

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
MANANTHAVADY

Present :- Sri.Prakashan.P.T., Additional Sessions Judge.

Tuesday, the 16th day of January, 2024
the 26th day of Pousha, 1945.

SESSIONS CASE No.89/2019

Complainant	:	State of Kerala represented by the Sub Inspector of Police, Thirunelly Police Station..
Name of the Accused	:	A1) Rushikesh Sahni, S/o Raghunathan K.R., Aged 19/18, Thoppil House, Kaniyaram, Palakkuli, Mananthavady. A2) Nikhil C.A., S/o Chandran, Aged 19/18, Vinitha Nivas, Kottarakkunnu Post, Alanchery, Vellamunda Amsom.
Charges	:	U/Ss.307, 333 r/w 34 IPC and U/s.3(1) of Prevention of Damage to Public Property Act.
Plea of the Accused	:	Not guilty.
Finding of the Judge	:	Not guilty.
Sentence/ Order	:	Accused is acquitted U/s 235(1) of Cr.PC.
No. of Crime and Name of Police Station	:	Crime No.370/2018 of Thirunelly Police Station. Police Station.
Prosecution conducted by	:	Sri. M.Joshy, Additional Public Prosecutor, Mananthavady.
Accused defended by	:	Adv.Saji Mathew, Advocate
This case was committed by the Judicial 1st Class Magistrate-II, Mananthavady as per order in CP 08/2019 on 21.02.2019. Case records received in the Sessions Court, Kalpetta on 01.04.2019 and numbered as SC.89/2019 on 03.04.2019 and made over to Additional Sessions Court, Mananthavady for disposal according to law.		

<u>DESCRIPTION OF THE ACCUSED</u>			
1.	Serial Number	:	SC 89/2019
2.	Name of Police Station and Crime Number of the offence	:	Crime No.370/2018 of Thirunelly Police Station. Police Station.
3.	Name of Accused	:	A1) Rushikesh Sahni, A2) Nikhil C.A.
4.	Father's Name	:	A1) Raghunathan K.R., A2) Chandran
5.	Occupation	:	-
6.	Residence	:	A1) Thoppil House, Kaniyaram, Palakkuli, Mananthavady. A2) Vinitha Nivas, Kottarakkун്നു Post, Alanchery, Vellamunda Amsom.
7.	Age	:	A1) and A2) 19/18
8.	Date of Occurrence	:	02.11.2018
9.	Date of Complaint	:	17.01.2019
10.	Date of Apprehension	:	03.11.2018
11.	Date of Release on Bail	:	01.12.2018
12.	Date of Commitment	:	21.02.2019
13.	Date of Commencement of Trial	:	01.09.2022
13A	Commencement of evidence	:	01.09.2022
14.	Date of Close of Trial	:	21.06.2023
15.	Date of Sentence/ Order	:	16.01.2024.
16.	Service of copy of Judgment/ Order to the Accused.	:	-
17.	Explanation for the delay	:	No delay
18	Period of detention undergone during investigation, inquiry or trial for the purpose of Section 428 Cr.P.C.	:	From 03.11.2018 to 01.12.2018.

This case coming on for hearing before me upon perusing the records of evidence and proceedings and upon duly considering the same after hearing the public prosecutor and counsel for the accused on 21.12.2023 I do adjudge and pass the following:-

J U D G M E N T

This is a case in which police report filed U/S 173(2) of the Code of Criminal Procedure by the Sub Inspector of Police, Thirunelly Police Station in Crime No.370/2018 registered U/Ss.307, 333 r/w 34 IPC and U/S.3(1) of Prevention of Damage to Public Property Act.

2. The prosecution case in brief is as follows:- That on 02.11.2018 at about 12.45 pm both the accused in furtherance of their common intention attempted to commit culpable homicide amounting to murder on CW1, Mr.Vipin and CW2, Mr.Santhosh.K.J who were engaged in official duty at Excise Check Post, Baveli by hitting them with a motorcycle bearing registration No.KL-72-A-5755 and voluntarily caused grievous hurt on them to deter them from doing their official duty. In the same transaction, they caused damage to the public property to the tune of Rs.10,000/-. Hence both the accused committed the offence punishable U/Ss.307, 333 r/w 34 IPC and U/S.3(1) of Prevention of Damage to Public Property Act.

