2025:KER:29637

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. 1606 OF 2007

AGAINST THE JUDGMENT DATED 14.06.2007 IN SC NO.677 OF 2004 ON THE FILE OF THE ADDITIONAL SESSIONS JUDGE (AD HOC-I), KASARGOD.

APPELLANTS/ACCUSED:

1 ASHOKAN,
S/O KRISHNAN, MANIMOOLA,
BANDADUKKA VILLAGE.

2 K.MADHU,
S/O MADHAVAN
MANIMOOLA,
BANDADUKKA VILLAGE.

ADV.V.S. AFSAL KHAN, STATE BRIEF.

RESPONDENT/COMPLAINANT:

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

SMT.SHEEBA THOMAS, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02.04.2025, THE COURT ON 07.04.2025 DELIVERED THE FOLLOWING:

2025:KER:29637

C.S.SUDHA, J.

Criminal Appeal No.1606 of 2007

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 appellants, who are accused no.1 and 2 (A1 and A2) in S.C.No.677/2004 on the file of the Court of Session, Kasargod, challenge the conviction entered and sentence passed against them for the offence punishable under Section 324 read with Section 34 IPC.

2. The prosecution case is that the accused persons, two in number, who are Congress party sympathizers due to their political enmity towards PW6, a CPI(M) worker on 08/05/2002 at 17:00 hours while he was driving his auto bearing registration No.KL-14C-3708 with PW5 as passenger, attempted to murder him by stabbing him with a sword and causing injuries to him. Hence, as per the final report/charge sheet, the accused persons

are alleged to have committed the offence punishable under Section 307 read with Section 34 IPC.

3. Crime No.103/2002, Bedakam police station, that is, Ext.P4 FIR was registered by PW4, the Head Constable based on Ext.P3 FIS given by PW5, the occurrence witness. The investigation was conducted by PW9, C.I. Adhur, who on completion of the investigation submitted final report, alleging the commission of the offences punishable under the aforementioned Sections.

4. On appearance of the accused persons, the jurisdictional magistrate after complying with all the necessary formalities contemplated under Section 207 Cr.P.C., committed the case to the Court of Session, Kasargod. The case was taken on file as S.C.No.677/2004 and thereafter made over to the Additional Sessions Judge (Ad Hoc-I), Kasargod for trial and disposal. The trial court after hearing both sides, framed a charge under Section 307 read with Section 34 IPC, which was read over and explained to the accused persons to which they pleaded not

guilty.

5. On behalf of the prosecution, PW1 to PW9 were examined and Exts.P1 to P12 and M.O.1 to M.O.3 were marked in support of the case. 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.

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 did not find any evidence to find the accused persons guilty of the offence punishable under Section 307 IPC. However, the trial court

concluded that from the evidence on record the offence punishable under Section 324 read with Section 34 IPC was made out and hence convicted them thereunder and has sentenced them to rigorous imprisonment for a period of two years and to a fine of ₹10,000/- and in default to simple imprisonment for 4 months. The fine amount, if realised, has been directed to be given as compensation to PW6 under Section 357(1) Cr.P.C. Set off under Section 428 Cr.P.C. has been allowed. Aggrieved, the appellants/A1 and A2 have 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 appellants/A1 and A2 by the trial court are sustainable or not.

9. The first appellant/A1 was reported to have died on 12/06/2011. Therefore, the substantive sentence of imprisonment passed against him stands abated. However, since fine has also been imposed, the appeal does not abate. None of his legal representatives has come on record to prosecute the

appeal. There was no representation for the second appellant/A2 and hence as per order dated 18/11/2024, Adv. V.S.Afsal Khan was appointed as State Brief for both the appellants/A1 and A2.

