



2024/KER/20991

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 19TH DAY OF MARCH 2024/29TH PHALGUNA, 1945

CRL.A.NO.859 OF 2018

CRIME NO.827/2016 OF KOTTARAKKARA POLICE STATION, KOLLAM
AGAINST THE JUDGMENT DATED 08.01.2018 IN S.C.NO.39 OF
2016 OF SPECIAL COURT FOR SC/ST (PREVENTION OF ATROCITIES)
ACT CASES, KOTTARAKKARA

APPELLANT/ACCUSED:

RAJACHANDRASEKHARAN @ BABU
C.NO.2345, CENTRAL PRISON,
TRIVANDRUM-12.

BY ADV.SMT.DEEPA M.M, STATE BRIEF

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY DGP, HIGH COURT OF KERALA.

BY SMT.AMBIKA DEVI.S, SPECIAL PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR HEARING ON
13.03.2024, THE COURT ON 19.03.2024 DELIVERED THE
FOLLOWING:

**'C.R.'****J U D G M E N T****Dr. A.K. Jayasankaran Nambiar, J.**

This appeal is preferred against the judgment dated 08.01.2018 of the Special Court for SC/ST (POA) Act Cases, Kottarakkara, whereby, the appellant was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo imprisonment for three months under Section 326 of the Indian Penal Code [IPC] read with Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [SC/ST (PoA) Act, 1989]. He was further convicted and sentenced to undergo imprisonment for life and a fine of Rs.10,000/- and in default of payment of fine, to undergo imprisonment for three months under Section 307 IPC read with Section 3(2)(v) of the SC/ST (PoA) Act. He was also sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.500/- and in default of payment of fine to undergo imprisonment for another seven days under Section 341 IPC read with Section 3(2)(va) of the SC/ST (PoA) Act. The court however found the appellant not guilty of the offence under Section 3(1)(s) of SC/ST (PoA) Act and he was acquitted of the same under Section 235(1) of the Code of Criminal Procedure [Cr.P.C.].



2. The prosecution case was that the appellant, who belongs to the Hindu Viswakarma community assaulted his wife [*de facto* complainant], who belongs to the Hindu Kuruva community, owing to her having filed complaints against him alleging assaults on her, and on account of her family members questioning him about his conduct. It was alleged that on 05.04.2016 at about 3 p.m., the appellant, with the intention of insulting her by referring to her caste, as also with the intention of murdering her, forced the *de facto* complainant to sit on a plastic chair in the hall room of her house in Vettikkavala Grama Panchayat, abused her in filthy language and inflicted wounds on her right shoulder using a chopper [koduval]. When she cried out aloud, he again assaulted her with a chopper which, when evaded, fell on the left arm rest of the plastic chair on which she was sitting and as a result the chair broke. With a view to save her life, the *de facto* complainant then ran out of the house crying out aloud, consequent to which, the further attempts of the appellant to assault her were thwarted through the intervention of CW2, the father of the *de facto* complainant. The appellant thereafter chased the *de facto* complainant as she ran away from the house and when she reached in front of the property of one Omana, the appellant wrongfully restrained her by catching hold of her night dress and inflicted wounds on her head using the chopper. When the *de facto* complainant resisted the blows using her hands, she sustained injuries on her hands, back side of the body and also a fracture of her skull



bone. It was the case of the Prosecution therefore that the appellant had committed the offences punishable under Sections 341, 326 and 307 of the IPC read with Sections 3(1)(s) and 3(2)(v) of the SC/ST (PoA) Act, 1989.

3. The investigation of the case commenced when the *de facto* complainant was undergoing treatment at the Medical College Hospital, Thiruvananthapuram. CW20, the Additional Sub Inspector of Police, Kottarakkara Police Station recorded her F.I. Statement, and on the basis of that, CW21, the Sub Inspector of Police, Kottarakkara Police Station registered Crime No.827/2016 under Sections 294A, 341, 326 and 307 IPC. Thereafter, CW22, Inspector of Police, Kottarakkara took over the investigation, prepared the scene mahazar, recorded the arrest of the appellant who had been handed over to the Police by CW4 and others, recorded the confession of the appellant and effected recovery of the weapon based on the said confession. He also filed a report adding Sections 3(1)(s) and 3(2)(v) of SC/ST (PoA) Act. The investigation was thereafter continued and completed by CW23, the Dy.SP, Kottarakkara, who filed the final report before the court which took the case on file as S.C.No.39/2016 under Sections 341, 326 and 307 IPC and Section 3(1)(s) and 3(2)(v) of the SC/ST (PoA) Act. Charges were thereafter framed, read over and explained to the appellant, to which, he pleaded not guilty. In the trial that followed, PWs.1 to 21 were examined on the side of the Prosecution and Exts.P1 to P26 marked. MOs.1 to 7 were also identified.