3. On completion of investigation, CW26, the Investigating Officer filed final report before the Judicial First Class Magistrate-II, Mananthavady. On getting the charge sheet, the Judicial First Class Magistrate-II, Mananthavady took cognizance of the offence punishable U/Ss.307, 333 r/w 34 IPC and U/S.3(1) of Prevention of Damage to Public Property Act and issued summons to both the accused. They appeared on summons and they were enlarged on bail. On their appearance, copy of prosecution records was furnished to them. Since the offence is exclusively triable by the Court of Sessions, the case was committed to Sessions Court, Kalpetta as per the order in CP.8/2019 dated 21.02.2019 of the Judicial First Class Magistrate-II, Mananthavady. The said case was taken on file as SC.89/2019 on the file of the

Sessions Court, Kalpetta and then, made over to this court for trial and disposal. Both the accused entered appearance before this court on receipt of summons issued. They appointed a counsel of their own choice to defend their case.

4. On hearing both side, charge was framed against the accused for the offence punishable U/Ss.307, 333 r/w 34 IPC and U/S.3(1) of Prevention of Damage to Public Property Act. Charge was then read over and explained to both the accused in Malayalam, to which, they pleaded not guilty. They stood for trial.

5. Thereupon, the prosecution has got examined PWs 1 to 22 and Exts.P1, P2, P3 series, P4 to P12, P13 series, P14 to P21, P22 series, P23 to P25, P26 series, P27 series, P28 to P30 and MO1 series marked. Exts.D1 to D8 were marked through PWs 1 and 2 and Exts.D9 and D10 contradictions of CWs 4 and 3 respectively were marked on the defence side.

6. On the closure of prosecution evidence, both the accused were questioned U/S.313(1)(b) of Cr.PC. They denied the entire prosecution case at that time and filed defence statements. In the said statements, they took more or less the very same contentions. Their contention is that they are innocent to the charge levelled against them. They have not committed any offence as alleged by the prosecution. The excise officials were not injured by the vehicle bearing registration No.KL-72-A-5755. No cannabis was seized from the aforesaid vehicle at the alleged place, date and time by the excise officials. At the time when the incident took place, the cross bar of the check post was raised. When the bike reached near the raised cross bar, without any warning the excise officials suddenly pulled down the cross bar in a careless and dangerous manner and as a result of it, the middle portion of the cross bar hit on the front side of the motorbike and the vehicle and travellers therein fell down on the road and sustained injury. The motorbike never hit the excise officials, according to both the accused in their defence statement.

7. Heard both side U/S.232 Cr.P.C. There was no ground to acquit the accused under that section. Hence both the accused were called upon to enter on their defence. But no witness was examined and no documents were marked on the defence side at that stage.

8. Now, the points that arose for determination are:-

1. Whether both the accused in furtherance of their common intention attempted to commit culpable homicide amounting to murder on CWs 1 and 2 as alleged?
2. Whether both the accused in furtherance of their common intention voluntarily caused grievous hurt on CWs 1 and 2 who are public servants to deter them from doing their official duty as alleged?
3. Whether both accused caused damage to the public property to the tune of Rs.10,000/- as alleged?
4. Whether the accused committed any of the offences alleged against them?
5. If so, what is the sentence or order to be passed against them?

9. Heard both side.

10. **Point Nos.1 to 4:-** For the sake of brevity and convenience, these points are considered together. The prosecution allegation against the accused is that on 02.11.2018 at about 12.45 pm they in furtherance of their common intention attempted to murder CWs 1 and 2 who are public servants engaged in official duty at the Excise Check Post, Baveli by hitting them with the motorbike bearing registration No.KL-72-A-5755 ridden by the first accused and voluntarily caused grievous hurt on them to deter them from doing their official duty. In the same transaction, they caused damage to the public property to the tune of Rs.10,000/-.

11. CWs 1 and 2 are the injured. They were examined as PWs 1 and 2 respectively. PW1 was the then, Civil Excise Officer and PW2 was the then, Preventive Officer who were engaged in official duty at Excise Check Post, Baveli on the date of incident ie., on 02.11.2018. The prosecution case is that PWs 1 and 2 sustained injury in the incident and they were removed to Government District Hospital, Mananthavady for treatment. PW1 sustained fracture to his right hand and PW2 sustained fracture to the ankle of his left leg. Since the injury sustained to PW2 was very serious, he was referred to the hospital at Kozhikode for better treatment. PW1 was treated from the District Hospital, Mananthavady and thereafter, discharged in the night of the date of incident itself. Then, he straight away went to the Thirunelly police station and preferred an oral complaint against the accused. PW22 recorded Ext.P1, First Information Statement of PW1 at about 22.00 hours on 02.11.2018 at the police station and then, registered Ext.P21, FIR against the accused. On registration of Ext.P21, FIR, PW22 took over the investigation of the crime, recorded the statement of the witnesses, collected other evidence, completed the investigation and filed charge sheet against the accused. The prosecution case is that the first accused was the rider and the second accused was the pillion rider of the motorbike bearing registration No. KL-72-A-5755 which alleged to have been hit against PWs 1 and 2. At this juncture, it is pertinent to note that the accused did not dispute the fact that the first accused was the rider and the second accused was the pillion rider of the aforesaid motorbike at the time of the incident happened at the Excise Check Post, Baveli.

