2025:KER:29636

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

CRL.A NO. 1616 OF 2006

AGAINST THE JUDGMENT DATED 21.07.2006 IN SC NO.78 OF 2003 OF THE SESIONS COURT,KALPETTA

APPELLANT/ACCUSED:

VISWANATHAN,
S/O BALAN,
AGED 49 YEARS,
KOTTUVEETIL VEEDU,
KONDAZHI VILLAGE,
MELEMURI, THRISSUR DISTRICT.

BY ADVS.
ANAND KALYANAKRISHNAN
C.DHEERAJ RAJAN(K/579/2013)

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA FOR SUB INSPECTOR OF POLICE,
MEENANGADI POLICE STATION (CRIME NO.126/95).

SMT.SHEEBA THOMAS, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01.04.2025, THE COURT ON 07.04.2025 DELIVERED THE FOLLOWING:

2025:KER:29636

C.S.SUDHA, J.

Criminal Appeal No.1616 of 2006

Dated this the 7th day of April 2025

J U D G M E N T

In this appeal filed under Section 374(2) Cr.P.C., the appellant, the sole accused, in S.C.No.78/2003 on the file of the Court of Session, Kalpetta, challenges the conviction entered and sentence passed against him for the offences punishable under Section 326 and 324 IPC.

2. The prosecution case as revealed from the charge sheet is as follows – the accused due to his enmity towards PW2, on 12/08/1995 at about 09:00 p.m. abused the latter by calling him by his caste him and then voluntarily caused grievous hurt to him by stabbing on his stomach with a knife. When PW1 attempted to intervene, the accused stabbed him also on his left hand causing an injury. Hence as per the final report, the accused

is alleged to have committed the offences punishable under Sections 324, 326 and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Act).

3. Crime No.126/1995 of Meenangadi police station, that is, Ext.P6 FIR was registered by PW7 Head Constable based on Ext.P1 FIS of PW1. The investigation was conducted by PW11, Dy.SP, Crime Detachment, Wayanad, who on completion of investigation, submitted the final report alleging the commission of the offences punishable under the aforementioned sections by the accused.

4. On appearance of the accused, the jurisdictional magistrate after complying with all the necessary formalities contemplated under Section 209 Cr.P.C., committed the case to the Court of Session, Kalpetta. The case was taken on file as S.C.No.78/2003. The trial court after hearing both sides framed a charge for the offences punishable under Section 326, 324 and Section 3(1)(x) of the Act, which was read over and explained to

the accused to which he pleaded not guilty.

5. On behalf of the prosecution, PW1 to PW15 were examined and Exts.P1 to P13 and M.O.1 shirt of PW2 was marked in support of the case. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence.

6. As the trial court did not find it a fit case to acquit the accused under Section 232 Cr.P.C., he was asked to enter on his defence and adduce evidence in support thereof. No oral or documentary evidence was adduced by the accused. Ext.D1 is the contradiction brought out in the statement of PW12.

7. On consideration of the oral and documentary evidence and after hearing both sides, the trial court did not find any evidence to find the accused guilty of the offence punishable under Section 3(1)(x) of the Act and hence acquitted him under Section 235(1) Cr.P.C. of the said offence. However, he has been

found guilty of the offences punishable under Sections 326 and 324 IPC. Hence he has been sentenced to rigorous imprisonment for two years and to a fine of ₹15,000/- and in default to rigorous imprisonment for six months for the offence punishable under Section 326 IPC. He has also been sentenced to rigorous imprisonment for six months for the offence punishable under Section 324 IPC. If the fine amount is realised, an amount of ₹12,000/- has been directed to be paid as compensation to PW2. The substantive sentences have been directed to run concurrently. Set off under Section 428 Cr.P.C. has been allowed. Aggrieved, the accused has come up in appeal.

8. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the accused/appellant by the trial court are sustainable or not.

9. Heard both sides.

10. It was submitted by the learned counsel for the appellant/accused that CW3, a material witness, has not been

examined. Ext. P3 issued by PW5 does not refer to the part of the body where the injury was caused to PW1. PW2 had no external bleeding. The weapon that is alleged to have been used by the accused for the crime was never seized and hence the trial court went wrong in convicting the accused, goes the argument.

11. *Per contra*, it was submitted by the learned public prosecutor that the materials on record are sufficient to find the appellant/accused guilty of the offences alleged against him and no interference into the impugned judgment is called for.

