

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

CRL.A.No. 1467 of 2012 ()

**AGAINST THE ORDER/JUDGMENT IN CP 33/2011 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, THODUPUZHA**

**AGAINST THE JUDGMENT IN SC 437/2011 OF 3RD ADDITIONAL SESSIONS COURT
(ADHOC-I), THODUPUZHA DATED 30.6.2012**

APPELLANT/ACCUSED:

**JOSE @ JIJO, S/O. VARKEY, C.NO.7243
CENTRAL PRISON, THIRUVANANTHAPURAM**

BY ADV. S.L.SYLAJA (STATE BRIEF)

RESPONDENT/COMPLAINANT:

**STATE OF KERALA
REP.BY THE C I OF POLICE, THODUPUZHA
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM**

BY PUBLIC PROSECUTOR SMT. REMA R.

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A.No.1467 of 2012

Dated this the 4th day of March, 2015

J U D G M E N T

The appellant was the accused in Sessions Case No.437/2011 on the file of the 3rd Additional Sessions Judge (Adhoc-I), Thodupuzha. The appellant and PW1 Marikutty were neighbours. It is alleged that on 6.2.2005 at about 5.45 p.m. he trespassed into her house and in the presence of her infant daughter he attempted to murder her by assaulting her with an axe. She sustained injuries on the head and fracture of bones apart from some other injuries. Previous enmity is said to be the motive. The learned Sessions Judge found that the prosecution has succeeded in proving its allegation against him and convicted him of the offences under Sections 307 and 452 I.P.C. For the offence under Section 307 I.P.C. he was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.25,000/- with a default clause. For the offence under Section 452 I.P.C. he was sentenced to undergo rigorous

imprisonment for two years and to pay a fine of Rs.25,000/- with a default clause. The substantive sentences were directed to run concurrently. The order of conviction and the sentence are challenged in this appeal.

2. The victim PW1 Marikutty was aged about 40 years at the relevant time. There is no dispute that at about 5.45 p.m. on 6.2.2005 she sustained injuries. She was immediately taken to a hospital at Thodupuzha, where she was examined by PW8 Dr. Thomas Sebastian. Ext.P4 is the certificate issued by him. From the hospital at Thodupuzha PW1 was taken to Medical College Hospital, Kolencherry where she was examined by PW12 Dr.Sreekumar. His evidence and Ext.P8 certificate issued by him prove that PW1 sustained fracture of the skull, mandible, left maxilla, mastoid process and 8th & 9th ribs apart from some other injuries. PW12 noticed left bell's palsy.

3. Both the above doctors deposed that the injuries sustained by PW1 could be caused with an axe. They did not accept the suggestion that the injuries could be caused

in a fall on a stone. I do not find any reason to reject the prosecution case that PW1 sustained injuries when she was assaulted with an axe.

4. There is a well near the house of PW1 whose husband is PW3. PW4 who is their neighbour used to take water from the well using a motor. It came out in the evidence of PW1 that just before the incident the accused had taken bath near the well and he took away the lock and key of the pump house. It also came out in her evidence and the testimony of PW4 that the latter came back and switched on the motor. These facts are not disputed. The incident of assault happened immediately thereafter.

5. The prosecution examined PW1 and her daughter PW2 to prove the occurrence. From the pump house PW1 was going back to her house along with PW2 when the appellant came running towards her shouting that he would kill her, PW1 deposed. She immediately along with the child took refuge in her house. When she entered the house the appellant also came there. He kicked her, which caused

her to fall down. The appellant assaulted her repeatedly with the axe he had brought with him. This is the sum and substance of the evidence of PW1. This version has received full support in the testimony of PW2. In their cross-examination nothing was brought out to discredit them. There was not even a suggestion that the appellant did not take away the lock and key from the pump house just before the incident. It was suggested to PW1 that a scuffle took place between her and the appellant near the well, during which she fell down on a stone and sustained injuries, which was promptly denied by her. It is very difficult to accept the defence version. The nature of the injuries does not justify the suggestion.

6. The prosecution allegation is that there was previous enmity between the appellant and the family of the victim. The former was being tried in a sessions case. The allegation was that he attempted to murder PW3, husband of PW1. PW1 and the parents of PW3 were witnesses in that case. It came out in the evidence of PW1 that the

appellant wanted them to settle the matter and they refused to do so. It was revealed in the evidence of PW3 that a case had been registered against him on the allegation that he destroyed the rubber trees in the property of the appellant. It is also not in dispute that the appellant did not like PW4 taking water from the well using a motor. There cannot be any dispute there was enmity between the appellant and the family of PW1.

7. The evidence of PW1 and PW2 unerringly proves that the appellant attacked PW1 with an axe. The weapon used by the appellant and the injuries sustained by PW1 definitely indicate that the former had the intention to cause the death of the latter. The incident happened inside the house of PW1. The learned Sessions Judge rightly came to the conclusion that the appellant committed the offences under Sections 307 and 452 I.P.C. No interference is called for.

8. Learned defence counsel submits that leniency may be shown in the matter of sentence. For the offence

under Section 307 I.P.C. the appellant has been sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.25,000/-. In default of payment of fine he has to suffer simple imprisonment for six more months. For the offence under Section 452 I.P.C. he has been sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.25,000/-. In case he does not pay the fine, he has to undergo simple imprisonment for more six months. Having regard to the nature of the injuries and the history of the case and the fact that PW1 was assaulted in the presence of her nursery going daughter, it cannot be said that the sentence is harsh. No modification is necessary.

In the result, this appeal is dismissed. The order of conviction and the sentence imposed on the appellant are confirmed.

**K. ABRAHAM MATHEW
JUDGE**

shg/