12. At the cost of repetition, PW1 went to Thirunelly police station and gave Ext.P1 First Information Statement at about 22.00 hours on 02.11.2018. It may be noted that the incident was on 02.11.2018 at about 12.45 pm. In Ext.P1, the case of PW1 is that he came to the police station soon after got discharged from the hospital. PW2 was removed to Kozhikode for better treatment since he sustained very serious injury. PW1 put his left hand thumb impression on Ext.P1, First Information Statement since he was unable to sign due to the fracture injury sustained to his right hand and it was bandaged from

the hospital. The case of PW1 in Ext.P1, First Information Statement is that he was working at Excise Check Post, Baveli from 22.10.2018 onwards. His further evidence is that today, ie., on 02.11.2018 at about 12.45 pm two persons came on a motorbike bearing registration No.KL-72-A-5755 and hit him and one Mr.Santhosh.K.J, the Preventive Officer (PW2) while engaged in official duty at Excise Check Post, Baveli. He sustained fracture injury to his right hand and PW2 sustained fracture injury to the ankle of his left leg. He along with Mr.Sajimon, the Preventive Officer, Mr.Amal Dev, Civil Excise Officer, Mr.Santhosh, Preventive Officer were on duty at the check post. They put down the cross bar of the barricade and they were checking the vehicles at the check post on getting the reliable information that two persons were coming on a bike with cannabis from Bairakuppa side. While so, at around 12.45 pm two persons came on a black pulsar motorbike in a high speed from Karnataka side. They were standing in front of the closed barricade at that time and on seeing the motorbike, he and PW2 moved a little towards the road and PW2 showed his hands to stop the motorbike. The bike came at the same speed and hit PW2. It hit against him also when he tried to stop the vehicle from nearby. There was a pedestrian path where they stood. The bike came at the same speed with an intention to escape through that pedestrian path even if hit and thrown away them. Due to the impact of hit, they thrown away and hit against the pillar of the barricade and fell on the road. He sustained fracture to his right hand and injury to his left hand. PW2 sustained injury to the ankle part of his left leg. Those who were on the bike fell on the opposite side of the road. The bike after hitting them hit the barricade and slipped to the opposite side. Mr.Sajimon, the Prevective Officer, Mr.Amal Dev, the Civil Excise Officer who were engaged in duty at the opposite side of the barricade with the help of local people by name Mr.Thankachan and Mr.Ratheesh Babu restrained the travellers on the bike. He along with PW2 was removed to the Government District Hospital, Mananthavady for treatment in the jeep of one Mr.Nishad. Mr.Amal Dev, the Civil Excise Officer accompanied them to the hospital. Later, he learned that Mr.Sajimon, the Preventive Officer searched the body of

those persons and bike and seized 200 gms of cannabis from their possession. The pillion rider of the bike was loudly telling the rider not to stop the bike. Since they were carrying cannabis, their intention was to escape even after killing them. In the incident, the cross bar of the barricade has bend and post has broken. As such, they caused damage to the tune of Rs.10,000/- to the property of the department. The rider of the motorbike was one Mr.Rishikesh and the pillion rider was one Mr.Nikhil. He can identify them, according to PW1 in his Ext.P1, First Information Statement.

13. PW1 would say that on 02.11.2018 he was on duty at Excise Check Post, Baveli and his duty time was from 9.00 am to 9.00 pm. Mr.Sajimon, the Preventive Officer, Mr.Amal Dev, the Civil Excise Officer also were on duty at the Check Post on that day. Mr.Santhosh.K.J, the Preventive Officer attached to Excise Intelligence Bureau, Wayanad also came to the check post at about 12.00 noon and joined with them for duty. Mr.Santhosh.K.J, PW2 came to the check post on getting a reliable information that two persons were coming on a black pulsar bike with cannabis from Bairakkuppa side. On getting the secret information, he closed the barricade of the check post. At about 12.45 pm while they were engaged in vehicle checking duty, a black pulsar bike came from Biarakkuppa side in high speed. He and Mr.Santhosh were standing middle of the road at that time and on seeing the motorbike he and Mr.Santhosh moved a little towards the road and Mr.Santhosh showed his hands to stop the vehicle. But the motorbike came in the same speed and hit Mr.Santhosh and thereafter, hit him also. There was a small gap after the barricade as a pathway for the pedestrians to cross the check post. He was standing near to that pathway. The attempt of the rider of the motorbike was to escape through that gap. The vehicle after hitting them, hit against the barricade and overturned. The travellers in the motorbike also fell down on the road. Due to the impact of the hit, he sustained fracture injury to the wrist of his right hand and sustained injury near the palm of his left hand. Mr.Santhosh sustained fracture injury to the ankle side of his left leg. The broken bone was hanging. Mr.Sajimon, the Preventive Officer,