12. I make a brief reference to the oral and documentary evidence adduced by the prosecution in support of the case. PW1 is the son of the paternal uncle of PW2. PW2 deposed that on a day in August 1995 at about 09:00 p.m., while he was in his house, he heard an altercation from the paddy field situated in front of his house. He went to the place with a torch light from where he heard the noise. While PW2 proceeded to the paddy field, his mother and his two sisters namely, PW3 and PW12 also accompanied him. When he reached the place of

occurrence he saw CW3 his elder brother, Palani and the accused engaged in an altercation. When PW2 enquired the matter with the accused, the latter retorted as to who he was to question the accused and threatened that people of the Kuruma community (to which PW2 belongs) would not be allowed to live there. Pursuant to the same, there was an altercation between PW2 and the accused. The accused then took out a knife from his waist and stabbed PW2 on the left side of his chest. According to PW2, his mother and sisters who had accompanied him, had also seen the incident. He identified the accused from the torch light in his possession as well as light from the kerosene lamps in the possession of his mother and his sisters. PW2 deposed that because of the stab injury caused by the accused, part of his intestine had come out.

12.1. PW1 supports the prosecution case. He deposed that on the said day at about 09:00 p.m., hearing noises from the paddy field outside his home, he went out, at which time he saw CW3 Palani and the accused engaged in an altercation. He saw

the accused stabbing PW2 with a knife. According to PW1, he was also carrying a torch and from the light of the said torch, he was able to identify the accused. There was moon light also. PW1 further deposed that the accused took to his heels when he tried to restrain him. PW1 followed in pursuit and intercepted the accused at which time the latter stabbed him on the left hand and took to his heels.

12.2. PW3, the sister of PW2, supports the prosecution case. She deposed that on the said day, she as well as her mother and PW12, her sister, followed PW2 to the place of occurrence carrying kerosene lamps and a torch. According to PW3, when she reached the scene, she saw the intestine of PW2 protruding from the stab wound on his abdomen. The people who gathered there, bandaged the wound of PW2 and he was immediately taken to the hospital.

12.3. PW9 deposed that he is acquainted with PW1, PW2 and the accused. On hearing the commotion, he had also gone to the scene of occurrence. When he reached the scene of

occurrence, he saw that PW1 and PW2 wounded. PW9 in his cross examination deposed that when he reached the scene, neither PW2 nor Palani (CW3) were present. He also deposed that he heard that PW2 had been taken to the hospital on him sustaining an injury.

12.4. PW12, the sister of PW2, deposed that hearing a commotion outside their house, when she came out she saw PW2 injured. In the cross examination she deposed that when she reached the scene of occurrence, CW3 was not there. She denied having stated to the police that Palani (CW3) her husband was present when she reached the place of occurrence. The contradiction has been marked as Ext.D1.

12.5. PW4, Civil Surgeon, Taluk Head Quarters hospital, Sultanbatheri, deposed that on 12/08/1995 at 10:30 p.m. he had examined PW2 who was brought to the hospital with history of assault by one Viswan, who had stabbed him with a knife on his stomach. On examination he found part of the intestine of PW2 protruding from left side of the lower abdomen.

He referred PW2 to the Medical College Hospital, Calicut. Ext.P2 is the certificate issued by him. PW4 in his cross examination deposed that PW2 did not have any external bleeding. But internal bleeding was there. The size of the external injury seen on the abdomen has been noted in Ext.P2.

12.6. PW5, Civil Surgeon, Grade II, District Hospital, Mananthavady, deposed that on 13/08/1995 at 04:30 a.m. she examined PW1 who had come with a history of stabbing by one Viswanathan. On examination she found a lacerated wound. The certificate issued by her is Ext.P3. PW5 in the cross examination deposed that she had omitted to note the part of the body where the injury was seen, the age or size of the injury. She admitted that Ext.P4 is the intimation given from the hospital to the police.

12.7. PW6, Lecturer in Surgery, Medical College Hospital, Calicut, deposed that he had issued Ext.P5 discharge certificate in respect of PW2 who was admitted in the hospital on 13/08/1995 as an inpatient and discharged on 20/08/1995. PW2 had been subjected to emergency laparotomy. The injury noted in

Ext.P2 wound certificate reads - "*Part of intestine protruding from the lower abdomen on left side.*" In the cross examination, PW6 deposed that the injury seen on PW2 was not a superficial injury. On the other hand, it was a deep injury penetrating into the abdominal cavity.

