

**IN THE COURT OF THE SESSION, THRISSUR SESSIONS
DIVISION**

Present:-

Sri. V. Vinod, Asst. Sessions Judge, Chavakkad.

Monday, the 22nd day of July, 2024

(31st Ashada, 1946 S.E.)

SESSIONS CASE NO. 480/2023

Complainant	: State rep. by : Sub Inspector of Police, Chavakkad police station. (Cr. No. 220/2022 of Chavakkad Police station)
Accused	: Lisan @ Habeeb, S/o. Hamsakoya, Palappetty House, Kallu Blangad Desom, Manathala Village.
Charge	: Under Sections 323, 324, 308 of IPC

The Sessions Court delivered the following:-

ORDER

The accused in the above case is facing trial for the offences punishable u/s. 323, 324, 308 of IPC based on the final report submitted by the SI of Police, Chavakkad.

2. The case of the prosecution in brief is as follows: At 8.30 pm of 19.2.2019 from the eastern side of the old bridge at Chavakkad centre the accused attacked the victim Shejeer @ Vethalam Shejeer on his head using a granite stone. The same was evaded. However the assault fell on the back of his head. Again the victim was attacked by Shejeer and that was blocked by him with his left hand and he sustained injury on his left

hand. He fell down. At that time the accused attacked him by hitting him with hands.

3. The victim was admitted at Government Medical College, Thrissur. From there his statement was recorded. In that involvement of two other persons were also spoken to by the victim. Hence, case was registered against this accused and two unknown persons u/s. 323, 324, 308 r/w 34 of IPC. The investigation was taken up by the Sub Inspector of Police, Chavakkad. During the course of the investigation, it came to light that other than this accused no other persons were involved in the crime. Hence, others were deleted from the array of the accused and Sec. 34 of IPC was also deleted.

4. After the completion of the investigation, a final report was filed against the accused under Section 173 (2) Cr.P.C, before the Judicial First Class Magistrate Court, Chavakkad against the accused alleging the aforesaid offences. The learned Magistrate took the case on file as C.P. 59/2022. Accused appeared before that court. After furnishing the copies of the relevant prosecution records to the accused the learned Magistrate committed the case under Section 209 Cr.P.C to the Hon'ble Court of Sessions, Thrissur Division as per order dated 9.3.2023 with a direction to the accused to appear before the

Court of Session as and when summoned. Thereafter, the Hon'ble Sessions Judge took the case on file as S.C.480/2023 and made over the case to this court for disposal.

5. The accused appeared before this court.

6. Heard the accused and the prosecution on question of charge.

7. On going through the records of the case, I am satisfied that there are sufficient materials before the court to presume that the accused has committed offence punishable u/s. 323 and 324 of IPC. However, with regard to the offence u/s. 308, it is the case of the victim that the accused 1st assaulted him on his head with a stone of hand size and he evaded that and the assault fell on the back side of his head. Again he was assaulted and he obstructed it with left wrist and he sustained injury on the left hand. Thereafter he was assaulted by the accused with hands. It is the case of the victim that the if the assault with the stone was not evaded it would have caused his death.

8. The intention to commit culpable homicide by the accused will have to be gathered from the circumstances of the case. The stone is of hand size. After the 2 assault on the head and hand, which did not create any serious wound on the body of the victim, the accused hit the victim with hands. If the intention of the accused was to commit culpable homicide he could have assaulted the

victim further with the stone. Further the stone is of hand size and normally it is not sufficient to cause death of a person. The Hon'ble High Court of Kerala in

John @ Kunjukutty (1969 KLT 488) cited supra has observed as follows:

“In a completed act of beating, stabbing or cutting, there cannot be an attempt to murder unless intention to kill is clearly proved by circumstances like persistence of the attack on vital parts of the body, or the assailant lying in wait armed with dangerous weapon, or declarations made by him that the victim would be killed etc. This intention is not gatherable merely from the seriousness of the resultant injury. In "attempt to murder", we are punishing a person for his intention and not for any injury caused by him and we have, therefore, to be particularly careful in gouging that intention. If the intention is not clearly discernible from the "act", the accused will have to be acquitted of attempt lest we should commit the sin of punishing a person for something which he did not intend; much less commit”.

Hence I am of the considered view that offence u/s. 308 IPC is not attracted against the accused. Hence the accused is discharged for the offence u/s. 308 of IPC. However there are sufficient materials to frame charge against the accused u/s. 323 and 324 of IPC. Hence the charge will have to be framed against the accused for those offences.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court, on this the 22nd July, 2024).

Sd/-

**V. VINOD,
ASSISTANT SESSIONS JUDGE.**

/True copy/

ASSISTANT SESSIONS JUDGE.