Mr.Amal Dev, Civil Excise Officer along with the local people gathered there restrained the rider and pillion rider of the bike. He along with Mr.Santhosh was removed to the hospital in the jeep of one Mr.Nishad and Mr.Amal Dev accompanied them to the hospital. He was treated from the District Hospital, Mananthavady and Mr.Santhosh was removed to Aster hospital, Kozhikode for better treatment. Due to the incident, the post of the barricade was broken. It was an iron pipe. Later on, he learned that cannabis was seized from the possession of the travellers on the motorbike. They attempted to escape after hitting them since they were possessing cannabis. Due to the overt act of the accused, they were prevented from doing their official duty. He heard that the pillion rider of the motorbike was telling the rider not to stop the vehicle. PW1 identified the first accused who was the rider of the motorbike and the second accused who was the pillion rider therein. PW1 again deposed that after putting bandage to his right hand he was discharged from the hospital on the very same day at about 6.00 pm. Thereafter, he went to Thirunelly police station in the departmental vehicle and reached there at about 10.00 pm. Then, he preferred Ext.P1, complaint to the police. He again deposed that the uniform which was worn by him at the time of incident was produced to Thirunelly police station on 04.11.208. The material objects produced are uniform shirt, name badge, whistle cord and two numbers of shoulder badge. He identified the shirt and pants produced to the police and those were marked as MO1 series. PW1 again deposed that since the accused damaged the barricade, the government sustained a loss to the tune of Rs.10,000/-. As such, PW1 deposed in tune with his statements in Ext.P1, First Information Statement.

14. PW2 is an another injured. He would say that on 02.11.2018 he was the preventive office in Excise Intelligence Bereau, Wayanad. He was holding the charge of Mananthavady Taluk. Baveli and Tholpetty Check Posts are in his jurisdiction. On the particular day when he was at Mananthavady, he received a reliable information that two persons in a pulsar bike with cannabis might come from Bairakuppa side. He inrmed the said information to his

superior officer and then, proceeded to Baveli Check Post and reached there at 12.00 noon. He informed the details in the information received by him to Mr.Sajimon, the Preventive Officer, Mr.Vipin, the Civil Excise Officer and Mr.Amal Dev, the Civil Excise Officer who were on duty at that time. Then, the barricade of the check post was pulled down. He also joined with the aforesaid persons for checking vehicles. While so, at about 12.45 pm, a bike came in high speed from Bairakuppa side. They were standing near the far end of the cross bar where there was a pathway provided for the pedestrians. There were two persons on the motorbike. On seeing the vehicle coming in high speed, they moved a little towards the road and showed his hands to stop the vehicle. But the vehicle came in the same speed and hit and threw away him. Thereafter, it hit against Mr.Vipin, PW1 and threw away him also. He sustained fracture injury to the ankle part of his left leg. The bone was broken and hanging. PW1 sustained injury to his right hand. After hitting them, the motorbike hit against the barricade and fell down. He and PW1 were removed to the District Hospital, Mananthvady in the jeep of one Mr.Nishad. Since the injury was grievous, he was removed to M/s.Aster hospital, Kozhikode for better treatment. PW2 identified the first accused as rider of the motorbike and the second accused as the pillion rider therein. The further evidence of PW2 is that their official duty was prevented by the overt act of the accused. Since he was in the Intelligence Wing, he was not in uniform at the time of the incident, according to PW2. The intention of the accused was to kill them. They made damage to the barricade. He heard that the pillion rider was telling to the rider of the motorbike not to stop the vehicle. He had produced the pants and shirt worn by him at the time of the incident to the police. As such, PW2 deposed in tune with the testimony of PW1.

