IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 22ND DAY OF MAY 2026 / 1ST JYAISHTA, 1948

CRL.REV.PET NO. 187 OF 2016

CRIME NO.692/2005 OF ERNAKULAM CENTRAL POLICE STATION, ERNAKULAM

AGAINST THE JUDGMENT DATED 01.01.2016 IN Crl.A NO.272 OF 2015 OF ADDITIONAL DISTRICT COURT-IV, ERNAKULAM ARISING OUT OF THE JUDGMENT DATED 02.06.2015 IN CC NO.961 OF 2005 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, ERNAKULAM

REVISION PETITIONER/APPELLANT/ACCUSED NO.1:

BABU AVARACHAN
AGED 52 YEARS
S/O.AVARACHAN, KUDILIL HOUSE, PAZHOOR, PIRAVOM.

BY ADV SRI.C.P.UDAYABHANU

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE S.I. OF POLICE (CRIME NO.692/05), ERNAKULAM CENTRAL POLICE STATION, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

SRI U. JAYAKRISHNAN, P. P.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20.05.2026, THE COURT ON 22.05.2026 DELIVERED THE FOLLOWING:

2026:KER:35293

"C.R."

ORDER

This criminal revision petition has been filed under Sections 397 and 401 of the Code of Criminal Procedure, challenging the judgment of conviction and the order of sentence passed against the revision petitioner for the offence punishable under Section 324 of Indian Penal Code by the Judicial First Class Magistrate Court-II, Ernakulam, as per judgment dated 02.06.2015 in C.C. No.961/2005, which was confirmed in appeal by the Additional Sessions Court-IV, Ernakulam, by judgment dated 01.01.2016 in criminal appeal No.272/2015. The revision petitioner is the first accused in the said case and the remaining accused were acquitted by the trial court.

2. The prosecution case can be epitomized as follows;

The accused, three in number, were employees in a private bus bearing registration No.KL-7-AU-9176. While so, on 01.08.2015, at 6.00 p.m., the first accused drove the bus through Sahodharan Ayyappan Road at overspeed, which was questioned by CW1 (PW1), a Police Constable attached to Ambalamedu Police Station. Infuriated by the same, all the accused, in furtherance of their common intention, showered abuses against PW1 and the first accused, stabbed PW1 on the neck with a screwdriver and voluntarily caused hurt to PW1. The second and third accused also assaulted

PW1 by fisting and beating him repeatedly. According to the prosecution, at the relevant time, PW1 was in the discharge of his official duties, and the accused acted with an intention to deter him from discharging the said duty. Thus, the accused is alleged to have committed the offences punishable under Sections 294(b) and 332 r/w 34 of the IPC.

3. In order to establish the guilt of the accused, the prosecution had examined six witnesses as PW1 to PW6 and the documents produced from the side of the prosecution were marked Exts.P1 to P8. A contradiction in the statement of the prosecution witness brought out during cross-examination was marked as Ext. D1. The alleged weapon of offence was exhibited, identified and marked as MO1. After the closure of the prosecution evidence, the accused were questioned under Section 313 of the Cr.P.C., during which they denied all the incriminating circumstances brought out against them in evidence. Thereafter, the accused were called upon to enter upon their defence and adduce evidence, if any, in support thereof. However, no evidence whatsoever was adduced on the side of the defence.

4. After hearing both sides, the learned Magistrate found all the accused not guilty of the offence punishable under Sections 294(b) and 332 r/w 34 IPC and acquitted them on the said charges. However, the first

accused was found guilty of the offence punishable under Section 324 of IPC and convicted him, although no specific charge was framed under the said section. The first accused was sentenced to undergo simple imprisonment of two years and to pay a fine of Rs.6,000/- for the offence for which he was convicted.

5. Aggrieved by the judgment of conviction and the order of sentence passed by the trial court, the first accused preferred Criminal Appeal No.272/2015 before the Sessions Court, Ernakulam. The learned Additional Sessions Judge, who heard the appeal, confirmed the conviction and sentence imposed on the first accused by the trial court. Aggrieved thereby, the first accused has preferred the present revision petition.

