

**IN THE COURT OF ADDL SESSIONS JUDGE-IV,
KOTTAYAM DIVISION.**

Present: Smt. Elsamma Joseph. P, Addl. Sessions Judge-IV.
Kottayam.

Monday the 21st day of August, 2023.
30th day of Shravan, 1945.

CRIMINAL APPEAL No. 123/2022.

(C.C. No. 1069/2020 of JFCM-I, Changanacherry)

Appellant / Accused :-

Mathew Joseph @ Santhosh, S/o Joseph
(C.No. 305 of of High Security Prison, Viyyur,
Thrissur) Chakkittaparambil Veedu,
Chirackal Bhagom, Champakkara Kara,
Karukachal Village.

By Adv. T. Rajan.

Respondent:-

State of Kerala represented by the Sub Inspector of
Police, Karukachal .

By Adv. U. Girija, Addl. Public Prosecutor, Kottayam.

Charge : U/s. 323, 324, 506(ii) and 332 of IPC.

Finding : Guilty.

Sentence / Order of Lower Court:-

The accused is found not guilty for the offence punishable u/s. 506(ii) of IPC and he is acquitted for the said offence u/s. 248(1) Cr. P.C. Accused is found guilty for the offence punishable u/s. 323, 324 and 332 IPC and convicted u/s. 248(2) of Cr. P.C. Accused is sentenced to undergo Simple Imprisonment for a period of three years for the offence punishable u/s. 332 IPC. Accused is sentenced to undergo Simple Imprisonment for a period of One year for the offence punishable u/s. 324 IPC. Accused is further sentenced to undergo Simple Imprisonment for a period of Six months for the offence punishable u/s. 323 IPC . Sentence shall run concurrently. Set off allowed u/s. 428 of Cr. P.C.

Result of Appeal: Appeal is dismissed.

This Criminal appeal having been finally heard on 19.05.2023 and the Court on 21.08.2023day delivered the following:-

JUDGMENT

This jail appeal filed against the judgment of conviction and sentence of the Judicial First Class Magistrate Court-I, Changanacherry in C.C.No.1069/2020. Appellant is the accused in that case. It is a case charge sheeted by Sub Inspector of Police, Karukachal Police Station alleging commission of offences punishable under sections. 323,324, 506(ii) and 332 of IPC.

2. The prosecution case is that: accused on 07.08.2020 at 12 noon with intention to deter the defacto complainant CW1 who was working then as Civil Police Officer attached with Karukachal Police Station and CW2 who was then Inspector of Police, Karukachal from discharging their official duty, attacked them when they tried to resist the accused who was found to be inebriated and behaving in a unruly and indecent manner in public. Accused inflicted injury on the left palm of CW1 with a pen knife, hit and kicked CW1, when CW2 intervened accused kicked on the lower abdomen of CW2 causing severe pain to him. Thus the accused committed the aforesaid offences.

3. On appearance of accused before the court below he was furnished with relevant copies of documents relied by the

prosecution. The charge was framed and it was read over and explained to the accused to which he pleaded not guilty.

4. Thereafter PW1 to PW9 were examined and Exts. P1 to P11 and MO1 were marked on the side of prosecution.

5. After the closure of prosecution evidence, accused was questioned u/s.313(1)(b) of Cr.P.C. He denied all incriminating circumstances brought out in evidence against him. Additional statement was filed by the accused. As per the accused, while he was standing in the road the Circle Inspector and 2 or 3 policemen came. They asked whether he was the Gunda there and took him to the police station in the jeep. The police brutally attacked him at the station and kept him in the cell. They threatened that if it is revealed in court, he will be finished. They again attacked him while returning after remand and he filed complaint against that. This is a false case registered against him and he is innocent in this case. No evidence adduced on the side of accused.

6. On appreciation of evidence the learned Magistrate found the accused not guilty u/ss.506(ii) IPC and acquitted there under. The accused was found guilty u/s.332, 323 and 324 of IPC and he was convicted thereunder. Accused was sentenced to undergo simple imprisonment for a period of three years for offence punishable u/s.332 of IPC, the accused was sentenced to undergo simple imprisonment for a period of one year for the

offence punishable u/s.324 of IPC, the accused was sentenced to undergo simple imprisonment for six months for the offence punishable u/s.323 of IPC. The sentence shall run concurrently. Set off u/s. 428 Cr.P.C allowed.