15. PWs 4, 6 and 16 are the occurrence witnesses cited by the prosecution. PW4 is an independent witness and PWs 6 and 16 are excise officials. PW4 would say that he had seen the incident in which PWs 1 and 2 sustained injury. But he does not remember the date. It was on a Friday at about 12.15 pm, according to PW4. On that particular day and time he was

sitting under a banyan tree situated about 300 metres away from the check post. One Mr.Ratheesh was also sitting under the banyan tree along with him at that time. While so, he saw a bike coming from Baveli side to Kattikkulam side and there was two persons on the bike. It came in speed and two minutes later he heard the sound of hitting the vehicle to the barricade. On hearing the hue and cry, he went there by running. The bike was lying on the road. Two excise officials were found sustained injury. One sustained injury to his hand and the other sustained injury to his leg. The travelers in the bike were found sitting near to the bike. Subsequently, the jeep of Mr.Nishad came and the persons injured were removed to the hospital for treatment in that jeep. He identified both the accused while in the witness box. So also, he identified the photographs of the motorbike which was marked as Ext.P3 series. The evidence of PW4 would go to show that he has not seen the incident directly. But he has seen the bike coming from Baveli side to Kattikkulam side and he heard the sound of hitting the bike to the barricade. So also, he has seen two excise officials sustained injury.

16. PW6 is one of the Civil Excise Officer who was engaged on duty in Excise Check Post on 02.11.2018. He would say that on the particular day he along with Mr.Sajimon (PW16), the Preventive Officer, Mr.Vipin (PW1), the Civil Excise Officer were engaged on duty at the check post. While so, at about 12.00 noon Mr.Santhosh (PW2), the Preventive officer attached to the Intelligence Bureau came there and informed that two persons were coming on a pulsar bike with cannabis. He also joined with them for checking. While so, at about 12.45 pm a pulsar bike came from Baveli side and there was two persons on the bike. The crane bar was pulled down at that time. PWs 1 and 2 were standing to the northern side of the barricade which is the eastern side of the road. The bike was in high speed and PW2 showed his hands to stop the vehicle. But the rider of the vehicle did not stop it. The bike proceeded in the same speed and hit against PWs 1 and 2 and attempted to escape. The bike hit the crane bar and as a result of it , the travelers therein also fell down on the road. Due to the incident, PW1 sustained injury to his left hand and PW2

sustained injury to his right leg. They were removed to the District Hospital, Mananthavady in the jeep of one Mr.Nishad for treatment. The crane bar of the check post was completely damaged due to the hit. He also identified the rider and pillion rider of the motorbike. He would further say that the pillion rider was telling the rider not to stop the bike. He had accompanied the injured to the hospital. The accused attempted to endanger the life of PWs 1 and 2 and prevent them from doing their official duty, according to PW6.

17. PW16 was the then Preventive Officer who was engaged on duty in Excise Check Post, Baveli on 02.11.2018. He also deposed in tune with the depositions of PWs 1, 2 and 6. He also identified the accused. He would say that the first accused was the rider and the second accused was the pillion rider of the motorbike. PW16 would further say that he was the custodian of the GD maintained in the Check Post. He again deposed that the GD and the attendance register in the check post were seized by the police by preparing Ext.P2, seizure mahazar and he signed in it as a witness. The further evidence of PW16 is that the incident was recorded in the GD. He identified the certified copy of the relevant pages of the the GD and and as such, it was marked as Ext.P6. The narration of the incident was recorded by him in his handwriting, according to PW6. He again deposed that he had shown the place of incident to police to prepare the scene mahazar.

18. PW3 is the witness in Ext.P5, scene mahazar. He identified his signature in Ext.P5. PW5 is the driver who took the injured persons to the hospital. He would say that on a day in the year 2018 at about 12.45 pm, he had gone to pray to the mosque situated near the Excise Check Post. He received a phone call at that time and informed that one bike hit the excise officials and he was asked him to go there immediately. Hence he went to the Excise Check Post, Baveli with his jeep without waiting to pray in the mosque and took the excise officials sustained injury to the District Hospital, Mananthvady. PW7 is the Civil Excise Officer who signed in Ext.P2, seizure mahazar prepared by the investigating officer to seize the dress worn by PW1

