IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 02ND DAY OF JUNE 2020 / 12TH JYAISHTA, 1942

CRL.A.No.160 OF 2004(A)

AGAINST THE JUDGMENT IN SC 18/1996 DATED 19-01-2004 OF ADDITIONAL SESSIONS COURT (ADHOC)-I, KOLLAM

APPELLANT/ACCUSED NO.2:

ESTHAPANOSE WILSON
KALLUMPURATHU VEEDU, ALSO KNOWN AS CHIRAYARUKIL
PUTHEN VEEDU,, KOTTAPPURAM, PERAYAM, KOLLAM DISTRICT.

BY ADVS.
SRI.K.L.NARASIMHAN
SRI.M.SHAHEED AHMAD

RESPONDENT/COMPLAINANT:

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

SR.PUBLIC PROSECUTOR SRI.SANTHOSH PETER

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02-06-2020, ALONG WITH CRL.A.137/2004(B), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 02ND DAY OF JUNE 2020 / 12TH JYAISHTA, 1942

CRL.A.No.137 OF 2004

AGAINST THE JUDGMENT IN SC 18/1996 DATED 19-01-2004 OF ADDITIONAL DISTRICT COURT (ADHOC)-I, KOLLAM

APPELLANTS/ACCUSED 1 AND 3:

1 KARLOSE JOSE,
THADATHIL PUTHEN VEEDU, KODIYATHU VEEDU,
KOTTAPPURAM, PERAYAM.

2 DENNIS @ ANTONY VIJAYAN
MANKONATHU CHARUVIL PUTHEN VEEDU, KOTTAPPURAM,
PERAYAM.

BY ADVS.
SRI.B.RAMAN PILLAI
SRI.ANIL K.MOHAMMED
SRI.R.ANIL
SRI.DELVIN JACOB MATHEWS
SRI.GEORGE PHILIP
SRI.RAJU RADHAKRISHNAN

RESPONDENT/COMPLAINANT:

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

SRI.SANTHOSH PETER, SR.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02.06.2020, ALONG WITH CRL.A.160/2004(A), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 2nd day of June 2020

These appeals are filed by the accused in Sessions Case No.18 of 1996 on the file of the Additional District and Sessions Judge (Adhoc) Court-I, Kollam. The above case is charge sheeted by the Circle Inspector of Police, Kundara against the accused alleging offence punishable under Sections 307 and 324 read with Section 34 IPC. The appellants in Crl.A.No.137 of 2004 are accused Nos.1 and 3. The appellant in Crl.A.No.160 of 2004 is the second accused in the above case. The fourth accused in the case was absconding and hence his case was split up by the trial court. Since these two appeals are filed by the accused in a same case I am disposing these appeals together.

2. The prosecution case is that on 21.2.1995, at 8.30 p.m., the four accused, out of their previous enmity and in pursuance of their common intention to cause the death of charge witness No.1, inflicted cut injuries on his head and hands using choppers. The further allegation is that, accused No.4 beat charge witnesses 1 and 2 using stick. Hence it is alleged that, the accused committed the offence.

3. To substantiate the case prosecution examined PW1 to PW9. Exts.P1 to P10 are the exhibits on the side of the prosecution. Exts.D1 to D3 are the exhibits on the side of the defence and MO I to MO IV are the material objects marked in this case.

4. On going through the evidence and the documents, the trial court found that, accused Nos.1 to 3 are guilty under Section 307 read with Section 34 IPC. They are acquitted under Section

324 read with Section 34 IPC. Accused Nos.1 to 3 are sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs.25,000/- each under Section 307 read with Section 34 IPC. In default of payment of fine, accused Nos.1 to 3 are directed to undergo simple imprisonment for one year each. If the fine is realised, the trial court directed to pay Rs.20,000/- of the fine realised from each of the accused to prosecution witness No.1 under Section 357(1) Cr.P.C. Aggrieved by the above conviction and sentence, these appeals are filed by accused Nos.1 to 3.