10. Heard both sides.

11. It was submitted by the learned counsel for the appellants/A1 and A2 that the weapon used for the offence was not recovered. The wound certificate has been issued by a doctor who had never examined PW6. PW5 and PW7, the occurrence witnesses are interested witnesses as they belong to the same political party as that of PW6. Hence, they are not credible witnesses. The crime has been registered only due to the political rivalry between the parties. The prosecution has suppressed the best evidence, that is, the driver and the passengers of the bus from which the appellants/A1 and A2 are alleged to have got down to attack PW6 were never examined. Hence on these grounds, an acquittal of the appellants/A1 and A2 was canvassed.

12. *Per contra*, it was submitted by the learned Public Prosecutor that PW5 and PW7 are reliable witnesses and

that nothing has been brought out to discredit their testimony. The medical evidence also supports the prosecution case. Hence no ground for interference had been made out, argued the learned Public Prosecutor.

13. I briefly refer to the oral and documentary evidence adduced by the prosecution in support of the case. Ext.P3 FIS was given by PW5, the passenger in the autorickshaw driven by PW6. In the FIS, PW5 states that on 08/05/2002, he hired the autorickshaw of PW6, the injured, in this case for going to the house of his sister situated at Kakkachal. By about 05:00 p.m. they reached the place by name Kakkachal and stopped by the side of the road. After paying the hire charges, he was about to proceed, when a stage carrier bus came and stopped near the autorickshaw. A1 and A2 jumped out of the bus and A2 saying that PW6 should not be allowed to escape and that he must be killed, drew out a sword concealed under the shirt on his back and tried to stab PW6. While PW6 was trying to ward off the attack, A1 with another sword stabbed on the left leg above his knee.

PW6 fell down. Seeing the incident, the passengers in the bus and others cried out, at which time A1 and A2 took to their heels. PW6 was taken to the Carewell Hospital, Kasargod, where he was admitted. He gave Ext.P3 FIS when PW6 was undergoing operation in the hospital. In the FIS, it is also stated that A1 and A2 are sympathizers of the Congress party while PW6 had allegiance to the CPI(M). It is also stated that on an earlier occasion there was an attempt on the life of PW6 by the same accused persons and the reason for the attack was political rivalry.

13.1. PW6, the injured in this case deposed that the incident was on 08/05/2002 at about 05:00 p.m. at the place by name Kakkachal. He was driving his autorickshaw to Kakkachal with PW5 as his passenger. When he reached Kakkachal, the bus by name pournami came and stopped behind autorickshaw at which time, the accused persons jumped out of the bus and approached him. A2 attacked him first and thereafter A1. He sustained injuries on his left leg above the knee. PW6 also deposed that A1 had broken the windshield of his autorickshaw.

The accused persons attacked him due to political rivalry.

13.2. PW5, the occurrence witness and the passenger in the autorickshaw of PW6 when examined stood by his case case in Ext.P3 FIS.

13.3. PW6, the cleaner of the bus Pournami deposed that he was unable to recollect the entire incident. However, he deposed that when the bus slowed down at Kakkachal, the accused persons jumped out of the bus, ran over to the autorickshaw, drew swords which were concealed beneath their shirts and attacked PW6. PW7 admitted that he is acquainted with PW6 and hence he had accompanied the latter to the hospital. PW7 also admitted that he is a member of the CITU.

13.4. PW1, Orthopedic Surgeon, Carewell Hospital, Kasargod, deposed that on 08/05/2002 at 06:00 p.m., he had examined PW6 and issued Ext.P1 wound certificate. The injuries noted are -

"Small abrasions left deltoid area about 1x2 depth.

Small abrasions left elbow 1 c.m.

Small L.W. over.

Sciatic nerve cut.

Incised wound left thigh m/3rd 3x2x2"

13.5. PW1 deposed that injury no.3 was grievous, which could cause permanent disability to the leg. PW1 in the cross examination deposed that the patient was fully conscious during his examination. The alleged cause of injury was narrated to him by the injured himself. There were no injuries on the palm of the victim. PW1 deposed that no weapon had been shown to him by the police.