The remaining witnesses were given up by the Special Public Prosecutor. After completion of the Prosecution evidence, the appellant was examined under Section 313 Cr.P.C. when he denied the Prosecution evidence and pleaded ignorance of the incident. The court thereafter heard the appellant and the Prosecution under Section 232 Cr.P.C. and on finding that there was no ground for acquitting the appellant under the said provision, called upon the appellant to enter on his defence and adduce evidence if any. No oral evidence was adduced on behalf of the appellant. During cross-examination of PW4, a relevant portion of his statement under Section 161 of Cr.P.C. was marked as Ext.D1. Thereafter, the Prosecution and the appellant were heard in detail and it was consequent thereto that the trial court found against the appellant, convicted him and passed the sentence as aforesaid.

4. In the appeal before us, Adv.Smt.Deepa M.M. appeared on behalf of the appellant and Smt.Ambika Devi S. appeared on behalf of the Prosecution.

5. The submissions made on behalf of the appellant by the learned counsel Smt.Deepa M.M., briefly stated, are as follows:

- The Police Officer, who investigated the crime was not of the rank of Deputy Superintendent of Police or a higher rank in Officer, and hence, the mandatory statutory requirements under Section 9 of the



SC/ST (PoA) Act read with Rule 7 of the SC/ST (PoA) Rules were not complied with. The entire investigation and trial, therefore, stood vitiated as against the appellant. Reliance is placed on the decisions reported in **State of M.P. v. Chunnilal - [2009 (2) KLT 335 (SC)]** and **Shatrughna Shraavan Kamble v. State of Maharashtra and Others - [2003 KHC 2159]**.

- There was a delay in lodging the F.I.R inasmuch as the incident took place on 05.04.2016 and the F.I. Statement was taken only on 06.04.2016.
- Although the appellant was charged under Section 307 IPC read with Section 3(2)(v) of the SC/ST (PoA) Act, the evidence in the form of Ext.P11 certificate and Ext.P12 case record issued by the doctors PWs.18 and 19 were not produced along with the final report, and hence, the appellant was kept in the dark as regards the nature of injury that could have justified the charge under Section 307 IPC read with Section 3(2)(v) of the SC/ST (PoA) Act.
- The Prosecution failed to establish that the injury caused to the victim was sufficient in the ordinary course of nature to cause death. Moreover, none of the doctors who were examined deposed to that effect in their oral testimony before the court. There was also a discrepancy as regards the weapon that was used for the purposes of inflicting the injury and ambiguity with regard to where the recovery was effected from. The said factors clearly pointed to the absence of sufficient evidence to sustain a charge under Section 307 of the IPC.

6. Per contra, the submissions made by Smt.Ambika Devi, the learned Special Public Prosecutor, briefly stated, are as follows:



- The contention of the accused regarding non-compliance with the procedural requirements under Section 9 of the SC/ST (PoA) Act read with Rule 7 of the SC/ST (PoA) Rules is legally unsustainable since barely two days after the incident and during the course of its investigation, the charge under Section 3(2)(v) of the SC/ST (PoA) Act was incorporated through Ext.P20 report filed by the Investigation Officer and immediately thereafter on 08.04.2016, the Dy.S.P. took charge of the investigation, and it was the said Officer who filed the final report on 17.07.2016. There was therefore no violation of the statutory provisions under the SC/ST (PoA) Act and Rules.
- The evidence of PWs.1 to 4 clearly reveal that the injuries on PW1 were all caused by the appellant. The evidence of PW5 and PW6 reveal that the injuries were inflicted by the appellant using MO1 chopper on which human blood stains were also found. There is therefore ample evidence both in the form of eye witness testimony of PWs.2 to 4 as also corroborative evidence of PW5 and PW6 that would substantiate the case of the Prosecution that the appellant had committed the offences under Sections 326, 307 and 341 of the IPC read with Section 3(2)(v) and Section 3(2)(va) of the SC/ST (PoA) Act. Reliance is placed on the decisions reported in **State of Rajasthan v. Teja Ram and Others - [1999 KHC 1081]**, **Gura Singh v. State of Rajasthan - [2001 KHC 1019]**, **State of Bihar and Others v. Anil Kumar and Others - [2017 KHC 6397]** and **State of Madhya Pradesh v. Kanha Alias Omprakash - [(2019) 3 SCC 605]**.

