



2025:KER:18964

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

THURSDAY, THE 6TH DAY OF MARCH 2025 / 15TH PHALGUNA, 1946

CRL.A NO. 1462 OF 2018

CRIME NO.1914/2013 OF Ezhukone Police Station, Kollam
(AGAINST THE ORDER/JUDGMENT DATED 30.11.2018 IN SC NO.158 OF
2016 OF II ADDITIONAL DISTRICT COURT,KOLLAM ARISING OUT OF
THE ORDER/JUDGMENT IN CP NO.74 OF 2015 OF JUDICIAL MAGISTRATE
OF FIRST CLASS -I,KOTTARAKKARA)

APPELLANTS/ACCUSED:

- 1 SHIBU
AGED 33 YEARS
S/O. THANKACHAN, PUTHANVILA VEEDU, THRIPPALAZHIKAM
MURI, KAREEPRA VILLAGE.
- 2 KOCHUMMAN @ THANKACHAN,
AGED 68 YEARS
S/O. CHACKO, PUTHANVILA VEEDU, THRIPPALAZHIKAM
MURI, KAREEPRA VILLAGE.
- 3 VINOD,
AGED 38 YEARS
S/O. VIJAYAN PILLAI, NIRANJANA BHAVAN, NEAR
SAYIPPUMUKKU,KUZHUMATHIKKAD MURI, KAREEPRA VILLAGE.



2025:KER:18964

BY ADVS.
S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY
SRI.D.FEROZE
SRI.K.ANAND (A-1921)

RESPONDENTS/STATE:

STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031, (CRIME NO.1914/2013 OF EZHUKONE
POLICE STATION, KOLLAM DISTRICT).

OTHER PRESENT:

SMT NEEMA T V, SR. PP.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
03.03.2025, ALONG WITH CRA(V)No.26/2019, THE COURT ON
6/3/2025 DELIVERED THE FOLLOWING:



2025:KER:18964

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

THURSDAY, THE 6TH DAY OF MARCH 2025 / 15TH PHALGUNA, 1946

CRA(V) NO. 26 OF 2019

CRIME NO.1914/20113 OF Ezhukone Police Station, Kollam

(AGAINST THE ORDER/JUDGMENT DATED 30.11.2018 IN SC NO.158 OF 2016 OF II ADDITIONAL DISTRICT COURT,KOLLAM ARISING OUT OF THE ORDER/JUDGMENT IN CP NO.74 OF 2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,KOTTARAKKARA)

APPELLANT/DEFACTO COMPLAINANT(PW1):

LISSY,
AGED 59 YEARS
W/O.LATE THAMPACHAN, PLAVILAPUTHEN VEEDU,
THRIPILAZHAIKOM MURI, KAREEPRA VILLAGE.

BY ADV ALEXANDER GEORGE

RESPONDENT/ACCUSED 1 TO 3 & STATE:

1 SHIBU,
AGED 36 YEARS
S/O.THANKACHAN, PUTHENVILA VEEDU, THRIPPALAZHIKAM



2025:KER:18964

MURI, KAREEPA VILLAGE - 691 509.

- 2 KOCHUMMA @ THANKACHA,
AGED 71 YEARS, S/O.CHACKO, PUTHANVILA VEEDU,
THRIPPALAZHIKAM MURI, KAREEPA VILLAGE - 691 509.
- 3 VINOD,
AGED 41 YEARS, S/O.VIJAYAN PILLAI, NIRANJANA
BHAVAN, NEAR SAYIPPUMUKKU, KUZHUMATHIKKAD MURI,
KAREEPA VILLAGE - 691 509.
- 4 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM - 682 031.

THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING
BEEN FINALLY HEARD ON 03.03.2025, ALONG WITH
CRL.A.1462/2018, THE COURT ON 6/3/2025 DELIVERED THE
FOLLOWING:



2025:KER:18964

**RAJA VIJAYARAGHAVAN V,
&
P.V.BALAKRISHNAN,JJ.**

Crl.Appeal Nos.1462 of 2018 & 26 of 2019

Dated this the 6th day of March 2025

COMMON JUDGMENT

P.V.BALAKRISHNAN,J

Criminal Appeal No.1462/2018 is filed by accused Nos. 1 to 3 in SC No.158/2016 challenging their conviction and sentence imposed under Section 304 Part II and Section 447 read with Section 34 IPC by the Additional Sessions Court-II, Kollam. Criminal Appeal(V)No.26/2019 is filed by the wife of deceased Thampachan (PW1) under Section 372 proviso of Cr.P.C., aggrieved by the conviction of the accused for a lesser offence.

