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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

CRL.A NO. 1650 OF 2006

AGAINST THE JUDGMENT DATED 10.08.2006 IN SC NO.238 OF 2005 ON THE FILE OF COURT OF SESSION, ERNAKULAM.

APPELLANT/ACCUSED NO.1 TO 3, 6 & 10:

1 SREENESH,
S/O LOHIDAKSHAN,
PALAKKATTUPARAMBIL VEETTIL,
PADIVATTOM KARA,
EDAPPALLY SOUTH VILLAGE.

2 VARGHESE @ KUNJUMON, S/O FRANCIS,
PALLITHARA VEETTIL,
ANJUMANA BHAGAM, PADIVATTOM KARA,
EDAPPALLY SOUTH VILLAGE.

3 DHANESH, S/O PARAMESWARAN,
NADUVIL VEETTIL, NEAR KATTUPARAMBIL,
DEVI TEMPLE, CHEMBUMUKKU KARA,
VAZHAKKALA VILLAGE.

4 ANISH JOSEPH @ANISH,
S/O ANTONY,
PUTHALATH VEETTIL, MANGATTU BHAGOM,
THUTHIYOOR DESOM, VAZHAKKALA VILLAGE.

5 AJAYAN, S/O PARAMESWARAN,
KOLLAMPARAMBIL VEETTIL,
ANAMUKKU BHAGOM,
THUTHIYOOR DESOM,
VAZHAKKALA VILLAGE.

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BY ADVS.
SRI.C.AJITH KUMAR (KALLESSERIL)
SRI.C.ANILKUMAR KALLESSERIL

RESPONDENT/COMPLAINANT:

STATE OF KERALA
(REP.BY THE INSPECTOR OF POLICE, ERNAKULAM TOWN SOUTH, POLICE STATION - CR.NO.21/2004 OF PANANGAD, POLICE STATION) REPRESENTED BY THE STATE, PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

SMT.SHEEBA THOMAS, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02.04.2025, ALONG WITH CRL.A.1653/2006, THE COURT ON 10.02.2025 DELIVERED THE FOLLOWING:

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

CRL.A NO. 1653 OF 2006

AGAINST THE JUDGMENT DATED 10.08.2006 IN SC NO.238 OF 2005 ON THE FILE OF THE COURT OF SESSION, ERNAKULAM.

APPELLANTS/ACCUSED:

1 **DHANESH**
NADUVIL VEETTIL, NEAR KATTUPARAMBIL,
DEVI TEMPLE, CHEMBUMUKKU KARA,
VAZHAKKALA VILLAGE.

2 **MAHESH, S/O SANKARA NARAYANAN,**
ERINGATHURUTHI VEEDU,
ANAMUKKU BHAGAM, THUTHIYOOR DESOM,
VAZHAKALA VILLAGE.

3 **MATHEW @ KUTTAN, S/O VARKEY**
KOTTAMPARAMBIL VEETTIL, ANAMUKKU BHAGAM,
THUTHIYOOR, VAZHAKKALA VILLAGE.

BY ADVS.
P.V.ANILKUMAR
LAVARAJ M.G.
C.R.VINOD KUMAR

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RESPONDENT/COMPLIANANT:

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

SRI.VIPIN NARAYAN, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02.04.2025, ALONG WITH CRL.A.1650/2006, THE COURT ON 10.04.2025 DELIVERED THE FOLLOWING:

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C.S.SUDHA, J.

Crl.Appeal Nos.1650 and 1653 of 2006

Dated this the 10th day of April 2025

J U D G M E N T

In these appeals filed under Section 374(2) Cr.P.C., the appellants who are accused no.1 to 6 and 10 (A1 to A6 and A10) in S.C.No.238/2005 on the file of the Court of Session, Ernakulam, challenge the conviction entered and sentence passed against them for the offences punishable under Sections 395, 398, 400, 402 and 450 IPC.