7. On a consideration of the rival submissions and after a careful



appreciation of the evidence on record and on perusing the impugned judgment of the trial court, we are of the view that the conviction and sentence imposed on the appellant by the trial court does not call for any interference and requires to be sustained.

8. At the outset, we may deal with the argument of the learned counsel for the appellant regarding the alleged breach of the statutory requirement under the SC/ST (PoA) Act and Rules regarding the manner in which an investigation of an offence under the said Statute must be conducted. It is her contention that inasmuch as the investigation was not done by an officer of the rank of Dy.S.P. till the stage of filing the final report, the entire trial as against the appellant stood vitiated. In order to appreciate the said contention, we deem it apposite to notice the statutory provisions in this regard:

9. Section 9 of the SC/ST (PoA) Act and Rule 7 of the SC/ST (PoA)

Rules read as under:

Section 9 of the SC/ST (PoA) Act

9. Conferment of powers

(1) Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do,-

(a) for the prevention of and for coping with any offence under this Act; or

(b) for any case or class or group of cases under this Act, in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as



the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rules, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).

Rule 7 of the SC/ST (PoA) Rules

7. Investigating officer

(1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director-General of Police/ Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority, submit the report to the Superintendent of Police, who in turn shall immediately forward the report to the Director General of Police or Commissioner of Police of the State Government, and the officer-in-charge of the concerned police station shall file the charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days (the period is inclusive of investigation and filing of charge-sheet).

(2A) The delay, if any, in investigation or filing of charge-sheet in accordance with sub-rule (2) shall be explained in writing by the investigating officer.

(3) The Secretary, Home Department and the Secretary, Scheduled Castes and Scheduled Tribes Development Department (the name of the Department may vary from State to State) of the State Government or Union territory Administration, Director of Prosecution, the officer-in-charge of Prosecution and the Director General of Police or the Commissioner of Police in-charge of the concerned State or Union territory shall review by the end of every quarter the position of all investigations done by the investigating officer.

10. In the instant case, the investigation was initially commenced by treating it as relating to offences under Sections 326 and 307 of the IPC. However, on 07.04.2016, barely two days after the incident, the additional



charge under Sections 3(2)(v) of the SC/ST (PoA) Act was also incorporated through Ext.P20 report. On the very next day, the Dy.S.P. took charge of the investigation and it was he who filed the final report on 17.07.2016. We therefore find that factually there was no breach of the statutory provisions since, on the day following the incorporation of the charge under Section 3(2)(v) of the SC/ST (PoA) Act, the further investigation was in the manner prescribed under the Statute.

11. Even otherwise, we are of the view that the mandate of Rule 7 of the SC/ST (PoA) Rules applies only in cases where the offence alleged to be committed is one defined under the SC/ST (PoA) Act itself. In cases where Section 3(2)(v) of the SC/ST (PoA) Act is invoked there is no offence under the SC/ST (PoA) Act that is alleged to be committed. Rather, the provisions of Section 3(2)(v) of the SC/ST (PoA) Act itself make it clear that its application is only under circumstances where specified offences under the IPC are committed, with the knowledge that the person against whom it is committed is a member of the Scheduled Caste or a Scheduled Tribe. As noticed in **Narain Trivedi v. State of U.P. - [2009 KHC 5489 (All)]** and **Jhhau v. State - [2019 KHC 3633 (All)]**, Section 3(2)(v) of the SC/ST (PoA) Act does not constitute any substantive offence and an accused cannot be convicted and sentenced for an offence under Section 3(2)(v) simplicitor. Section 3(2)(v) is only an enabling provision for awarding sentence for the commission of particular types of offences under the IPC.