6. Heard Sri. C. P. Udayabhanu, the learned counsel appearing for the revision petitioner, and Sri. G. Sudheer, the learned Public Prosecutor. The records were also perused.

7. This is a case in which a police officer was allegedly attacked by the accused while he was engaged in the discharge of his official duties. There is a specific allegation that in the said unfortunate incident, the said police officer had sustained injuries. It was on the strength of the FIS given by the injured police officer that the law was set in motion in this case by

registering Ext.P4 FIR. When the injured police officer was examined as PW1, he had portrayed the entire matters transacted in this case vividly. It was mainly by placing reliance on his testimony that the trial court recorded a conviction against the first accused, who is the revision petitioner herein.

8. From a perusal of the impugned judgment, it can be gathered that on examination before the court, PW1 had given evidence in a convincing manner and his evidence is free from omissions and contradictions of even a minor nature. Moreover, the trial court as well as the appellate court had correctly found that PW1, being an injured witness, his evidence has to be accorded a special status in law. Undisputedly, now by a series of judicial pronouncements, it is well settled that the evidence of an injured witness alone can form the basis of a conviction in a criminal case, if the same is convincing and reliable to inspire the confidence of the court. Likewise, it is well settled that an injured witness comes with a built-in guarantee of his presence at the crime scene and normally, he will not falsely implicate an innocent person so as to afford an opportunity to the actual assailant to escape from punishment.

9. Notably, the medical records marked in this case reveal that immediately after the incident, PW1 sought medical aid at General Hospital,

Ernakulam, with an alleged history of assault and on examination, a scratch mark was noted on the right side of the neck and a swelling at the right lower arm of PW1. The doctor who clinically examined PW1 and issued the wound certificate deposed that he had examined PW1 on the date of the incident and issued Ext.P2 wound certificate. The doctor categorically stated that the injuries noted by him could have been caused in the manner alleged by the prosecution. Therefore, a conjoint reading of the wound certificate and the oral evidence of the doctor who issued Ext.P2 wound certificate reveals that injury corresponding to the overt acts attributed to the first accused was noted in the medical examination. More significantly, there is nothing to show that PW1 has any sort of animosity or ill-will towards the first accused to implicate him in a case of this nature. Hence, there is no reason to disbelieve the evidence of PW1 regarding the occurrence.

10. However, the learned trial judge as well as the appellate court concurrently found that the ingredients to attract an offence punishable under Sections 294(b) and 332 of the IPC were not made out in the present case. The accused was acquitted for the offence under Section 332 IPC mainly for the reason that there was no evidence to establish that at the time of the alleged occurrence PW1, the injured, was engaged in the discharge of his official duty.

11. However, both the said courts consistently and unequivocally found that the act allegedly committed by the accused would attract an offence punishable under Section 324 of the IPC. It is undisputed that such finding was recorded by the trial court as well as by the appellate court notwithstanding the absence of a specific charge under Section 324 of the IPC.

12. Now the pertinent question that arises for consideration is whether the trial court, as affirmed by the appellate court, was justified in convicting the accused for an offence under Section 324 of the IPC in the absence of a specific charge framed under the said provision. It is trite law that, in a given case, a criminal court may convict an accused for an offence for which no specific charge had been framed, provided that the proved offence is a minor offence of the offence charged, as contemplated in Section 222 of the Cr.P.C.

13. At this juncture, it is apposite to refer to Section 222 of the Cr.P.C. which reads as follows;

> *"When offence proved included in offence charged*
>
> *(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.*

> *(2) When a person is charged with an offence and facts are proved which reduce it to minor offence, he may be convicted of the minor offence, although he is not charged with it.*
>
> *(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.*
>
> *(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.* "

14. A plain reading of the said provision would indicate that there is no legal impediment in convicting an accused for an offence which is proved against him, notwithstanding the absence of a specific charge, provided the offence ultimately proved is only a minor offence of the principal offence for which the accused was charged.