2. The prosecution case is that the accused persons, 15 in number, entered into a conspiracy to commit dacioty and in furtherance of the said intention, trespassed into Agasthya Ayurvedic Hospital, located near Vyttila junction,

armed with deadly weapons like sword, iron rod etc. threatened the doctors, the patients and the employees of the hospital and robbed gold ornaments of the employees and tape recorder, land phone and other equipment of the hospital. Hence as per the final report, the accused persons are alleged to have committed the offences punishable under Section 120B, 450, 395, 398, 400, 402, 354 and 412 IPC.

3. Crime No.271/2003, Panangad police station, that is, Ext.P18 FIR was registered by PW18, the then Sub Inspector based on Ext.P1 FIS of PW1. The initial investigation was conducted by PW19, Circle Inspector, Hill Palace police station. Thereafter, the investigation was taken over by PW20, Circle Inspector, Ernakulam Town South police station, who on completion of investigation submitted the final report before the jurisdictional magistrate alleging the commission of the offences punishable under the aforementioned sections by the accused persons.

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4. On appearance of the accused persons, 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, Ernakulam. The case was taken on file as S.C.No.238/2005. Thereafter the case was made over to the Additional Sessions Court-Adhoc-I, Ernakulam, for trial and disposal. When the accused persons appeared before the trial court, a charge under Sections 120B, 450, 395, 398, 400, 402, 354 and 412 IPC was framed, read over and explained to the accused persons to which they pleaded not guilty.

5. On behalf of the prosecution, PW1 to PW20 were examined and Exts.P1 to P24 and MO.1 to MO.10 were marked. After the close of the prosecution evidence, the accused persons were questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence of the prosecution. The accused persons denied all those circumstances and maintained their innocence.

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6. As the trial court did not find it a fit case to acquit the accused persons under Section 232 Cr.P.C., they were asked to enter on their defence and adduce evidence in support thereof. No oral or documentary evidence was adduced by the accused persons.

7. On consideration of the oral and documentary evidence and after hearing both sides, the trial court by the impugned judgment found no evidence to find accused no. 7, 8, 9, 11, 14 and 15 guilty of any of the offences charged against them and hence they have been acquitted under Section 235(1) Cr.P.C. A1, A2, A3, A4, A5, A6 and A10 were also found not guilty of the offences punishable under Section 120B, 354 and 412 IPC and hence they have been acquitted of the said offences under Section 235(1) Cr.P.C. However, A1 to A6 and A10 have been found guilty of the offences punishable under Section 395, 398, 400, 402 and 450 IPC and hence they have been convicted thereunder. A1 to A6 and A10 have been sentenced to rigorous

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imprisonment for seven years each and to a fine of ₹5,000/- each and in default to simple imprisonment for two months each for the offence under Section 398 IPC; rigorous imprisonment for five years each and to a fine of ₹5,000/- each and in default to simple imprisonment for two months each for the offence under Section 395 IPC; rigorous imprisonment for three years each and to a fine of ₹3,000/- each and in default to simple imprisonment for 45 days each for the offence under Section 400 IPC; rigorous imprisonment for two years each and to a fine of ₹2,000/- each and in default to simple imprisonment for one month each for the offence punishable under Section 402 IPC and rigorous imprisonment for two years each and to a fine of ₹2,000/- each and in default to simple imprisonment for one month each for the offence under Section 450 IPC. The substantive sentences of imprisonment have been directed to run concurrently. Set off under Section 428 Cr.P.C. has been allowed. Aggrieved, A1 to A6 and A10 have come up in appeal.

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8. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against appellants/A1 to A6 and A10 by the trial court are sustainable or not.

9. The first appellant/A1 was reported dead and his death certificate has also been produced. However, since the sentence imposed includes fine also, the appeal does not abate. None of the legal representatives of A1 has come on record. Heard the learned counsel for the third appellant in Crl.Appeal No.1653/2006, who is A5. There is no representation for the remaining appellants/A2 to A4, A6 and A10. Hence, relying on the decision in **Bani Singh v. State of U.P., AIR 1996 SC 2439**, I proceed to consider the appeals on merits after going through the entire records in the case.