We therefore find ourselves unable to accept the contention of the learned counsel for the appellant that the investigation and trial of the case against the appellant stood vitiated for non-compliance with the provisions of the SC/ST (PoA) Act and Rules. We also do not find any delay in the lodging of the FIR, as alleged by the learned counsel for the appellant. The incident occurred on 05.04.2016 and the F.I. Statement was taken from PW1, who was in hospital, on 06.04.2016. The FIR was registered shortly thereafter.

12. Coming to the incident itself, we find from the testimony of PW1, the victim, that the appellant, who is her husband, had gone to the house where she was sleeping, caught her hand, stating that he needed to talk to her and dragged her to a hall where she was forcibly made to sit on a plastic chair. He then attempted to inflict wounds on her neck using a chopper, which, when evaded, caused injuries on her shoulder and her back. According to her, if she hadn't evaded the first blow, it would have landed on her neck and she would have died. The second blow, that was again evaded by her, landed on the armrest of the chair and broke the chair. On hearing the sound, her father PW2 came to the scene and tried to restrain the appellant. Seizing the said opportunity, PW1 ran out of the house and cried out aloud for help. The appellant then followed her, and when they reached in front of Omana's property, he caught hold of her and inflicted further wounds on her head. Despite her attempts to evade those blows, injuries were caused on her head, hand and fingers. She further



deposed that when her mother, father and other persons in the locality reached the scene, the appellant ran away and it was her father and mother who took her to the Government Hospital, Kottarakkara and thereafter to the Medical College Hospital, Thiruvananthapuram. She also identified MO1 chopper that was used by the appellant to inflict wounds on her, MO2 night dress that she was wearing that day and MO3 blood soaked clothes that was used by her father to bandage the wounds inflicted on her. This version of the incident as deposed to by PW1, the victim, is corroborated by the ocular testimonies of PW2 Gopalan, the father of the victim, PW3 Suma, the sister-in-law of the victim and PW4 Sethunath, the husband of the ward member, who was an eye witness to the incident after PW1 reached in front of the house of Omana. The testimonies of the said witnesses have not been shaken in cross-examination and although minor contradictions/omissions were sought to be highlighted from their previous statements, we do not find the said contradictions/omissions to be so material as to cast doubts on the credibility of the said witnesses. We also find that the evidence of PW5 Rajesh, a 12 year old boy, and PW6 Shanmughan from whose house MO1 chopper was taken, conclusively prove that the appellant had taken the chopper from PW6 under the guise of needing it for cutting tender coconuts, and proceeded to the house of PW1 with the same in an agitated state. The evidence of PW19 Dr.Naveen, who examined PW1 at the Medical College Hospital, Thiruvananthapuram indicates that she had suffered multiple wounds in the scalp and in the left



elbow and that a CT Scan had indicated a fracture in the occipital bone. The wounds in the scalp were lacerated wounds of 4 cm and 3 cm respectively and there were similar wounds of 5 cm and 3 cm on the right hand and left elbow respectively. Ext.P12 case record that was marked through PW19 shows that PW1 was admitted with wounds allegedly caused by an assault. Ext.P13 treatment certificate also indicates that the wounds, including the fracture of the occipital skull bone, were the result of the alleged assault reported by PW1. As the aforesaid evidence has not been demolished in cross-examination or through any evidence adduced on behalf of the appellant, we find that the inflicting of the wounds by the appellant using MO1 chopper stands proved through the testimonies of the victim herself and the eye witness testimonies of PWs.2 to 4 and the testimonies of PW5, PW6 and PW19. In this connection, we might also add that we do not find any substance in the argument of the learned counsel for the appellant that Ext.P12 case record and Ext.P13 certificate were not produced along with the final report and hence the appellant was kept in the dark with regard to the injuries that could sustain charges under Sections 326 and 307 of the IPC. Ext.P12 case record and Ext.P13 certificate were produced by the prosecution after getting permission from the trial judge as seen from the order dated 21.8.2017 in Crl.MP.No.706/2017 in S.C. No.39/2016 that is available among the trial court records. There was thus no prejudice caused to the appellant through the belated production of the above documents, more so when the appellant



had an opportunity to cross-examine the doctor PW19 through whom they were marked.

