWs.1 and 2 were travelling together, only PW2 was attacked, which possibly leads to an inference that the previous enmity as alleged by the prosecution is not true. A reasonable answer to this is available in the version of PW3. According to PW3, he himself along with PWs1 and 2 had met the accused on the previous day and warned against repetition of such acts. This indicates a sudden provocation to the accused for commission of the crime. This is fortified by the evidence of PWs.1 and 2 to the effect that before attacking PW2, accused had restrained the motor cycle by saying that he is not going to stop his ganja business. Even otherwise, the prosecution is trying to establish the guilt against the accused on the basis of direct

evidence. Hence motive pales into insignificance.

13. The evidence tendered by PW2 regarding the incident gets its corroboration from PW1. It is further corroborated by the medical evidence as well as the forensic evidence in the form of Ext.P13. The recovery also confirms the use of MO1. No serious contradiction, omission or embellishment to doubt the substratum of the prosecution case was brought out in the course of cross examination. Hence, I am inclined to agree with the finding of the court below that the prosecution has succeeded in proving the guilt of the accused for committing offences under Sections 341 and 307 of IPC. The conviction of the accused is hence liable to be sustained.

14. Learned counsel for the accused alternatively pleaded that the sentence imposed by the court below is highly excessive and he is entitled for a lenient view. Learned counsel contended that the accused was only 34 years at the time of the incident and still, there is chance for reformation. However, there are materials to show that accused was involved in several other cases as spoken by the Investigating Officer. An enhanced conviction may sustain only if there is evidence regarding the conviction. However, taking

into account the antecedents of the accused, I feel that the sentence imposed on him should have an element of deterrence also. Hence, I am not inclined to interfere with the sentence passed by the court below.

In the result, the appeal fails and is dismissed confirming the conviction and sentence.

SUNIL THOMAS
Judge

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