

(2024) 06 KL CK 0192

In the High Court Of Kerala

Case No : Criminal Appeal No. 735 Of 2007 & Criminal Revision Petition No.
2458 Of 2007

John

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 28-06-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 162
Indian Penal Code, 1860 — Section 34, 308, 324, 427
Probation of Offenders Act, 1958 — Section 4, 5, 5(2), 11(1)
Evidence Act, 1872 — Section 145

Citation : (2024) 06 KL CK 0192

Hon'ble Judges : Johnson John, J

Bench : Single Bench

Advocate : V.Rajendran, George Varghese Kizhakkambalam, Vipin Narayan

Final Decision : Partly Allowed

Judgement

Johnson John, J

1. The above appeal is filed by accused Nos. 1 and 2 in S.C. No. 439 of 2006 on the file of the Sessions Judge, Ernakulam challenging their conviction under Section 324 IPC and releasing them on probation of good conduct for a period of one year under Section 4 of the Probation of Offenders Act, 1958 ('the Act' for short). The Criminal Revision Petition is filed by the de facto complainant against the order releasing the accused on probation of good conduct, instead of awarding appropriate sentence for the offence committed.

2. The prosecution case is that on 24.02.2006, at about 9 a.m., while the de facto complainant and his workers were making preparations in connection with the construction of the first floor of the building owned by the brother of the de facto complainant near Pattimattom junction, the accused, who are residing adjacent to that property, raised objection against the construction of the first floor and thereafter, they attacked the de facto complainant with a sickle tied at

the top of a bamboo stick. It is alleged that the accused persons extended the sickle tied on a bamboo stick towards the neck of the de facto complainant and thereafter, pulled the same and when the de facto complainant prevented the attack with his hand, the sickle fell on his flank and he sustained injuries on his flank and in between the fingers and the accused are thereby, alleged to have committed the offences under Sections 308 and 427 r/w 34 IPC.

3. On appearance of the accused persons before the trial court and when the accused persons pleaded not guilty to the charge, PWs 1 to 4 were examined and Exhibits P1 to P6 and MO1 were marked from the side of the prosecution. From the side of the defence Exhibits D1 and D1(a) were marked.

4. After hearing both sides and considering the oral and documentary evidence on record, the learned Sessions Judge, as per the impugned judgment dated 24.01.2007, convicted the accused persons for the offence under Section 324 IPC and after hearing the accused persons and considering the facts and circumstance of the case, invoked Section 4 of the Act and the appellants are challenging their conviction under Section 324 IPC and the revision petitioner is challenging the release of the accused persons under Section 4 of the Act, instead of imposing appropriate sentence under Section 324 IPC.

5. Heard Sri. N. Rajesh, the learned counsel for the appellants, Smt. Sruthy N. Bhat, the learned counsel representing the learned counsel for the revision petitioner and Sri. Vipin Narayan, the learned Public Prosecutor and perused the records.

6. The points that arise for consideration are the following:

1. Whether the conviction of the accused persons for the offence under Section 324 IPC is legally sustainable.

2. Whether the order releasing the accused on probation of good conduct under Section 4 of the Act is legally sustainable?

Point No.1:

7. The learned counsel for the appellants argued that the prosecution has not examined any of the persons residing in the neighbourhood and the dress alleged to be worn by the de facto complainant at the time of occurrence was not seized and the evidence of PWs 1 and 2 regarding the occurrence is not at all reliable.

8. But, the learned Public Prosecutor and the counsel for the revision petitioner argued that PW1 is the injured victim and his evidence regarding the occurrence is supported by the evidence of PW2, the worker engaged for the construction of the building and there is also clear medical evidence and therefore, there is no reason to interfere with the conviction of the accused persons for the offence under Section 324 IPC.

9. The evidence of PW1 shows that he is a building contractor and that on 24.02.2006, he was engaged in the construction of the house of his brother near

Pattimattom junction. According to PW1, while he was standing on the sunshade and setting the alignment for the construction of the first floor, the accused persons raised objection by saying that they will not permit the construction of the first floor and thereafter, the accused persons extended a sickle tied on a bamboo stick towards his neck and pulled and then, he prevented the attack with his hand and the sickle fell on his flank and he sustained injuries on his flank and in between the fingers. PW1 would say that if the sickle had caused to hit on his neck, the same would have caused his death and that the accused persons also threatened to cause his death. PW1 stated that the accused persons committed the act by standing on the western courtyard of their house and that there is a distance of 2 feet from that place to the compound wall of the property of his brother.

10. The evidence of PW2 shows that he is a worker engaged by PW1 for the construction work and that on 24.02.2006, while PW1 was setting the alignment of the first floor, the second accused raised objection saying that he will not permit the construction above the ground floor and then the first accused, who is the mother of the second accused, extended a bamboo stick with a sickle tied on the top and when the witness moved back, the accused persons attempted to pull the sickle on the neck of PW1 and when PW1 prevented the attack with his hand, he sustained injuries on his flank and in between his fingers. PW2 also identified both the accused persons and MO1 sickle before the court.

11. In cross examination, PW2 categorically stated that the accused persons together extended the sickle attached to the bamboo stick and they together pulled the same. He would say that he has not stated to the police that the accused persons caused the sickle to touch his body and that what he told the police is that when he saw the accused persons extending the bamboo pole with the sickle, he moved back and the relevant portion in his statement to the police is marked as Exhibit D1. PW2 would say that he has not stated to the police that Manoj came near to Rajamma and stated that he is a Police Constable and that no one will be allowed to construct the top floor and in case anyone constructs the top floor, he will not be left alive and that he will play all the games which a Police Constable can play and the said portion in the statement of PW2 is marked as Exhibit D1(a).