10. I will briefly refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext.P1 FIS given by PW1 is seen recorded on 07/11/2003 at

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08:15 p.m. by PW18, the Sub Inspector, Panangad police station. In Ext.P1, PW1 states thus – she is conducting an Ayurvedic Hospital by name Agasthya situated in Toc -H road, Vytilla. On 07/11/2003, she went to see her mother at Thaikkoodam. By 05:15 p.m., her partner Edison (PW2) came home. She along with Edison returned to the hospital. When they crossed the gate of the hospital, she saw about 15 people coming on foot from the side of choice garden on the western side. Four to five persons in the front had long swords in their possession. Edison stopped the bike in the porch of the hospital. The aforesaid persons entered the compound of the hospital, seeing which, Edison called out that they are extortioners (പിടിച്ചുപറിക്കാരാണ്). Both of them ran inside the hospital and Edison closed the front door and latched it. The intruders then kicked the front door open. She ran into the room of the doctor and closed the door. The doctor was present inside the room. Edison ran upstairs. PW1 heard the intruders breaking the glass of the counter and pulling down the rolling

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shutter. They then kicked the door of the room in which she was in. Fearing that they may kick the door open, she herself opened the door. When the room was opened five persons barged into the room. One of them, who was in possession of a sword, held her at sword point and demanded that she give him all her valuables. She gave him all the gold ornaments worn by her, that is, MO.1 chain weighing 8 sovereigns and her finger rings weighing 1 ¼ sovereign. The doctor was also held at sword point and asked to hand over his valuables. The doctor gave them his watch. The intruders did not allow them to go outside the room. While she was standing near the door of the room, she saw three patients, that is, one Manoj from Thrissur and two others running out of the hospital. After some time, she heard one of the intruders calling out "*come on boys*". Hearing this, all the others followed him out of the hospital. When she came out of the room, she saw the employees of the hospital coming down from the first floor. When she went to the kitchen, her employee Maya (PW4) fell on

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her feet and started crying. When she enquired the matter, Maya told her that her gold chain weighing one sovereign and one bangle had been taken away by the intruders. Maya also told her that she had been assaulted by the intruders. The other employees, namely, Anu (PW3), Jisha (PW5), Lekha also told her that the intruders had taken their gold ornaments and watches. In addition, a Kingtel phone worth ₹1,300/-; a C.D. set and BPL tape recorder worth ₹3,000/-; a torch worth ₹900/-; a V-guard stabilizing iron box; one suite case etc, were taken away by the intruders. The valuables of the patients in the hospital were also forcibly taken away. The intruders destroyed all the items/articles in the office room. She was also told that the intruders had taken away the watch of the therapists, namely, Siju (PW12), Murali (PW6), Biju (PW8) and Rajesh. They had also taken the gold ring of Siju (PW9). PW1 immediately informed the police over the phone. The employees of the hospital have seen the intruders. She can identify the five persons who had barged into the room of

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the doctor. As all the intruders were armed and had threatened her with swords, she was unable to seek help or call the police during the incident. The incident was over by about 20 minutes. The incident took place at about 05:15 p.m. on 07/11/2003.

10.1. PW1 in the box more or less stands by Ext.P1 FIS. PW1 deposed that she had identified the robbers before the police. In the box she specifically identified A1, A2, A3, A6 and A10. She also deposed that the remaining accused persons in the dock were also involved in the incident. PW1 identified MO.1 to MO.4, that is the tape recorder, the video C.D player, the stabilizer and Kingtel land phone. PW1 also identified MO.5 gold chain of Lekha, her employee. According to PW1, she sustained loss of more than ₹1,00,000/-. In the cross examination PW1 deposed that only five persons entered the room of the doctor and that the remaining accused persons had not come inside the room. She has no prior acquaintance or prior enmity towards the accused persons.

