

(2014) 10 KL CK 0329

In the High Court Of Kerala

Case No : Criminal Appeal No. 1076 of 2004 (C)

Muhammed Fazal

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 326, 498A

Citation : (2014) 10 KL CK 0329

Hon'ble Judges : A. Hariprasad, J

Bench : Single Bench

Advocate : S. Nair, Advocate for the Appellant; K.K. Rajeev, Public Prosecutor, Advocate for the Respondent

Judgement

A. Hariprasad, J.—Conviction of the appellant by the learned Additional Sessions Judge (Adhoc No. II), Manjeri under Sections 307 and 326 I.P.C. in Sessions Case No. 333/2000 and sentence awarded thereunder are impugned in this appeal.

2. Heard the learned counsel for the appellant and the learned Public Prosecutor.

3. Facts in brief, are as follows:

Appellant is the husband of PW 1. Husband and wife were estranged at the time of incident. PW 3 is the uncle of PW 1. PW 1, along with PW 3 and her father Ali, on the fateful day attended the court to settle the marital dispute persisted between the appellant and PW 1 in a Lok Adalath held on 16-09-1999. Unfortunately, it could not be settled. Thereafter, PW 1, her father and PW 3 came to the bus stand, Manjeri at about 15.45 hours. It is alleged that the appellant wrongfully restrained PW 1 and attempted to cause her death by striking her with a chopper and voluntarily caused grievous hurt to CW 2 Ali, (father-in-law of the appellant) by cutting him with the same chopper.

4. Trial court examined nine witnesses and marked ten documents on the side of the prosecution. Material objects are MO's 1 to 5. There was no defence

evidence.

5. Court below mainly relied on the testimony of PW's 1, 3 and 5 and also on the medical evidence borne out from the records. PW 1 is one of the injured witnesses, who is the wife of the appellant. It is her case that after the attempt of settlement failed, they returned to bus stand in the evening. It is also come out in evidence that she had filed a case against the appellant under Section 498A I.P.C. before the Chief Judicial Magistrate Court, Manjeri. While PW 1, with her father and uncle, was waiting in the bus stand, the appellant appeared from behind and pulled her by dress. Thereafter, he yelled that she would be done to death and he cut her with MO 1 chopper. She sustained injuries on the neck behind her left ear. Second cut injury was warded off by her father Ali (CW 2). In that process, he sustained serious injuries at the hands of the appellant. Thereafter, the injured witnesses were removed to District Hospital, Manjeri. From there, CW 2 Ali was taken to Medical College Hospital, Kozhikode. Ext. P1 is the First Information Statement. The dress worn by the PW 1 drenched in blood are MO's 2 to 4. Towel which was in the possession of CW 2 Ali is MO 5. PW 1 asserted that the appellant was bent upon killing her on account of matrimonial disputes. It is come out in evidence that the appellant alleged infidelity to PW 1. He was having suspicion that PW 1 was having an extra marital amorous relationship with one Abdul Kadher. Even though he was cited as a witness, he was not examined. PW 3 is the other injured witness. He also deposed that the accused emerged from behind PW 1 screaming that he would kill her and he inflicted a cut with MO 1 chopper. CW 2 Ali tried to prevent any further attack on PW 1 and he sustained grave injuries. These two witnesses were cross examined at length. In spite of searching cross examination, their credibility could not be impeached. Ext. P5 is the wound certificate relating to PW 1. It shows lacerated wound scalp, right mastoid region 3 c.m. behind right pinna 5 x 3 x 1 c.m. and incised wounds 2 x 1 x 1.5 c.m. at the back of medial side of right scapula at lower end, piercing into muscular layer. She was admitted and treated as an indoor patient till 22-09-1999.

6. Ext. P6 is the wound certificate pertaining to Ali (CW 2). He sustained lacerated wound left wrist 6 x 2 x 1.5 c.m. exposing carpal bones cutting extensor retinaculum. He was referred to Medical College Hospital, Kozhikode for expert management. The wound certificate itself revealed fracture of radial styloid. These documents were proved through PW 5. PW 5 deposed that the injuries seen as per Exts. P5 and P6 could be inflicted by using a weapon like MO 1. Though he was cross examined, his evidence could not be impeached.

7. Learned counsel for the appellant contended that non examination of Abdul Kadher, who is an eye witness to the incident, weakens the prosecution case. The same contention was raised before the trial court also. It can be seen that in the cross examination of PW's 2 and 3, specific suggestion has been raised that PW 1 was having an extra marital relationship with said Abdul Kadher. Even though there is no reason stated for his non examination, it can be inferred that he must

not have been prepared to face disturbing questions in respect of the contention raised by the defence. Whatever that be, the testimony of PW's 1 and 3 remains credible and I find no reason to discard the prosecution case only on the fact that the said witness was not examined.

8. CW 2 Ali, father of PW 1 was also not examined. The prosecution has an explanation that he could not be examined due to his ill health. On a reconsideration of the entire oral evidence of PW's 1, 3 and 5 and that of PW 9, I am of the view that the court below correctly appreciated the evidence and found that the appellant has committed the offences under Sections 307 and 326 I.P.C. The appellant attempted to hack PW 1 and her father from behind with a dangerous weapon like MO 1 chopper. On an evaluation of the evidence, it can be found that the act was done by the appellant with an intention or knowledge that under the said circumstances, he would have caused death of the victim. Therefore, the offence under Section 307 I.P.C. is clearly attracted in this case. Ext. P6 wound certificate and the oral evidence of PW 5 would show that CW 2 Ali sustained grave injuries, including a fracture. He was admitted in a hospital for long duration. Therefore, the offence under Section 326 I.P.C. is also established against the appellant. Hence, I find no reason to interfere with the conviction awarded by the court below on the appellant.

9. Learned counsel for the appellant submitted that the court below imposed a very harsh punishment. The incident was in the year 1999. Admittedly, the parties were at loggerheads on account of other litigations. The court below imposed a sentence of rigorous imprisonment for a period of five years under Section 307 I.P.C. and further sentence to rigorous imprisonment for a period of four years under Section 326 I.P.C. Considering the entire facts, I reduce the sentence in the following manner.

In the result, the appeal is partly allowed. Convictions of the appellant under Sections 307 and 326 I.P.C. are confirmed. The appellant shall undergo rigorous imprisonment for a period of three years under Section 307 I.P.C. and further sentence of rigorous imprisonment for a period three years under Section 326 I.P.C. Both these sentences shall run concurrently. The fine imposed by the court below is sustained. The court below shall take steps to enforce the sentence forthwith.

All pending interlocutory applications will stand dismissed.