IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 08TH DAY OF DECEMBER 2020 / 17TH AGRAHAYANA, 1942

CRL.A.No.1140 OF 2004(C)

AGAINST THE JUDGMENT IN SC NO.112/2004 DATED 15-07-2004 ON THE FILE OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FAST TRACK COURT (ADHOC)-II, KOTTAYAM

APPELLANTS/ACCUSED NOS.2 AND 3:

1 MONCY, S/O. JOSEPH,
KAKKANAD KANDATHIL HOUSE, KALLUKADAVU, NATTAKAM KARA,, NATTAKAM VILLAGE, ALAPPUZHA.

2 ANEESH, S/O. ABRAHAM,
PATHIPARAMBIL HOUSE, MULANKUZHA KARA,, NATTAKAM VILLAGE.

BY ADV. SRI.C.S.SUNIL

RESPONDENT/COMPLAINANT:

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

R1 BY SRI. P.K.BABU, SR.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08.12.2020, ALONG WITH CRL.A.1217/2004(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 08TH DAY OF DECEMBER 2020 / 17TH AGRAHAYANA, 1942

CRL.A.No.1217 OF 2004

AGAINST THE JUDGMENT IN SC NO.112/2004 DATED 15-07-2004 ON THE FILE OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FAST TRACK COURT (ADHOC)-II, KOTTAYAM

APPELLANT/ACCUSED NO.1:

RENJITH
S/O NADESAN, KALLUKADAVIL HOUSE, NATTAKOM KARA,,
NATTAKOM VILLAGE.

BY ADVS.
SRI.SURESH BABU THOMAS
SRI.P.RAVINDRA BABU

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY S.I. OF POLICE, CHINGAVANAM,
REPRESENTED BY PUBLIC, PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

OTHER PRESENT:

R1 BY SRI.P.K.BABU, SR.PP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08.12.2020, ALONG WITH CRL.A.1140/2004(C), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

[CRL.A.1140/2004, CRL.A.1217/2004]

Dated this the 8th day of December 2020

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The appellants are the accused in S.C.No.112 of 2004 on the file of the Additional District and Sessions Judge, Fast Track Court (Adhoc)-II, Kottayam.

2. The appellant in Crl.Appeal No.1217 of 2004 is the 1st accused and the appellants in Crl.Appeal No.1140 of 2004 is accused Nos.2 and 3. [Hereinafter the parties are mentioned according to their rank in the lower court]

3. Since these appeals are filed by the accused in the same sessions case, I am disposing of these criminal appeals by a common judgment.

4. The above case is charge sheeted by the Sub Inspector of Chingavanam Police Station alleging offences punishable under Sections 341, 294(b), 323, 324, 308 and 427 r/w. Section 34 of

the Indian Penal Code.

5. The prosecution case in brief is like this:- While PW1 was proceeding to his house situated at Mulanguzha Bhagom at Nattakom in his car bearing registration No.KLA 5600 the accused persons with intent to commit culpable homicide of PW1 not amounting to murder, came near to the front of the car running on the M.C.Road on the southern side of Cement Kavala at Nattakom in Nattakom village. It is alleged that, accused obstructed the said car driven by PW1 so as to prevent him from going to his house and thereafter the first accused put a hollow brick on the windscreen of the car causing destruction thereto and subsequently the accused persons uttered obscene words to PW1 asking him to get off the car. It is further alleged that, when PW1 alighted from the car opening the door the first accused beat PW1 behind his right ear with a piece of wood and afterwards all the accused

persons delivered blows on the head, chest, back, arm and leg of PW1 with piece of wood and the second accused broke the rear window of the car by throwing stone at the rear window. It is alleged that, PW1 sustained a loss to the tune of Rs.5,000/- owing to the destruction of the windscreen and rear window of the car and hence, it is alleged that, the accused committed the said offences.

6. To substantiate the case, the prosecution examined PW1 to PW8. Exhibits P1 to P6 are the documents marked on the side of the prosecution. D1 to D3 are the documents marked on the side of the defence. One witness was also examined on the side of the defence as DW1, who is the doctor who examined the accused and issued Ext.D2 certificate. MO1 and MO2 are the material objects.

7. After going through the evidence and documents, the trial court found that, accused

Nos.1 to 3 are guilty under Section 341 IPC, the 1st accused is guilty under Section 324 IPC and accused Nos.1 and 2 are guilty under Section 427 IPC. The accused were found not guilty under Sections 294(b), 323 and 308 r/w. Section 34 IPC. Separate sentences were also imposed.