5. Heard Sri.Advocate R.Anil for accused Nos.1 and 3 who are the appellants in Crl.A.No.137 of 2004.

6. When Crl.Appeal No.160 of 2004 came up for consideration on 7.12.2017, this Court passed the following order :

> ***"No representation for the appellant. The matter is posted to 11.12.2017 for hearing.***

> ***If there is no representation on that day, the appeal will be disposed of as per the dictum laid down by the Apex Court in K.S.Panduranga v. State of Karnataka [(2013) 3 SCC 721].″***

Thereafter also, there was no representation for the appellant continuously. Today also there is no representation. Therefore, I request Advocate R.Anil who is appearing in Crl.Appeal No.137 of 2004 to argue on behalf of the appellant in Crl.Appeal No.160 of 2004 also. He is appointed as Amicus Curiae for the appellant in Crl.Appeal No.160 of 2004. Advocate R.Anil, consolidated his arguments in both appeals.

7. The learned counsel appearing for the appellants submitted that even if the entire allegations are accepted, no offence under Section 307 IPC is made out. He also submitted that the evidence of PW1 is not believable. The learned counsel submitted that the evidence of PW1 consists of contradictory versions. He also

submitted that, the evidence of the other witnesses, supporting prosecution witness No.1 is also not believable and they are contradictory. As a last submission, the counsel submitted that, at the maximum the offence made out in this case is only under Section 324 IPC. Therefore, he submitted that, they may not be sent to jail at this distance of time.

8. The learned Public Prosecutor submitted that, the evidence of prosecution witness No.1 is corroborated with the evidence of other eye witnesses and the medical evidence. According to the Public Prosecutor, there is nothing to interfere with the conviction and sentence imposed by the trial court.

9. I carefully perused the evidence and documents adduced by the prosecution in this case. The prosecution examined PW1 to PW9. PW1 is the injured. PW2 and PW4 are the alleged eye

witness. PW3 is the doctor through whom Ext.P2 wound certificate is marked. PW7 is the police officer who recorded Ext.P1 First Information Statement. PW8 and PW9 are the investigating officers. PW6 is the Village Officer through whom Ext.P3 is marked.

10. Ext.P1 is the First Information Statement of the injured. It was recorded at 9.30 P.M. from the hospital. Prosecution Witness No.1 was definite in Ext.P1 that, the accused Nos.1 to 3 were found in possession of dangerous weapons like choppers. PW1, 2 and 4 deposed before the court that the accused were having choppers in their hands at the time of occurrence and shortly thereafter also. PW1 and PW2 categorically stated that accused Nos.1 to 3 have inflicted cut injuries on the body of PW1 using choppers. PW3 is the doctor who examined the injured PW1. Ext.P2 is the wound certificate. PW3 categorically stated

that, all the injuries which were found on the body of PW1 could be caused by choppers. PW4 has seen the accused leaving the place of occurrence holding choppers in their hands. PW1 also deposed that he saw the accused throwing choppers into puncha water. The weapons were not recovered by the police even though search was conducted. In the light of the oral evidence of PW1, 2 and 4 along with the evidence of PW3, the doctor through whom Ext.P2 wound certificate is marked, it is clear that, the accused assaulted the injured with dangerous weapons and the injured sustained injuries. There is nothing to disbelieve the evidence of PW1, PW2 and PW4 regarding the incident as such. The FIR is registered promptly. The injured were taken to the hospital on 21.2.1995 at 9.35 p.m. The first version to the doctor says that three persons attacked him. Moreover, in the FI statement, the accused

identified all the accused by name. As stated above, the oral evidence of PW1, PW2 and PW4 along with the medical evidence of PW3 will prove that the accused inflicted injuries to prosecution witness No.1.