at the time of incident. He identified his signature in Ext.P2. So also, he identified MO1, dress materials. PW8 was the then Excise Inspector in Baveli Check Post. He would say tht he had produced the GD dated 02.11.2018 maintained in the Check Post to the investigating officer and in turn, the investigating officer seized it. Then, it was released to him on kaicheet. He identified the certified copy of the GD and as such, it was marked as Ext.P6. He had produced the copy of the appointment orders of PWs 1 and 16 in Excise Check Post, Baveli. He identified it and as such, it was marked as Ext.P7. PW9 was the Civil Excise Officer in Excise Range Office, Mananthavady. The investigating officer seized Exts.P6 and P7 documents by preparing Ext.P8, seizure mahazar. PW9 is one of the witness in the said mahazar and he identified his signature in Ext.P8. PW10 is the Civil Excise Officer who signed in Ext.P4, seizure mahazar prepared by the investigating officer to seize the dress materials worn by PW2 at the time of incident. PW11 was the then Preventive Officer attached to Excise Intelligence and Investigation Bureau, Wayanad. He had produced the copy of GD and Attendance Register dated 02.11.2018 to the investigating officer on 13.11.2018 when he was holding the GD charge. He identified it and as such, those were marked as Exts.P9 and P10. PW12 is the witness in Ext.P12 seizure mahazar prepared by the investigating officer to seize Exts.P9 and P10 and he identified his signature in it.

19. PW13 is the Police Photographer in the office of District Police Chief, Wayanad. He would say that on 03.11.2018 he went to the place occurrence as per the requestion given by the investigating officer and captured the photographs of collection of evidence by the scientific officer. He took the print out of those photographs in four pages and produced those photographs, its CD and 65B certificate to the investigating officer. He identified the photographs and as such, those were marked as Ext.P13 series. So also, he identified the certificate issued by him and as such, it was marked as Ext.P14. PW14 was the then AMVI in Sub Regional Transport Office, Mananthavady. He would say that he had inspected the pulsar bike bearing registration

No.KL-72-A-5755 from Thirunelly Police Aid Post, Kattikkulam and issued Ext.P15 report. The damages noticed are:- (1) Front headlight assembly was found broken, (2) Front right side indicator was found broken, (3) Visor was found scratched and (4) Front mudguard found scratched. He identified Ext.P3 photographs of the motorbike. PW15 was the then Assistant Engineer in PWD Building Section, Mananthavady. He prepared valuation report of the damages caused to the crane bar and issued Ext.P16, report. According to him, there was damages to the tune of Rs.4,900/-. PW17 was the then Excise Inspector in Excise Range Office, Mananthavady. He would say that he was holding the additional charge of Excise Check Post, Baveli. He is not an eye witness to the incident. He registered a Crime and Occurrence Report against the accused for possessing cannabis.

20. PW19 is the Scientific Officer attached to DCRB Kozhikode City. He would say that when he was holding the additional charge of DCRB, Wayanad, he inspected the place of occurrence as per the requisition given by the investigating officer. The place of occurrence was the Excise Check Post, Baveli. The barricade in west-east direction across the road was found in bend condition. Blood stains were found on the eastern side of the road. A Bajaj Pulsor motorbike in black colour was found parked on eastern side of the road. It was bearing the registration No.KL-72-A-5755. Damages were observed on the two wheeler towards the front end. Its headlight, front indicator and fibre part of right side between petrol tank and visor were found damaged. The crash guard was also found scratched. The yellow coloured foreign paint was found on the damaged parts on the right side of the bike. Its left side handle and crash guard were found scratched, according to PW19. He again deposed that he collected blood stains, blood stained soil, yellow coloured foreign paint etc., and packed and sealed it. PW20 is the doctor who treated PWs 1 and 2. He examined PWs 1 and 2 and issued Exts.P18 and P19 wound certificates. PW21 is the Village Officer in Thirunelly Village who prepared Ext.P20 eye sketch of the place of occurrence. PW22 is the officer who registered the crime, conducted investigation and filed charge sheet against the accused.

21. The specific case of the prosecution is that both the accused came on a motorbike as the rider and pillion rider from Baveli side to Kattikkulam side. Accused No.1 was the rider and accused No.2 was the pillion rider. At that time, the crane bar of the Check Post was in pulled down position to check the vehicles since PW2 received a reliable information that two persons were coming on a pulser motorbike with cannabis. The bike was coming in high speed and on seeing it, PW2 showed his hands to stop the vehicle. But the rider of the motorbike did not stop the vehicle and the pillion rider was telling the rider not to stop the vehicle. They came in the same speed and hit PW2 and thereafter hit PW1 and then hit the cross bar. Their attempt was to escape without checking even killing the excise officials on duty through the pedestrian pass having the width of one metre situated to the eastern side of the road. The evidence of PWs 1 and 2 would go to show that they were standing adjacent to the road margin on eastern side. PWs 1 and 2 would further say that the bike came in high speed and hit against PW2 and then hit against PW1 and thereafter it hit the crane bar. The prosecution has no case that PW1 was standing behind PW2. PWs 1 and 2 would say that PW1 was standing near PW2 near the road margin on the eastern side. If that be so, there is no possibility to hit PW2 and then PW1 and thereafter hit the crane bar. If the motorbike lost the control after hitting PW2, definitely it will hit the cross bar and fell down. The evidence of PWs 1 and 2 is that the motorbike first hit against PW2 and then hit PW1 and thereafter hit the crane bar. There is no possibility to occur such an incident. If the accused intentionally hit PW2 first and then PW1, it shows that the first accused had not lost the control of the bike. But the evidence of PWs 1 and 2 would go to show that after hitting PW1 the bike hit the crane bar. The said fact would go to show that the first accused lost the control of the bike. In the said circumstance, the aforesaid case of the prosecution is not digestible to a common man. During cross-examination, PW2 would say that there was no regular practice to keep the crane bar down. The said evidence of PW2 would go to show that the crane bar of the Check Post will always be in raised position and it will be pulled down, if necessary.