8. Aggrieved by the conviction and sentence, these criminal appeal are filed.

9. Heard the learned counsel for the appellants and the learned public prosecutor.

10. The learned counsel for the appellants submitted that, only the interested testimony of the injured witness is available in this case. There is no independent corroboration to their evidence. The counsel submitted that, even though the prosecution examined PW2 to PW4, they turned hostile to the prosecution. The counsel also submitted that, if we accept the allegation of PW1, the injury sustained to him is not sufficient. According to the counsel, the ocular

evidence is contrary to the medical evidence. The counsel submitted that, PW1 sustained only abrasions. According to PW1, the accused used wooden reaper and attacked PW1 mercilessly. If that is the case, PW1 ought to have sustained severe injuries. According to the counsel, that itself shows the falsity of the case of PW1. The counsel submitted that, there is exaggerations and embellishment to the evidence adduced by PW1 when compared to his statement in Ext.P1 F.I.statement. The counsel submitted that, the accused in this case are entitled the benefit of doubt.

11. The learned Public Prosecutor submitted that, there is nothing to disbelieve the evidence of PW1 in this case in the light of the medical evidence adduced by the prosecution. The public prosecutor submitted that, the trial court is perfectly justified in convicting the accused Nos.1 to 3 under Section 341 IPC, accused No.1

under Section 324 IPC and accused Nos.1 and 2 under Section 427 IPC.

12. The point for consideration in this case is whether the conviction and sentence imposed by the trial court is justified or not ?

13. There is evidence of PW1, the injured in this case. He narrated the incident in detail. He deposed that, the accused wrongfully restrained him and the 1st accused attacked him with a dangerous weapon. He also deposed that, accused Nos.1 and 2 committed mischief by damaging his car. The prosecution also adduced medical evidence to prove that, PW1 sustained injury. It is true that, the injuries sustained to PW1 are minor injuries. But from the evidence, it is clear that, the accused assaulted him with dangerous weapon and he sustained injuries. It is true that, there is some contradictions and omissions in the evidence of PW1. Of course, there is also some exaggerations and

embellishment in the evidence of PW1. But the fact that, the accused wrongfully restrained PW1 and attacked PW1, is proved through oral evidence coupled with the medical evidence. The trial court rightly acquitted the accused under Sections 294(b), 323 and 308 r/w. Section 34 IPC. According to me, there is nothing to interfere with the conviction imposed by the lower court on the appellants.

14. The next question is what is the sentence to be imposed. The alleged incident happened on 26.7.2003. Now about 17 years elapsed after the incident. PW1, the injured in this case sustained only abrasions. Considering the entire facts and circumstances of this case, I think, it will be injustice to send the appellants to jail at this distance of time. Therefore, according to me, a sentence of fine will be sufficient in the facts and circumstances of this case.

Therefore, this criminal appeal is allowed in

part with the following directions:

i) The conviction of accused Nos.1 to 3 under Section 341 IPC is confirmed. But the sentence imposed by the lower court is set aside. Accused Nos.1 to 3 are sentenced to pay a fine of Rs.500/- (Rupees Five hundred only) each under Section 341 r/w. Section 34 IPC. In default of payment of fine, the accused are directed to undergo simple imprisonment for seven days each;

ii) The conviction of the 1st accused under Section 324 IPC is confirmed. But the sentence imposed by the lower court is set aside. The 1st accused is sentenced to pay a fine of Rs.5,000/- (Rupees Five thousand only) under Section 324 r/w. 34 IPC. In default of payment of fine, the 1st accused is directed to undergo simple imprisonment for one month;

iii) The conviction of accused Nos.1 and 2 under Section 427 IPC is confirmed. But the sentence imposed by the lower court is set aside. Accused Nos.1 and 2 are sentenced to pay a fine of Rs.5,000/- (Rupees Five thousand only) each. In default of payment of fine, accused 1 and 2 are directed to undergo simple imprisonment for one month each.

iv) If the fine amount is realized, an amount of Rs.10,000/- (Rupees Ten thousand only) should be paid to PW1, the injured, as compensation under Section 357(1)Cr.P.C.

Sd/-

P.V.KUNHIKRISHNAN

pkk **JUDGE**