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10.2. PW2, the partner of PW1 supports the prosecution case. He deposed that he has prior acquaintance with A1. He had seen all the accused persons on the date of the incident except A14 and A15. He had identified A2, A4, A5, A6 before the police. He had not directly seen the accused persons taking away the valuables of the employees of the hospital.

10.3. PW3, a helper in the hospital deposed that she and another employee Lekha were asked to handover their ornaments to the robbers. She handed over her gold chain weighing two sovereigns, a bangle weighing 1 ½ sovereigns and two gold finger rings. PW3 also deposed that Lekha's gold chain had also been taken away by the robbers. She was on the first floor at the time of the incident. PW3 was unable to identify any of the accused persons. She deposed that she had not seen the accused persons after the incident. She had never identified the accused persons before the police. When PW3 failed to identify the accused persons, at the request of the prosecutor, the witness

was declared hostile and the prosecutor was permitted to put questions as put in the cross examination. Going by the testimony of PW3, the incident did happen, but she was unable to identify any of the accused persons.

10.4. PW4 Mariyakkutty deposed that she is also known as Maya. According to her, she joined the hospital on 18/10/2003 as therapist. On 07/11/2003 at 05:30 p.m., when she was coming down the stairs, she heard a noise at the counter. She saw two to three persons inside the hospital with swords. She was frightened and hence moved to the kitchen. The intruders followed her. She stood behind the door. The intruders threatened her with swords. They snatched away her gold chain weighing 3/4 sovereign. PW4 also deposed that some of the robbers had outraged her modesty. The robbers caused quite a commotion in the hospital. After some time, they left. According to PW4, she had identified the person who had outraged her modesty before the police. She did not see A5 on the said day along with the

other accused persons. When PW4 was asked whether it was A5, whom she had identified before the police, answered that as three accused persons look alike, she is unable to identify A5.

10.5. PW5, another therapist of the hospital deposed that on the said day while she was cleaning a room upstairs, she heard the sound of glass breaking. When she came down the stairs, she saw PW2 and another employee Murali rushing upstairs. Two to three people armed with sword sticks came upstairs. There were two other employees with her, namely, Saju and Sajoy. The robbers threatened her and hence she handed over her gold chain and bangle to them. She had seen all the accused on the said day. PW5 further pointed out to A10 and said that he was present. She had not directly seen the accused persons taking any of the articles from the hospital. She also deposed that she has no prior acquaintance with the accused persons.

10.6. PW6, another therapist also supported the prosecution case. He identified A1. However, he was unable to

identify the other accused persons.

10.7. PW9, therapist cum receptionist at the hospital also supported the prosecution case. He identified A4 as the person who had attacked him. However, he was unable to identify the other accused persons. PW9 deposed that he had identified all the persons who had trespassed and robbed them before the police.

10.8. PW7, is the driver of the tempo van bearing registration no.KL-7/Z 2739. The prosecution case is that the accused persons had reached the hospital in a tempo van as well as in an autorickshaw. PW7 deposed that the daughter of PW16 is the owner of the tempo van. According to PW7, it was an open tempo van meant for carrying goods. One day at about 04:30 p.m., his van was hired by an autorickshaw driver accompanied by another man. When they reached near Netaji Road, about 10 to 12 persons boarded the tempo van. He heard the sound of metal clanging and being thrown inside the tempo van. The passengers

alighted near Toc-H School and returned after 15 minutes, at which time all of them were holding swords. According to PW7, the tempo van was later sold by the owner as it was involved in this crime. He identified Ext.P5 GVR book maintained by him and also Ext.P5(a), the endorsement made by him on 07/11/2003. PW7 was unable to identify any of the accused persons in the box. Therefore, at the request of the prosecutor, he was declared hostile and the prosecutor was permitted to put questions as put in the cross examination. PW7 admitted that the name of the person who had hired the tempo van has been recorded in Ext.P5 and the relevant entry is Ext.P5(a) as per which it was one Dhanesh (A3) who had hired his vehicle. He admitted that he had stated to the police that he is acquainted with A3 Dhanesh. PW7 also identified A3 in the dock. However, PW7 was unable to identify the remaining accused persons.