11. Then the question is what is the offence committed by the accused in this case. In Ext.P2 wound certificate, the injury sustained by prosecution witness No.1 is mentioned. PW3 deposed that the injured was admitted on 21.2.1995 and was discharged only on 19.4.1995. When cross examined by the accused, the doctor stated that, from Ext.P2 wound certificate he cannot say why the patient was in the hospital till 19.4.1995. He also deposed that, all the injuries were only muscle deep. He also stated that he cannot say any final opinion regarding the injury to any blood vessel. He categorically stated that, regarding the scalp injury also, he had no final

opinion. The doctor also deposed that, if the scalp injury was a deep injury in the brain, the patient will be definitely unconscious. The prosecution witness No.3 has no case that the injured was unconscious. The injuries noted by the doctor are incised wounds and lacerated wound. The incised wounds are on right wrist, left wrist and on left hand. Lacerated wound was on the scalp 5x2 point deep right parietal region. It is a well known fact that, lacerated wounds cannot be caused by sharp edged weapons. To attract the offence under Section 307 IPC, the prosecution has to prove that the accused acted with such intention or knowledge and under circumstances that, if he by that act cause death, he would be guilty of murder. It is also stated in Section 307 IPC that if hurt is caused to any person by such act, the accused is liable for enhancement of doubt. Therefore, the main ingredient to attract

Section 307 IPC is that, the action of the accused must be with such intention or knowledge and under circumstances that if he by that act cause death he would be guilty of murder.

12. The prosecution witness No.1 is the injured in this case. According to him, on 21.02.1995 at about 8.30 p.m., he and charge witness No.2 were going to attend a festival. At that time, he saw somebody murmuring and when he lit the torch, four people came up with abusive language. The admitted case is that, the accused stand around PW1 and used abusive language. The further case of the prosecution is that, PW1 lit the torch and then he identified the accused. When the torch was lit against the accused, the accused questioned the same. Thereafter, the incident happened. A reading of prosecution witness No.1 will show that, the accused has no intention or knowledge that their act will cause death of

prosecution witness No.1. It is an immediate reaction when the torch was lit by the prosecution witness No.1 against the accused. Therefore, from the facts and circumstances of the case, I think, an offence under Section 307 IPC will not attract in this case. But, here is a case where the offence under Section 324 IPC is clearly made out. The accused voluntarily caused hurt to the injured using a dangerous weapon, is clear from the evidence adduced by the prosecution. Therefore, from the facts and circumstances of the case, I think, no offence under Section 307 IPC is made out in this case. But the offence under Section 324 IPC is made out. Therefore, the conviction under Section 307 IPC against the accused is not sustainable and hence the same is set aside. The accused are convicted under Section 324 IPC.

13. Then, the question is, what is the sentence to be imposed on the accused. Admittedly,

the accused Nos.1 and 3 were arrested on 09.03.1995. They were released on bail on 13.03.1995. The second accused was arrested on 27.02.1995 and he was released on bail on 06.03.1995. Therefore, the accused underwent pre-trial detention in this case. Moreover, 25 years elapsed after the incident. Therefore, it will be sufficient, if the accused is sentenced with a fine and the injured person is compensated from the fine amount. The prosecution witness No.1 sustained serious injuries. In the facts and circumstances of the case, I think, a fine of Rs.25,000/- each will be enough as sentence. Hence, the above appeals are allowed in part, as follows:

(i) The conviction and sentence imposed on the appellants in Crl.Appeal Nos.137 of 2004 and 160 of 2004 under Section 307 r/w S.34 IPC is set aside;

(ii) The appellants in Crl.Appeal Nos. 137 of 2004 and 160 of 2004 are convicted under Section 324 IPC and they are directed to pay a fine of Rs.25,000/- each. In default of payment of fine, the accused are directed to undergo simple imprisonment for six months. If the fine amount is realised from the accused, a sum of Rs.20,000/- each collected from accused (Rs.20,000 x 3 = 60,000) should be paid to the prosecution witness No.1 as compensation under Section 357(1) Cr.PC.

With the above modifications, the appeals are allowed in part.

Sd/-

P.V.KUNHIKRISHNAN

JUDGE

csl & pkk