A conspectus of the Prosecution case

2. Accused Nos.1 and 2 are neighbours of deceased



2025:KER:18964

Thampachan. On 6/12/2013 at 8.45 pm, there occurred a spat between Thampachan and the third accused at a place near the hospital junction. At that time, Thampachan slapped the third accused on his face. In order to exact revenge, on 6/12/2013 at about 9.45 pm at a place called Thrippalazhikom, accused Nos. 1 to 3 conspired together to murder Thampachan. In pursuance of the conspiracy, at about 10 pm on the same day, the third accused went to the house of Thampachan and called him outside. When Thampachan came out, accused No.3 gave him a blow using a wooden stick. Then accused Nos. 1 and 2 also joined the attack and all of them together beat Thampachan using wooden sticks. When the family members and locals intervened, the accused left the scene. Even though the relatives of Thampachan persuaded him to avail medical aid, he refused. On the next day at about 7.10 am, accused Nos. 1 and 2 trespassed into the courtyard of the house of Thampachan and slapped him on his face. Thereafter, Thampachan was taken to Taluk Hospital, Kottarakkara and after



2025:KER:18964

five days of treatment there, referred to the Medical College Hospital, Thiruvananthapuram. On 11/10/2013, at about 22.30 hours, Thampachan breathed his last. Hence, the prosecution alleged that the accused have committed the offences punishable under Sections 120B, 447 & 302 read with Section 34 IPC.

Proceedings before the trial court

3. In order to prove the prosecution case, PW1 to PW23 were examined and Exts. P1 to P33 and MO1 to MO3 were marked. Ext.D1 contradiction was also marked through PW1 by the defence. On examination under Section 313 Cr.P.C, the accused denied all the incriminating circumstances appearing against them in evidence and contended that they were innocent. From the side of the accused, DW1 was examined. The trial court, on an appreciation of the evidence on record, found the accused not guilty of the offences punishable under Section 302 r/w Section 34 and Section 120B IPC. But, it found all the accused guilty of committing the offences punishable under Section 304 Part-II read



2025:KER:18964

with Section 34 IPC and convicted them thereunder. It also found the first and the second accused guilty of committing the offence punishable under Section 447 read with Section 34 IPC and convicted them thereunder. The trial court sentenced accused Nos. 1 to 3 to undergo rigorous imprisonment for four years each and to pay a fine of Rs.50,000/- each under Section 304 Part II read with Section 34 IPC. In case of default, the accused were ordered to undergo rigorous imprisonment for a further period of three months each. It also sentenced accused Nos. 1 and 2 to undergo simple imprisonment for one month each and to pay a fine of Rs.500/- each under Section 447 read with Section 34 IPC. In case of default, they were ordered to undergo simple imprisonment for a further period of five days each. From the fine amount, an amount of 1,00,000/- was ordered to be paid as compensation to PW1 under Section 357(1)(b) Cr.P.C.

A compendium of the Prosecution evidence

4. PW1 is the wife of the deceased Thampachan. She



2025:KER:18964

deposed that on 6/12/2013 at about 8.pm, her husband had gone to a place called Aashupathri Mukku and there, had met the third accused. A verbal duel occurred between them and when the third accused uttered abusive words, Thampachan clouted him. Thampachan came back and told her about the incident. Later, in the evening she saw the first and the third accused in a motorcycle going to the house of the first accused. After some time, the third accused came outside her house and called her husband. When Thampachan went outside, the third accused attempted to assault him with a stick. Thampachan avoided the hit and started to come back. At that time, the third accused beat Thampachan on his back using the stick. When Thampachan fell down all the accused together beat him using sticks and stamped him. The stick held by the second accused got broken and a piece of it fell near the well. When the family members and locals intervened, the accused left the scene. Thereafter, they lifted Thampachan into her house and when offered medical aid, Thampachan informed them that he