15. Though the expression 'minor offence' has not been specifically defined either under the IPC or under the Cr.P.C., judicial pronouncements have consistently held that an offence can be treated as a minor offence only when (1) the punishment prescribed for the said offence is lesser than that prescribed for major offence and (2) the ingredients constituting the minor offence are inherently included in, and form part of, the major offence charged. In other words, the two offences must be cognate in nature, and the major offence should encompass all the essential ingredients of the alleged minor offence.

16. In **Shamnsaheb M. Multtani v. State of Karnataka**, [(2001)2 SCC 577], the Hon'ble Supreme Court framed a question as to what is meant by "a minor offence" for the purposes of Section 222 of the Cr.P.C. and answered it as follows:

> *"Although the said expression is not defined in the code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-a-vis the other offence."*

Therefore, a conviction for a minor offence in the absence of a specific charge would be legally sustainable only if the ingredients necessary to constitute the minor offence are already embedded in the offence charged. In the case at hand, the accused was charged for the offence punishable under Section 332 of IPC. To attract Section 332 of IPC, the prosecution must establish that the accused voluntarily caused hurt to a public servant while such public servant was acting in the discharge of his official duty, or with intent to deter or prevent him from discharging such duty. However, Section 324 IPC contains an additional and distinct ingredient, namely, that the hurt should have been caused by means of a dangerous weapon or means. The use of a dangerous weapon or means is therefore an essential

constituent of the offence under Section 324 of the IPC. Consequently, the ingredients necessary to constitute an offence under Section 324 of the IPC are not inherently included in the ingredients of Section 332 of the IPC.

17. More importantly, both Sections 324 and 332 of the IPC prescribe the same maximum punishment, namely, imprisonment of either description for a term which may extend to three years or with fine or with both. Therefore, the offence punishable under Section 324 IPC cannot be regarded as a minor offence of Section 332 of the IPC within the meaning of Section 222 of the Cr.P.C. Consequently, in the absence of a specific charge under Section 324 of the IPC, the judgment of conviction and the order of sentence passed by the trial court, which was affirmed in appeal, for the said offence cannot be legally sustained.

18. However, the act of the accused would undoubtedly constitute an offence punishable under Section 323 of the IPC for voluntarily causing simple hurt. The essential ingredients of the offence under Section 323 IPC are inherently subsumed within the offence punishable under Section 332 IPC. Since Section 323 IPC prescribes a lesser punishment in comparison to Section 332 IPC, the offence under Section 323 IPC may legitimately be regarded as a minor offence included within the graver offence under

Section 332 IPC. Consequently, even if the prosecution fails to establish all the ingredients necessary to attract Section 332 IPC, the accused may still be convicted under Section 323 IPC although there is no specific charge for the offence punishable under Section 323 IPC, provided the evidence on record satisfactorily proves the commission of simple hurt.

19. Considering all these aspects, this Court is of the view that the conviction of the revision petitioner for the offence punishable under Section 324 IPC is unsustainable in the absence of a specific charge. However, the materials on record clearly establish the commission of an offence punishable under Section 323 IPC, and the revision petitioner is liable to be convicted thereunder.

20. In the result, the Criminal Revision Petition is allowed in part. The conviction and sentence imposed on the revision petitioner for the offence punishable under Section 324 IPC are hereby set aside. Instead, the revision petitioner is found guilty and convicted for the offence punishable under Section 323 IPC.

21. Accordingly, the revision petitioner is sentenced to undergo imprisonment till the rising of the Court and to pay a fine of Rs.1,000/- (Rupees One Thousand only). In default of payment of fine, he shall

undergo simple imprisonment for a period of seven days.

Subject to the above alteration of finding and modification of sentence, the criminal revision petition stands allowed in part.

Sd/-
JOBIN SEBASTIAN
JUDGE

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