10.9. PW16 deposed that the aforesaid tempo van belonged to his daughter on whose behalf he was managing the

vehicle. During the relevant time, PW7 was the driver of the vehicle. PW16 also deposed that he had produced Ext.P5 GVR before the police. The police had seized Ext.P5 as per Ext.P16 mahazar and he is an attestor to the said mahazar.

10.10. PW8, Biju deposed that A1 had pledged MO.5 gold chain and availed a loan from his business concern. MO.5 was seized by the police as per Ext.P8 mahazar.

10.11. PW10, the Managing Partner of Maliyekkal Bankers deposed that he had produced MO.10 gold ingot before the police. PW10 deposed that he cannot identify any of the accused persons. He also deposed that he does not know whether the accused persons were in the police jeep when the police came to his concern for recovery of the gold ingot.

10.13. PW19, the then Sub Inspector, Hill Palace police station, who had taken over the investigation from 08/11/2003 deposed that he had arrested A3 and had got him identified by the witnesses. His investigation revealed that the

articles stolen from the hospital were concealed in the residence of A2 and hence on 09/11/2003 at 08:15 p.m. after preparing a search memo and sending the same to the Court he conducted a search in the house of A2 and recovered MO.2, MO.3 and MO.9 which were produced before the Court as per Ext.P13 search list.

10.14. PW20, Circle Inspector, Ernakulam Town South Police Station, deposed that on 19/11/2003 he had taken over the investigation and on 24/11/2003 had obtained police custody of A1, A2, A6 and A9. On the basis of the disclosure statement given by A1, he proceeded to the office of the Maliyekkal Bankers and seized MO.5 gold chain. The Manager of the said concern identified A1 and produced MO.5 gold chain weighing 1½ sovereigns which had been pledged by A1. MO.5 chain was seized as per Ext.P8 and Ext.P8(a) is the disclosure statement given by A1.

10.15. PW8, the Manager, Maliyekkal Bankers, Palarivattom deposed that they deal in gold loans and that the

details of the gold loan would be entered in a register. According to PW8 on 11/11/2003, A1 had come to the bank and pledged gold ornaments weighing 1½ sovereigns at which time he had issued Ext.P7 gold loan slip which was produced before PW20 when MO.5 gold chain was seized from his concern. PW8 also identified A1 in the box.

11. Based on the aforesaid evidence, the trial court found that the prosecution case as against A1 to A6 and A10 stands established. However, from the testimony of the prosecution witnesses to which I have referred to in detail, it is evident that A5 had not been identified by any of the witnesses. PW2 only deposed that he had identified A2, A4, A5 and A6 before the police. However, he was unable to identify A5 before the Court. The testimony of the prosecution witnesses will clearly show that the incident as deposed by them did infact take place. The only question is regarding the identity of the persons involved in the incident. The testimony of prosecution witnesses

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clearly show the involvement of A1 to A4, A6 and A10. Though the witnesses were extensively cross examined, nothing was brought out to discredit their testimony. Hence the finding of the trial court convicting A1 to A4, A6 and A10 suffers from no infirmity. However, A5 has not been identified by the witnesses and hence there is no evidence to show that he had also participated in the crime. Therefore, the finding of the trial court regarding the guilt of A5 does not appear to be correct and hence requires to be interfered with.

In the result, Crl.Appeal No.1650/2006 is dismissed and Crl.Appeal No.1653/2006 is partly allowed. The sentence of fine against A1 is confirmed. The conviction and sentence of A2 to A4, A6 and A10 is confirmed. The conviction and sentence of A5 by the trial court the offences punishable under Section 120B, 450, 395, 398, 400, 402, 354 and 412 IPC is set aside. A5 is acquitted under Section 235(1) Cr.P.C. He is set at liberty and his bail bond shall stand cancelled.

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Interlocutory applications, if any pending, shall stand closed.

Sd/-

C.S.SUDHA
JUDGE

Jms