2025:KER:18964

could wait till the next morning. On 7/12/2013 at about 7 am, when Thampachan uttered abusive words against the first and the second accused, who were standing in front of their house, they came running and clouted him on his face and back repeatedly. She took Thampachan inside the house and made him lie in a cot. When the pain aggravated, Thampachan was taken to the Taluk Hospital and admitted there. On the way, they dropped in at the police station and she gave a written complaint to the S.I. But no one came and the statement of Thampachan was recorded by the police only on the 11th. In the meantime, the condition of Thampachan worsened and he was taken to the Medical College Hospital. At about 10 pm, Thampachan died. She identified the accused and the weapons used by them and stated that she had seen them in the light emanating from the houses. She also stated that, while the statement of Thampachan was recorded by the police, she was present there and that Thampachan had signed in it, after the same was read over to him. She identified the



2025:KER:18964

signature of Thampachan and the FIS was marked as Ext.P1. During cross-examination, she stated that she had grievances against the doctor, but she did not make any complaints.

5. PW2 is Thampachan's brother's son. He deposed that on 6/12/2013 at about 9.30 pm, while he along with his family members were in front of their house, he heard someone call Thampachan. When he went there, he saw the third accused trying to hit Thampachan using a stick. Thampachan tried to avoid the hit, but the third accused hit him on his back. When Thampachan fell down, the first and the second accused came with sticks from their house and beat Thampachan blue and black all over his body. When the family members of Thampachan tried to prevent the attack, the first accused threatened them and all the accused together beat and stamped Thampachan. When the locals assembled, the accused left the scene. Thereafter, all of them together lifted Thampachan and took him inside his house. Thampachan refused to be taken to the hospital. On 7/12/2013, at



2025:KER:18964

about 7.30 am, when Thampachan uttered abusive and offensive words against the first and the second accused, they clouted Thampachan on his face. He along with others intervened and took Thampachan into his house. He identified the accused and the weapons used by them as MO1 to MO3. Later, he also pointed out the place of occurrence to the police and signed in Ext.P2 scene mahazar. On 11/12/2013 he pointed out the piece of stick lying there to the police, who seized it as per Ext.P3 mahazar. During cross examination, he stated that when the third accused called Thampachan, he was standing in front of his house and accused Nos 1 and 2 came immediately after the third accused hit Thampachan.

6. PW3 is the doctor attached to the Taluk Hospital, Kottarakkara. She deposed that on 7/12/2013 at about 11.40 am, he had examined Thampachan who had approached her with history of assault using a stick by Shibu, Thankkan and Vinod at 9.30 pm on 6/12/2013 and 7.30 am on 7/12/2013. The wound



2025:KER:18964

certificate issued by her was marked as Ext.P4. She stated that the cause of injuries could be, as alleged.

7. PW4 is the doctor who treated the deceased in Taluk Hospital during the period from 7/12/2013 to 11/12/2013. The case records of the victim were identified and was marked through her, as Ext.P5. On examination, fracture was suspected in the 5th rib and on 11/12/2013, she referred the patient to the Medical College, Hospital suspecting Pneumothorax and coronary artery disease.

8. PW6 is the police officer, who recorded the First Information Statement given by Thampachan. He deposed that on 11/12/2013, he went to the Taluk Hospital and recorded Ext.P1 statement of the victim. Thereafter, he read over the statement and obtained the victim's signature.

9. PW9 is a witness to Ext.P9 mahazar and recovery of MO1. He deposed that he had seen the first accused accompanying the police and the first accused producing MO1 before them.



2025:KER:18964

10. PW11 is the police officer, who registered Ext.P11 FIR on the basis of Ext.P1. He also prepared Ext.P12 scene mahazar and seized pieces of wild sticks lying there and produced them before the court. He identified the sticks as MO2 series. In his cross examination, he stated that the two pieces seized were part of a single stick.

11. PW 12 is the police officer, who conducted the inquest and prepared Ext.P7 report. PW13 is the police officer, who arrested accused Nos. 1 to 3 by preparing Ext.P14 to P22 documents.

12. PW15 deposed that, at 8pm on 6/12/2013 he had gone to Modern Bar in Kundara and had witnessed a tussle between a few people. The first accused was also involved in the tussle and he asked Thampachan to go to his house.