The evidence of PW2 would go to show that the width of the tarred portion of the road at the place of occurrence is seven metres and it is having the margin of one metres each on both side. The post of the crane bar was erected on the end portion of the tarred road. The prosecution case is that the attempt of the accused was to escape through the pedestrian pass having one metre width situated on the eastern side of the road. But PWs 1 and 2 would say that there is a parapet having one metre height crossing the road margin at both side. Ext.P5, scene mahazar prepared by the investigating officer also would go to show that there was a parapet crossing the road margin. Hence the motorbike came in high speed cannot pass through the said pedestrian pass. PW2 admitted the said fact while in the witness box. He would say that it was difficult to pass a two wheeler through the road margin on the eastern side. The said fact falsifies and shakes the very root of the prosecution case.

22. PWs 1 and 2 would say that the motorbike hit the crane bar to its northern end. At this juncture, it is very relevant to refer the evidence of PW14 and PW19. PW14 inspected the motorbike at the Police Aid Post, Kattikkulam and issued Ext.P15 certificate. He would say that he noticed the damages to the vehicle in Ext.P15. Front head light assembly was found broken, front right side indicator was found broken, visor was found scratched and front mudguard was also found scratched, according to PW14. At this juncture, it is very relevant to note the defence put forward by the accused. Their case is that at the time when the incident took place the cross bar of the check post was raised. When the bike reached near the raised cross bar, without any warning the excise officials suddenly pulled down the cross bar in a careless and dangerous manner and as a result of it the middle portion of the cross bar hit on the front side of the motorbike and as a result of it the vehicle and travellers therein fell on the road. The cross bar hit PWs 1 and 2 and they sustained injury. The motorbike never hit PWs 1 and 2 and there was no attempt from their side to escape through the pedestrian pass on seeing the crane bar pulled down. During cross-examination, PW14 would say that if a motorbike comes at a high speed and hit an iron post the tyre part will be the

first to hit and there will be damage to tyre. But he has not seen any such damage to the tyre of the motorbike. He again deposed that there is chance to blast the tyre depending upon the speed. He further deposed that depending upon the force, there is chance to bend the tyre disc. But PW14 has not seen any damage to the front tyre disc. PW14 again deposed that if a motorbike hit an iron post, the paint of the bike will stick to the post. Moreover, tyre marks can be found on the post. But PW14 has not seen the paint of the bike on the post on the northern side of the crane bar or the tyre mark therein. PW14 again deposed that when a bike passes through a check post when the crane bar raised and if the crane bar is suddenly put down, it will hit the headlight. In the case on hand, there was damage to the front head light of the motorbike. If the motorbike hit the crane bar, definitely there will be damage to its front tyre and other front parts. As pointed out above, there was no damage to the front tyre of the vehicle. But there was damage to the head light, right side indicator, visor etc. The said fact probabalises the case of the accused that on seeing the motorbike, the excise officials carelessly pulled down the crane bar and it hit at the front side of the motorbike and the crane bar hit PWs 1 and 2 and as a result of it they sustained injury. PW14 again deposed that if a bike came in over speed and fell on the road, there will be bend to its foot guard. But there was no bend to the foot guard of the motorbike. But he has noticed the paint of foot guard rubbed off.

23. The defence side produced the documents relating to the claim petition filed by PWs 1 and 2 to the Motor Accidents Claims Tribunal, Kalpetta. Exts.D1 to D4 are relating to PW1 and Exts.D5 to D8 are relating to PW2. In the claim petition, the case of PWs 1 and 2 is that they sustained injury in an accident. Their case is that the first accused drove the motorbike in a rash and negligent manner and hit them at the Excise Check Post, Baveli and as a result of it they sustained injury. But in the case on hand, the prosecution case is that the accused with an intention to commit culpable homicide of PWs 1 and 2, hit them with the motorbike. The said two cases of PWs 1 and 2 will not go together.