13.6. PW2, Medico Legal Expert at Highland Hospital, Mangalore deposed that on 08/05/2002 at 11:20 p.m., PW6 was admitted in his hospital. There was a deep penetrating (incised) injury over the posterior lateral aspect of his left thigh. Muscles and tendons were exposed. PW6 was unable to move the tendon and toes of his left leg. There was permanent disability. The patient was operated upon. Medial and lateral hamstrings were sutured end to end. He issued Ext.P2 certificate.

14. The argument advanced by the learned counsel for the appellants/accused that there is no medical evidence and that the wound certificate has been issued by a doctor, who was not examined PW6, does not appear correct. PW1 is the doctor who had initially examined him and Ext.P1 is the wound certificate issued by him. PW2 is the doctor of the hospital to which PW6 was later taken and Ext.P2 is the certificate issued by PW2, in which it has been recorded that the patient was treated by Dr.Jagannath Kamath of Highland hospital. In Ext.P2 wound certificate, the following has been recorded.

> " (1) Injury to left thigh. H/o bleeding +
>
> (2) No h/o head injury. No loss of consciousness.
>
> (3) Deep penetrating injury over posterior lateral aspect of left thigh junction of left 1/3 & medial 1/3. Muscles and tendons exposed. Inability to move the tendon of left leg and toes of left leg and sensation intact. Peripherial pulses felt.
>
> (4) Operation done- medial and lateral Hamstrings are sutured end to end. Hip spica given with hip

extension and knee in 45° flexion."

Exts.P1 and P2 have been proved through PW1 and PW2. PW1 also deposed that injury no.3 is a grievous one. The testimony of PW1 has not been discredited in any way. Therefore, the argument that there is no medical evidence to support the prosecution case is apparently incorrect.

15. A reading of the testimony of PW1 and PW2 show that the weapon alleged to have been used in the crime was shown to the witnesses and the same was marked as MO.1. Ext.P10 chemical report also shows that a dagger knife had been sent for chemical examination and the report says that the knife contained traces of blood. However, the impugned judgment does not refer to the weapon used for the offence. The appendix of the judgment does not refer to any weapon. Even assuming that the weapon of offence was not been seized or recovered or marked, is no ground to reject the entire prosecution case because 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).

16. PW5 and PW7, the occurrence witnesses also support the case. Merely because they also belong to the political party of PW6 is no ground to disbelieve them. Nothing was brought out to discredit their testimony. Therefore, I do not find any reason(s) to disbelieve them especially when the case spoken to by PW5 and PW6 is supported by the medical evidence also. The next argument that the driver and the passengers of the bus from which the appellants/A1 and A2 are alleged to have travelled to the place of occurrence has not been examined and therefore, the best evidence has been suppressed also cannot be accepted because PW7 was the cleaner of the bus. Evidence has to be weighed and not counted. The available evidence on record is sufficient to prove the prosecution case as nothing has been

brought out to discredit the same. In the light of the materials on record, the trial court was right in concluding that the offence under Section 307 IPC has not been made out and that the offence that is actually made out is only the offence punishable under Section 324 IPC. Therefore, I do not find any infirmity in the finding of the trial court calling for an interference by this Court.

17. Now coming to the sentence that has been imposed on the appellants/accused persons. As noticed earlier, the first appellant/A1 is no more and hence the substantive sentence of imprisonment as against A1 stands abated. The sentence of fine imposed on the first appellant/A1 is confirmed. The substantive sentence that has been imposed is for two years. The learned counsel for the second appellant/A2 submitted that the substantive sentence of imprisonment may be avoided and that the sentence may be confined to compensation or fine alone. In the light of the injury sustained by PW6, this submission of the learned counsel can not be accepted. As noticed earlier, the injury sustained by PW1 is a grievous one, which has caused permanent

disability to him as stated by PW1 and PW2. That being the position, I find that the substantive sentence of imprisonment cannot be modified or brought down.

In the result, the appeal is dismissed.

Interlocutory applications, if any pending, shall stand closed.

Sd/-
C.S.SUDHA
JUDGE

Jms