13. PW16 is a distant relative of deceased Thampachan. On 7/12/2013, at about 8 am, he went to Thampachan's house to take him to the hospital. At that time, PW1 told him about the



2025:KER:18964

events, which took place on that day and the previous day. While taking the victim in an auto rickshaw, he along with PW1 dropped in at Ezhukone Police Station and gave a written complaint giving all the details. The police advised them to take the victim to the hospital and promised to come and take the statement. But, no one came. It was only on 11/12/2013, the police came and took the statement of the victim from the hospital.

14. PW 17 is the doctor who conducted the postmortem examination and issued Ext.P26 certificate. She noted 26 ante mortem injuries on the body of the deceased and opined that the death was due to injuries sustained to the chest. She also stated that injury Nos. 1 to 4 can be caused by using MO1 to MO3 sticks. In her cross examination, she stated that she did not get any evidence of past heart attack on the deceased.

15. PW 22 is one of the investigating officers in this case. He deposed that he took over the investigation of this case on 13/12/2013 and thereafter collected Ext.P5 treatment records, as



2025:KER:18964

per Ext.P8 mahazar. On the basis of Ext.P9(a) confession made by the first accused, he recovered MO1 by preparing Ext.P5 mahazar and forwarded MO1 and MO2 to the court as per Ext.P30 property list. On the basis of Ext.P29(a) confession statement of the third accused, he recovered the motorcycle used by the third accused by preparing Ext.P29 mahazar. Similarly, on the basis of Ext.P3(a) confession statement of the third accused, he recovered MO3. Thereafter, he prepared Exts.P28 scene mahazar and produced the articles seized as per Exts.P3 and P29 before the court as per Ext.P31 property list. He also prepared Ext.P2 scene mahazar and filed Ext.P32 report adding Section 120B IPC.

16. PW 23 is the investigating officer, who filed the final report and produced Ext.P33 FSL report.

Defence Evidence

17. From the side of the accused, DW1, a forensic expert by name Sherly Vasu was examined. She deposed that she retired as Principal of the Medical College Hospital, Thrissur and also had



2025:KER:18964

worked as the head of the Department in Forensic Medicine during the period from 2001 to 2014. She stated that injury No.4, in Ext.P 26 when taken as a whole, by itself may not cause death because there is no tear of intercostal vessels and there is no tear in the lungs itself. Injury No.4 is a grievous injury, but is not life threatening. In her opinion injury No.12 is the cause of death of Thampachan. According to her, injury No.12 is a natural disease and myocardial infarction stated in Ext.P26 is the result of the injury No. 12. In the case on hand, massive infraction of heart, kidneys and adrenals, happened due to injury No.12 in between 24 to 48 hours and based on these facts, she cannot agree with the cause of death stated in Ext.P26. She further stated that none of the injuries mentioned in Ext.P26 accelerated the death of the injured and the death is due to natural causes and is not a homicidal death.

Contentions of the appellants/accused

18. The learned Counsel for the appellants/accused Adv.



2025:KER:18964

S.Rajeev, at the outset, itself submitted that the second appellant/second accused had died during the pendency of this appeal and the first appellant/first accused is his son and legal heir. On merits, he contended that the prosecution has not proved its case beyond reasonable doubt and there is no evidence available even to convincingly prove that the death of Thampachan is homicidal. He submitted that PW-17, the doctor, who conducted the postmortem examination has not gone through the earlier treatment records of the deceased and has not considered the impact of injury No.12, which DW1 has pointed out as the cause of death. He also submitted that the prosecution has suppressed the treatment records of the deceased in the Medical College Hospital, where he died while undergoing treatment and if the same was produced, it would have given a clear picture as to the actual cause of the death. He argued that the trial court erred in not relying upon the opinion of DW1, who is far more experienced than PW 17 and her evidence, unambiguously would show that the



2025:KER:18964

death of Thampachan is not homicidal. He contended that the evidence of PW1 & PW2 cannot be relied on, since they are relatives and interested witnesses and the testimony of these eye witnesses are contradictory to the recitals in the FIS. He would also submit that the prosecution has suppressed the incident which took place in the bar, as deposed by PW15. Hence, he prayed that his appeal may be allowed.