12. The decision of the Honourable Supreme Court in Tahsildar Singh and another v. State of UP [AIR 1959 SC 1012] shows that the proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by Section 145 of the Indian Evidence Act and it would be doing violence to the language of the proviso, if the said statement be allowed to be used for the purpose of cross examining a witness within the meaning of the first part of Section 145 of the Indian Evidence Act. In the said decision, it was also held by the Honourable Supreme Court that the contradiction, under the Section, should be between what a witness asserted in the witness-box and what he stated before the police-

officer, and not between what he said he had stated before the police officer and what he actually made before him. Therefore, I find no reason to disagree with the finding of the trial court that Exhibits D1 and D1(a) are not sufficient to discredit the evidence of PWs 1 and 2 in chief examination regarding the occurrence.

13. PW3 is the doctor who examined PW1 in the Government Hospital on 24.02.2006 and issued Exhibit P2 wound certificate. The evidence of PW3 and Exhibit P2 shows that PW1 sustained the following injuries:

1. Lacerated injury about 6 cm x 2 cm. At the lower back right side.
2. Abrasion on the dorsal aspect of right thumb.

According to PW3, the alleged cause of injury was the attack with a sickle and his opinion is that it could be caused as alleged. PW3 also stated that the injuries noted in Exhibit P2 can be caused with a weapon like MO1. In cross examination, PW3 stated that the tip of MO1 is somewhat blunt and therefore, a lacerated wound is possible.

14. PW4 was the Sub Inspector of Kunnathunad Police Station who registered Exhibit P3 FIR on the basis of Exhibit P1, First Information Statement of PW1 on 24.02.2006. The scene mahazar prepared by PW4 is marked as Exhibit P4 and Exhibit P5 is the mahazar prepared for the recovery of MO1 sickle. The property list prepared by PW4 is marked as Exhibit P6. The evidence of PW4 shows that he completed the investigation and filed the final report. In cross examination, PW4 stated that he questioned the neighbours and since they have not witnessed the occurrence, their statement was not recorded. PW4 also admitted that he has not seized the pants and shirt worn by the victim at the time of occurrence. According to PW4, when he met the victim in the hospital, the victim was wearing another pants and shirt.

15. In this case, the evidence of PWs 1 and 2 regarding the occurrence is supported by the evidence of PW3 doctor and Exhibit P2 wound certificate. The alleged occurrence was at 9 a.m., on 24.02.2006 and Exhibit P3 FIR is seen registered on the same day at 1.30 p.m. and therefore, it can be seen that there is a prompt FIR. It is well settled that FIR is the most immediate and first version of the incident and has great value in ascertaining the truth and that a prompt FIR diminishes the chances of an informant being tutored and the false implication of the accused.

16. The learned counsel for the appellants argued that the explanation of PW4 for not seizing the pants and shirt worn by PW1 at the time of occurrence is not at all satisfactory. But, it is well settled that investigation is not the solitary area for judicial scrutiny in a criminal trial and if the court is convinced that the testimony of a witness to the occurrence is true, the court is free to act on it, as held by the Honourable Supreme Court in State of Karnataka v. K. Yarappa Reddy [(1999) 8 scc 715].

17. In *Balu Sudam Khalde and another v. State of Maharashtra* [2023 Livelaw (SC) 279], the Honourable Supreme Court held that the following legal principles are required to be kept in mind, while appreciating the evidence of an injured witness:

“(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

18. On a careful re-appreciation of the entire evidence, I find no reason to disagree with the finding of the trial court that the evidence of PWs 1 and 2 regarding the occurrence is reliable and trustworthy and that their evidence is supported by the evidence of PW3 doctor and Exhibit P2 wound certificate and that the prosecution has succeeded in establishing that the accused persons committed the offence under Section 324 IPC and therefore, I find no reason to interfere with the conviction entered on the appellants for the offence under Section 324 IPC and hence, I find that the appeal is liable to be dismissed.

Point No.2:

19. The reasons stated in the impugned judgment for invoking Section 4 of the Act in favour of the accused are that the accused are first offenders and that the accused and the complainant are neighbours and that the dispute between the neighbours in connection with the construction of the house resulted in the incident and that it is necessary to avoid the sentence to foster amity among the neighbours. It is well settled that beneficial provision of the Act have to be extended liberally in all suitable cases taking into consideration of the nature of the offence, age, character and antecedents of the convict and the circumstances under which the crime was committed. It can be seen that the trial court has considered all these aspects before invoking Section 4 of the Act and releasing the accused persons on probation of good conduct for a period of one year.

Therefore, I find that there is no illegality in the order invoking Section 4 of the Act in favour of the accused persons. However, it is brought to my notice that the trial court has not exercised its power under Section 5 of the Act to compensate the victim. Section 11(1) of the Act, empowers the appellate and revisional court to exercise the power under Section 5 of the Act and therefore, I find merit in the argument of the learned counsel for the revision petitioner that considering the facts and circumstances, this Court can exercise the power under Section 5 of the Act to award reasonable compensation to PW1.

20. Therefore, considering the facts and circumstances of the case, and the nature of the injury sustained by PW1, the accused/appellants are directed under Section 5 of the Act to pay a compensation of Rs.25,000 (Rupees Twenty Five Thousand only) each to PW1 within two months from today. It is made clear that if in case the accused/appellants fails to pay the compensation, the same can be recovered as provided under Section 5(2) of the Act.

The Crl. Revision petition is allowed in part as above and the appeal is dismissed. Interlocutory applications, if any pending, shall stand closed.