7. Being aggrieved by the judgment, conviction and sentence of the court below, the appellant filed this appeal on the following grounds:- That the judgment of court below is not sustainable. Involvement of accused in this case is not proved. The investigation in this case was not proper. The conviction and sentence was so rigorous and harsh.

8. Since the appellant was in custody he was represented by an Advocate appointed by DLSA.

9. Heard both sides. Perused the records.

10. The points for consideration:

1. Whether the accused voluntarily caused hurt to CW1 and CW2?
2. Whether the accused voluntarily caused hurt to CW1 using any weapon of offence?
3. Whether the act of accused was with intent to prevent CW1 and CW2 from their official duty?
4. Whether the judgment of the court below is liable to be interfered with?

11. **Points No.1 to 3 :-** The counsel who is appearing for the appellant argued that the trial court convicted the accused without appreciating the evidence properly. As per him this is a

case fabricated against the accused as a counter to the complaint given by the accused against custodial torture. The witnesses are interested witnesses.

12. According to PW1 on 07.08.2020 he was CPO of Karukachal police station and was on duty as driver of Circle Inspector. On that day he was accompanying his superior officer in L&O patrolling duty in department vehicle. When they reached near Karukachal town at about 12 noon, they saw the accused in intoxicated condition, shouting and causing nuisance to public. They stopped the vehicle there, he alighted from the vehicle and went near to the accused on the direction of CI and wanted the accused to leave the place so as to avoid public nuisance, when the accused saw he approaching him accused became violent and began to use filthy words. On seeing this CW2 alighted from the jeep. Suddenly accused took a pen knife and waved it against PW1, he tried to resist the accused. The knife hit on his left palm and sustained injury there. When CW2 intervened accused kicked on his abdomen. Using sufficient force they could take accused into custody and brought him to the police station. After medical aid from CHC Karukachal he gave Ext.P1 before the Principle Sub Inspector attached with the station. He identified MO1 as the weapon used by the accused to inflict injury. He identified the accused.

13. CW2 was examined as PW5, he deposed in tune with the version of PW1. According to him he sustained injury in the incident and was under medical observation for two days after the incident. He issued Ext.P3 duty certificate to PW1.

14. PW2 and PW6 were examined to prove the occurrence. Eventhough their evidence do not completely corroborate the evidence of PW1 and PW5, their evidence prove the presence of accused PW1 and PW5 at the spot. As per them accused created nuisance to the public by that time police came there and attempted to prevent the accused. At that time accused attacked the police with a knife and caused injury on the hand of policeman.

15. PW3 and PW4 are the witnesses of the mahazar of MO1 knife. As per PW4 he saw the recovery of pen knife from accused and there was blood stain on the tip of the knife.

16. PW7 is the witness to scene mahazar.

17. PW8 is the doctor, who examined PW1 & PW5 and issued Ext.P6 and P7 certificates.

18. PW9 is the Sub Inspector of Police Karukachal, who conducted investigation of the case.

19. The evidence of PW1, PW2, PW5 and PW6 would show that accused caused hurt using MO1 to police officials who tried

to prevent the accused from causing public nuisance. On going through the evidence of prosecution witnesses it can be seen that the accused attacked the police officials while they were trying to prevent the accused from making public nuisance.

20. So the finding of the court below that the accused is guilty for the offence u/s.323, 324 and 332 of IPC absolutely correct and there is no ground to interfere with the judgment of conviction and sentence of the trial court.

21. Point No.4:- In the result, as there is no ground to interfere with the judgment of the trial court the appeal is dismissed, confirming the judgment of the trial court.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, on this the 21st day of August, 2023.

Sd/-
ELSAMMA JOSEPH P,
ADDL.SESIONS JUDGE - IV,
KOTTAYAM.

Appendix : Nil.

Id/-
Addl. Sessions Judge-IV,
Kottayam.

//True Copy//

Copied by :
Compared by :-

By Order.,

Sheristadar.

Crl.A.No.123/2022

JUDGMENT
Dated:21.09.2023.

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