13. As regards the motive for the crime, it has come out through the evidence of PW1 that she belongs to the Hindu Kuruva community, which is a Scheduled Caste, and that the appellant belongs to a forward community and that she had even earlier filed complaints against the appellant for assaulting her. On that occasion, the appellant was allegedly upset with the fact that his daughter had been given in marriage to a person belonging to the Schedule Caste and it was therefore that he had assaulted her. It was in retaliation to the complaint filed by her that he had come to her house on 05.04.2016 and assaulted her.

14. The charges against the appellant are for the offences committed under Sections 326 and 307 of the IPC. Section 326 IPC deals with voluntarily causing grievous hurt by dangerous weapons or means. 'Grievous hurt' is defined under Section 320 IPC to include fracture or dislocation of a bone or tooth and any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits. The offence under Section 326 is established when a person voluntarily causes grievous hurt by means *inter alia* of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death. On



the facts proved in the instant case through the oral testimonies of PWs.1 to 4, PW5, PW6 and PW19, we have no reason to dislodge the finding of the trial court regarding the charge under Section 326 being established against the appellant. As regards the charge under Section 307 IPC, although there was a feeble attempt by the learned counsel for the appellant to contend that the injuries inflicted on PW1 were not such as, under normal circumstances, would cause the death of a person, we find that it is not necessary that a bodily injury sufficient, under normal circumstances, to cause death should have been inflicted in order to attract the offence under Section 307 of the IPC. As observed in **State of Maharashtra v. Balram Bama Patil - [(1983) 2 SCC 28]**, although the nature of injury actually caused may often given considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. Section 307 IPC makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under the section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. An attempt, in order to be criminal, need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in



execution thereof. In **State of M.P. v. Saleem - [(2005) 5 SCC 554]**, it was held that under Section 307, the court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. It follows therefore that an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt. It has further been expounded in **Jage Ram v. State of Haryana - [(2015) 11 SCC 366]** that the intention of the accused in relation to the commission of an offence under Section 307 IPC, has to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given etc. Applying the said tests to the facts in the instant case, we find from the evidence on record that the appellant had arrived at the house of PW1 armed with MO1 chopper and forcibly dragged PW1 from the bedroom to the hall and made her sit on a plastic chair. He then attempted to strike blows on her neck which, when evaded, caused injuries on her shoulder and back as also broke the arm of the plastic chair on which she was made to sit. The intensity of those blows, especially the second one, can be gauged from the fact that, when it landed on the armrest of the plastic chair, the said armrest broke. That apart, it has also come out from the oral testimony of the eye witness to the incident that the appellant was using obscene and abusive language against PW1 while inflicting the blows



on her. The blows were also directed to the head and neck of PW1 and also caused a fracture to the occipital skull bone of PW1. Taken together with the fact that the assault, as narrated above, was using MO1 chopper, which is an inherently dangerous weapon, we are convinced that the offence under Section 307 IPC was established in the instant case.

15. After the amendment of Section 3(2)(v) of the SC/ST (PoA) Act, which came into force on 26.01.2016, the said offence is attracted when the accused not being a member of a Scheduled Caste or Scheduled Tribe committed an offence under the IPC punishable for a term of ten years or more against a member of a Scheduled Caste or Scheduled Tribe knowing that such person belongs to such 'community'. Section 8 of the SC/ST (PoA) Act which deals with presumption as to offences was also amended and inserted clause (c), which provides that "if the accused was acquainted with the victim/family, the court shall presume that the accused was aware of the caste or tribal identity of the victim, unless proved otherwise". The victim herein is none other than the wife of the appellant. The offences under Sections 326 and 307 IPC are both punishable with imprisonment for a term of ten years or more. Hence, the presumption under Section 8 could very well be drawn. We, therefore, see no reason to interfere with the finding of the trial court that convicted and sentenced the appellant under Sections 326 and 307 IPC read with Section 3(2)(v) of the SC/ST (PoA) Act. We also see no reason to interfere with the conviction and sentence of the



appellant under Section 341 IPC read with Section 3(2)(va) of the SC/ST (PoA) Act.

In the result, this Criminal Appeal fails and is accordingly dismissed by upholding the impugned judgment of the trial court.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

prp/