13. It is true that the weapon that was used by the accused to cause injury to PW1 and PW2 was never recovered. However, recovery of weapon used in the commission of an offence is not a *sine qua non* to convict the accused [See **Mritunjoy Biswas v. Pranab alias Kuti Biswas, AIR 2013 SC 3334 ; Sanjeev Kumar Gupta v. State of U.P., (2015)11 SCC 69 ; Yogesh Singh v. Mahabeer Singh, (2017)11 SCC 195 ; Rakesh v. State of U.P., (2021)7 SCC 188 ; State through the Inspector of Police v. Laly alias Manikandan, AIR 2022 SC 5034**).

14. CW3 was certainly a material witness in the case. However, it is seen from the impugned judgment that the prosecution was unable to produce him as his whereabouts were

not known. Despite coercive steps being taken, his presence could not be secured. Therefore, efforts are seen made by the prosecution to secure his presence. But the attempt failed. Though CW3 could not been examined, the remaining evidence on record does support the prosecution case.

15. As pointed out by the trial court, PW5 the doctor was certainly irresponsible and callous in not recording the part of the body of PW1 where the injury was seen. Ext.P3 issued by her merely mentions that Manoharan, (PW1) had a lacerated wound. Though the exact part of the body where PW1 sustained the injury has not come out from the testimony of PW5 or Ext.P3, the remaining evidence does show that PW1 did sustain a stab injury on his left hand.

16. PW4 is the doctor who had examined PW2. Ext.P2 wound certificate issued by him says thus: *"Part of intestine protruding from the lower abdomen on left side."* The injury caused to PW2 is more serious than the injury caused to PW1. It is true that there was no external bleeding. But PW4

deposed that internal bleeding was there and that PW2 had been referred to the Medical College Hospital, Calicut for surgery. The fact that PW2 underwent a surgery is proved through the testimony of PW6 and Ext.P5 certificate. Ext.P5 shows that an emergency laparotomy was performed on 13/08/1995 on PW2. PW2 was admitted in the hospital on 13/08/1995 and discharged on 20/08/1995. PW6 also deposed that the stab injury was on the left iliac fossa of the size 4x4x4 cms. He also deposed that the injury was grievous in nature.

17. The testimony of PW1 to PW3, PW9 and PW12 coupled with the medical evidence establishes the prosecution case. The learned counsel for the appellant was unable to show as to why the testimony of the said witnesses should not be relied upon. Hence I find no reasons to disbelieve the said witnesses. That being so, the trial court was right in concluding on the guilt of the accused

18. Now coming to the sentence that has been imposed on the appellant/accused. It was submitted by the

learned counsel for the appellant/accused that the incident took place on 12/08/1995, which is 30 years back. Now the appellant/accused is more than 65 years old. Hence it was submitted without referring to the Section that could be applied, that the benefit of the Probation of Offenders Act, 1958 (the PO Act) may be extended to the appellant/accused. The appellant/accused has been found guilty for causing hurt and grievous hurt to PW1 and PW2 respectively, punishable under Sections 324 and 326 IPC. As per Section 3 of the PO Act, when any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him, the court may having regard to the circumstances of the case including the nature of the offence, and the character of the offender, if it is expedient to do so, then, notwithstanding

anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition. Apparently Section 3 of the PO Act is not attracted to the case on hand.

19. Section 4 of the PO Act deals with the power of the court to release certain offenders on probation of good conduct. The Section says that when any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of the opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct him to be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period,

not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour. Section 326 IPC for which the appellant/accused has been found guilty is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Therefore, Section 4 of the PO Act also cannot be invoked. Now coming to Section 6 of the PO Act. The Section says that when any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment, but not with imprisonment for life, the court shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

20. Section 6 of the PO Act lays down an injunction on the court not to impose a sentence on persons who are below

the age of 21 years for the offences punishable with imprisonment for life. The appellant/accused in this case was admittedly for above 21 years at the time of conviction and one of the offences for which he has been found guilty is punishable with imprisonment for life also. That being the position, none of the provisions of the PO Act can be invoked in this case.

21. The medical evidence on record shows that the injury caused to PW2 was quite grievous. Part of the intestine of PW2 had come out due to the accused stabbing him. Therefore I do not find any reason to reduce the sentence as the sentence imposed is commensurate with the crime committed by the appellant/accused.

In the result, the appeal *sans* merit is dismissed.

Interlocutory applications, if any pending, shall stand closed.

Sd/-
C.S.SUDHA
JUDGE

Jms