Contentions of the Public Prosecutor

19. The learned Public Prosecutor Adv.Neema argued that the evidence of PW1 and PW2 regarding the events is credible and cogent and the same is also corroborated by the evidence of PW3 coupled with Ext.P4, wherein the names of the accused and the overt acts played by them finds a place. She submitted that the evidence of PW17 coupled with Ext.P26 would clearly go to show that the cause of death of Thampachan is due to injuries sustained to his chest using MO1 to MO3 and the evidence of DW1 cannot be relied upon since she had not seen the body or has conducted any



2025:KER:18964

examination upon it. She also relied on the decision in **Nirmala v. State of Kerala [2006 (1) KLT 761]** in support of her contentions. She further submitted that Ext.P1 FIS given by the deceased himself can be treated as a dying declaration and be acted upon to find the accused guilty.

Contentions of the victim/PW1.

20. Learned Counsel for PW1 Adv.Alexander George contended that the accused have brutally attacked Thampachan and the same is proved by the evidence of PW1 and PW2. He argued that the medical evidence adduced by the prosecution by examining PW3, PW4 and PW17 also confirms the fact that the victim had died due to the attack made by the accused using MO1 to MO3. He submitted that the evidence of PW17 coupled with Ext.P26 confirms the fact that the death of Thampachan is homicide. Hence, he submitted that this is a fit case where the accused can be convicted under Section 302 IPC.



2025:KER:18964

Evaluation of evidence

21. The first and foremost question to be considered in these appeals is whether the death of Thampachan is homicidal or not. While the prosecution heavily relies upon the evidence of PW17 and Ext.P26 to substantiate its case that the death of Thampachan is homicide, the accused relies upon the evidence of DW1 to contend otherwise. PW17 has opined that the death of Thampachan was due to injuries sustained to his chest and that injury Nos. 1 to 4 noted can be caused by MO1 to MO3. But in her cross examination, she stated that she has not specifically mentioned as to which of the injuries was the cause of death since the death was due to injuries to chest and internal organs. It is very pertinent to note that PW17 has not pinpointed any substantial injuries being caused to any internal organs of the deceased in the alleged attack. It is also pertinent to note that even though PW17 has noted injury No.12, which is an infected wound of 51 x 11 to 25 cm.on the back and outer aspect of right



2025:KER:18964

thigh, she has not verified the earlier treatment records of the deceased regarding the said injury or its effects on the body of the deceased at the time of her examination. Now coming to the evidence of DW1, who is a vastly experienced person in Forensic Medicine, it can be seen that she has categorically stated that the death of Thampachan is due to natural causes and is not a homicidal death. As regards the hemorrhage mentioned in injury No.4, she would opine that there is no chance for air leakage or blood leakage and the same itself will not cause death because there is no tear of intercostal vessels or lungs. She would affirm that injury No.4, even though is grievous, is not life threatening. She further stated that injury No.12 is the cause of death in the instant case and the same is a natural disease. According to her, Myocardial infarction is the result of injury No.12 and massive infarction of heart, kidneys and adrenals had happened in this case in between 24 to 48 hours due to injury No.12 and hence, the cause of death stated in Ext.P26 is not correct. It is to be taken



2025:KER:18964

note that there is no substantial challenge from the side of the prosecution regarding the reasoning and opinion given by DW1. Further, as stated earlier, the evidence of PW17 is totally silent about injury No.12 and its effects/consequences on the deceased and being so, the opinion of DW1 cannot be brushed aside by this Court. The situation would have been different if PW17 had analysed injury No.12 and has given an opinion ruling out the possibility of death of the deceased due to it. The decision in Nirmala's case (cited supra) relied on by the prosecution, hence, will not be applicable to the facts and circumstances of this case. If so, in the light of the evidence as discussed afore, we are of the view that the prosecution has not adduced any convincing evidence to prove that the death of Thampachan is homicidal.