24. In view of the aforesaid facts, law and reasons, I hold that the prosecution has miserably failed to prove that the accused attempted to commit culpable homicide on PWs 1 and 2 by hitting the motorbike so as to escape from the check post without checking and they caused damages to the public property. Point Nos.1 to 4 are answered against the prosecution.

25. **Point No.5:-** In the light of the finding on Point Nos.1 to 4, this point doesn't arise for consideration.

In the result, both the accused are acquitted U/s.235(1) Cr.P.C for the offence punishable U/Ss.307, 333 r/w 34 IPC and U/S.3(1) of /Prevention of Damage to Public Property Act. Their bail bonds stand cancelled and they are set at liberty. MO1 series shall be destroyed being valueless.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 16th day of January 2024)

ADDITIONAL SESSIONS JUDGE

List of Prosecution/Defence/Court Witnesses

A. Prosecution Witness

Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical witness, Other witness
PW1	Vipin	Eye witness
PW2	Santhosh K.J.	Eye witness
PW3	Shakeer C.S.	Other witness
PW4	Thankachan	Eye witness
PW5	Nishad	Other witness
PW6	Amal dev	Eye witness
PW7	Anudas	Other witness
PW8	Abdul Azees	Police witness

PW9	Prince	Other witness
PW10	Deepu	Other witness
PW11	Shajimon K.V.	Other witness
PW12	Ranjith	Other witness
PW13	Suresh Babu	Police witness
PW14	Baiju K.	Expert witness
PW15	Shiju C.M.	Other witness
PW16	Sajimon	Eye witness
PW17	Krishnankutty	Other witness
PW18	Ratheesh Babu	Other witness
PW19	Vineeth V.	Expert witness
PW20	Dr.Rohit	Medical witness
PW21	Jose K.T.	Other witness
PW22	Biju Antony	Police witness

B. Defence Witness : Nil

C. Court Witness : Nil

List of Prosecution/Defence/Court Exhibits:

A. Prosecution Exhibits:

1	Exhibit P1/PW1	FIS
2	Exhibit P2/PW1	Seizure mahazer
3	Exhibit P3 Series/PW1	Photograph with CD
4	Exhibit P4/PW2	Seizure mahazer
5	Exhibit P5/PW3	Scene mahazer
6	Exhibit P6/PW8	General Diary
7	Exhibit P7/PW8	Transfer Order
8	Exhibit P8/PW8	Seizure Mahazer cum Kachit
9	Exhibit P9/PW11	Attendance Register
10	Exhibit P10/PW11	General Diary
11	Exhibit P11/PW11	Kaichit

12	Exhibit P12/PW12	Seizure mahazer
13	Exhibit P13 Series/PW13	Photographs and CD
14	Exhibit P14/PW13	65B Certificate
15	Exhibit P15/PW14	Vehicle report
16	Exhibit P16/PW15	Valuation Report
17	Exhibit P17/PW17	Inventory and Form F
18	Exhibit P18/PW20	Wound Certificate of PW1
19	Exhibit P19/PW20	Wound Certificate of PW2
20	Exhibit P20/PW21	Eye sketch
21	Exhibit P21/PW22	FIR
22	Exhibit P22 series/PW22	Arrest memos
23	Exhibit P23/PW22	Remand report
24	Exhibit P24/PW22	Address adding report
25	Exhibit P25/PW22	Form 15
26	Exhibit P26 series/PW22	Forwarding notes
27	Exhibit P27 series /PW22	Property lists
28	Exhibit P28/PW22	RFSL Report
29	Exhibit P29/PW22	RFSL Report
30	Exhibit P30/PW22	Report

B. Defence Exhibits:

1	D1	Vakalath
2	D2	Petition
3	D3	Affidavit of certified copy
4	D4	Court fee affidavit
5	D5	Vakalath
6	D6	Petition
7	D7	Delay petition
8	D8	Exemption of Court Fee petition
9	D9	161 statement of PW6
10	D10	161 statement of PW16

C. Court Exhibits: Nil

D. Material Objects:

1	MO1 series	Uniform Shirt and Pants.
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ADDITIONAL SESSIONS JUDGE

Typed by: Manuel M.P.

Compared : Sreenandanan K.P.

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Fair Judgment in SC 89/2019

Dated: 16.01.2024

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