22. Be that as it may, the materials on record reveal that there is overwhelming evidence available to prove that the accused together have brutally attacked deceased Thampachan using MO1 to MO3 and has inflicted grievous hurt upon him. The



2025:KER:18964

evidence of PW1 shows that in the evening of 6/12/2013, the third accused had come to her house and called Thampachan outside and thereafter, had hit him on his back using a stick. When the deceased fell down, the first and the second accused also beat him using sticks and stamped him. When the relatives and locals intervened, the accused left the place. Thereafter, they lifted Thampachan, who was lying there with injuries and took him inside the house. PW1 also positively identified the weapons and the accused. On the next day morning, the first and the second accused again physically assaulted the deceased by slapping him and at about 9 am, Thampachan was taken to the hospital. It is to be taken note that the evidence of PW1 is also supported by the evidence of PW2, who had witnessed the incident. Moving further, the evidence of PW3 reveals that on 7/12/2013 at about 11.40 am, she had examined the deceased, who had approached her with a history of assault and has issued Ext.P4 wound certificate. Her evidence reveals that the deceased himself has told her about



2025:KER:18964

the history and the alleged cause of injury, which she had recorded in Ext.P4. It is pertinent to note that Ext.P4 mentions the name of the accused, the date, time, place and briefly the manner in which the deceased was assaulted. This piece of evidence also lends much support and credence to the evidence of PW1 and PW2 regarding the incident. Most importantly, the evidence of PW4, the doctor who had treated the deceased from 7/12/2013 to 11/12/2013, would go to show that the patient was having complaint of pain on the left side of his chest and on examination, she had suspected fracture in the fifth rib. It is also revealed that, later on 11/12/2013, she had referred the deceased to the Medical College Hospital suspecting pneumothorax and coronary artery disease, where he died. The postmortem examination conducted by PW17 reveals that the deceased had suffered fracture of third to fifth ribs on the left side at the outer angle. The evidence of PW17 further confirms the fact that injury Nos.1 to 4, which includes the the fractures, as referred above, can be caused by



2025:KER:18964

using MO1 to MO3 sticks. In the light of the evidence, as discussed afore, we have no doubt in our mind that the deceased has sustained fractures on his ribs in the attack made by the accused using MO1 to MO3.

23. The next question to be considered is whether MO1 to MO3 can be classified as a “dangerous weapon”. What would constitute a “dangerous weapon” would depend upon the facts of each case and no generalisation can be made. The facts involved in a particular case, depending upon various factors, like size, sharpness, etc. would throw light on the question whether the weapon was dangerous or deadly weapon or not. (See **Mathai v. State of Kerala [(2005) 3 SCC 260]**). In the present case, MO1 to MO3 are ordinary wild sticks having a length of about 1 metre without much girth and the same cannot be classified as a dangerous weapon. If so, we are of the view that the offence, which would be attracted in the present case, is under Section 325



2025:KER:18964

IPC.

24. As far as the offence under Section 447 is concerned, we are of the considered view that there is no substantive evidence to prove that accused Nos. 1 and 2 have trespassed into the property of the deceased when they allegedly assaulted him on 7/12/2013. The evidence of PW1 and PW2 are very vague on this aspect and does not pinpoint the exact place where the incident had taken place. Their evidence only show that when the deceased uttered abusive words against accused 1 and 2, they had moved towards him and has clouted him and nothing more. If so, we find that the conviction of appellants 1 & 2/accused 1 & 2 under Section 447 IPC cannot be sustained.

25. The upshot of the afore discussions on evidence is that, even though the accused cannot be found guilty of committing the offence punishable under Section 304 Part-II IPC, they are liable to be convicted and sentenced under Section 325 IPC. The conviction



2025:KER:18964

of appellants 1 & 2/accused 1 & 2 under Section 447 IPC also cannot be sustained. As regards sentencing the appellants, considering the gravity of offence, the manner in which it was perpetrated, the weapon used, the injuries inflicted and the facts and circumstances of this case, we are of the view that they can be sentenced to undergo rigorous imprisonment for a period of three years under Section 325 IPC.

In the result, the Criminal Appeal(V) No.26/2019 is dismissed and Criminal Appeal No.1462/2018 is allowed in part as follows:

i) The conviction and sentence of the appellants/accused under Section 304 Part-II IPC are set aside.

ii) Instead, the appellants/accused are convicted under Section 325 IPC and are sentenced to undergo rigorous imprisonment for a period of three years.

iii) The conviction and sentence passed against the appellants



2025:KER:18964

1 & 2/accused 1 & 2 under Section 447 IPC are also set aside.

Sd/-

RAJA VIJAYARAGHAVAN V
Judge

Sd/-

P.V.BALAKRISHNAN
Judge

dpk