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**(2022) 02 KL CK 0003**

**High Court Of Kerala**

**Case No:** Criminal Appeal No. 1387 Of 2006

Satheesh Babu S/o Karunakaran

APPELLANT

Vs

State Of Kerala

RESPONDENT

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**Date of Decision:** Feb. 1, 2022

**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 120B, 307

**Hon'ble Judges:** T.R.Ravi, J

**Bench:** Single Bench

**Advocate:** D.Kishore, S.L. Syalaja

**Final Decision:** Allowed

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### **Judgement**

T.R.Ravi,J.

1. The 1st accused in S.C.No.410 of 2002 on the file of the Second Additional Sessions Judge, Thiruvananthapuram has filed this appeal being aggrieved by the judgment dated 13.7.2006, whereby he has been found guilty of offence under Section 307 read with Section 34 IPC and has been convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.50,000/- and in default of payment of fine to undergo imprisonment for six months.

2. S.C.No.410 of 2002 was tried along with S.C.No.974 of 2004. The above said cases relate to Crime No.49/2001 of Mangalapuram Police Station.

The appellant along with one Subhash were the accused in S.C.No.410 of 2002 and one Suresh Babu was the accused in S.C.No.974 of 2004. On the side of the prosecution PW1 to PW12 were examined and Exts.P1 to P13 were marked. On the side of the defence, Exts.D1 to D11 were marked.

3. According to the prosecution, on or about 29.1.2001, the accused conspired to cause the death of one Vinayan and with the said common intention they armed themselves with iron pipes, iron rods and spade handle and boarded an Ambassador car bearing registration No.KL-01/7057 along with one Ajikumar. They followed Vinayan who was travelling in a scooter and when the scooter reached about 78 metres and 30 centimeters away from the culvert numbered as 548/1 at Pallippuram Village, the appellant hit the car against the scooter in which Vinayan and one Kunjumon were travelling and they fell down into a pit. Thereafter the accused with the weapons ran to Vinayan and attacked thereby committing offences under Section 120B and 307 read with Section 34 IPC.

4. According to Vinayan who was examined as PW1, he was conducting a tyre shop named Krishna Tyres at Kazhakkuttam during 2001. His case is that the incident occurred at about 7.30 hrs. in the night on 29.1.2001, and he sustained injuries and was treated at Medical College Hospital. He has stated that he owned a lorry and he was travelling in the scooter along with the driver of the lorry, towards a place called CRP at Pallippuram for the purpose of calling loading workers. It was during the said travel that the Ambassador car hit them from the side. According to him, when people came out of the car and started hitting him with spade handle and iron rod, he ran away, went to a house nearby and requested the person in the house for a lungi to wear and also to take him to a hospital. He also stated that he does not know what happened to the assaulters. He further says that he knew one Kannan who belonged to the area, that he was given water and he did not remember anything thereafter. He identified the spade handle and iron rod which were marked as MOs 1 and 2. He also proved Ext.P1 statement given to the Police. PW1 was declared hostile. When cross examined, he stated that there was animosity between the accused and himself and that earlier his cousin Ajayan and the appellant had involved in physical fights.

5. The above said PW1 Vinayan is the accused in S.C.No.1799/2001. According to the appellant, the car in which he was travelling had overtaken the scooter in which PW1 was travelling and during that process, the scooter dashed against the car and fell down and the witness sustained injuries.

According to the defence, Vinayan and Kunjumon had come with iron pipes to attack the appellant who ran away to the right side and that one

Ajikumar who was also travelling in the car had opened the door of the car and ran towards the left. According to the appellant, Vinayan and

Kunjumon followed Ajikumar who jumped into a water channel and they had caused the death of Ajikumar by suffocating him in the water channel.

Even though these aspects were suggested to the witness during cross examination, the same were denied.

6. PW2 is the attestor to the mahazar. PW3 is a person who took the injured PW1 to the hospital. According to him, he boarded the car only from

Kazhakuttam. PW4 is the lady from the house to which PW1 had gone and asked for lungie and water. According to her, a person soaked in blood

came to the house at about 7.30 hrs in the night, while she was watching television, and she did not open the door. Then, PW1 came again along with

Surendran who was staying in the upstairs portion of the house and on the request of Surendran, she had opened the door and given the lungie.

According to her, a car was called for and PW1 was taken to the hospital. PW5 who was examined is the owner of the house to which the lorry

driver of PW1 had gone and requested for water. PW6 is the son of PW4 who also stated about PW1 coming to the house. PW7 is a person who had

boarded the car in which Vinayan was taken to the hospital from Kazhakuttam. PW8 is the owner of the car which had allegedly hit the scooter and

according to him he had sold the car for Rs.90,000/-. PW9 is the pillion rider in the scooter. He has stated that he was called by PW1 through his

brother Byju and while they were going towards Pallippuram a car came and hit them at a place where there was no electric light and they had fallen

down. He heard somebody shout "kill him" and he hence ran away. PW10 is the witness to the seizure mahazar. PW11 is the person who drove

PW1 to the hospital in a car. PW12 is the brother of deceased Ajikumar. PW14 is the person who recorded Ext.P1 FI statement. PW15 is the Circle

Inspector, who investigated the case and PW16 is the Circle Inspector who filed the charge sheet.

7. In S.C.No.1799/2001, initiated against PW1 Vinayan on the murder of Ajikumar, he was convicted. The accused in this case are the direct cousins

of PW1 Vinayan. Admittedly PW1 has been convicted for the murder of Ajikumar and the 2nd accused in S.C.No.410 of 2002 and the accused in S.C.No.974 of 2004 have been acquitted.

8. The counsel for the appellant pointed out that as far as the conviction under Section 307 is concerned, the Court itself found that the case put

forward by PW1 was that he was attacked with iron rods and spade handles but the injuries are very simple in nature. The Court also found that the

“attack portion” deposed by PW1 is not believable. However, the Court, solely relying on the evidence of PW1 that the car came and hit the

scooter from behind and that the appellant was in the car, came to the conclusion that there is preponderance of probability to show that hitting the

scooter with the car was to commit murder of PW1, since there was previous animosity. The Court further seems to assume that if a car hits against

a scooter, in all probability death will be caused to the person travelling the scooter. It is further concluded that even though the injury to PW1 was

minor and that there was no injury to PW9 who was the pillion rider, it does not mean that there was no intention to cause death. The reasoning

adopted by the Court below is in my opinion absolutely perverse. The Court cannot rely on such conjectures and surmises, when it comes to

appreciating a case under Section 307. Even after finding that the co-accused in the case is not guilty and after having acquitted the accused in the

connected case, the Court further finds that Section 34 is attracted. Except for the fact that the accused were travelling together in the car which hit

against the scooter in which PW1 and PW9 were travelling in a place where admittedly there was no electricity, there is nothing in evidence to come

to such a conclusion. It is well settled that in a criminal trial, the standard of proof required to establish the guilt is much higher and unlike a civil case

or a departmental enquiry, it is not sufficient to show a preponderance of probability. The offence should be proved beyond reasonable doubt. [See

Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI & Anr. [(2020) 9 SCC 636]. The counsel for the appellant also

contended that the evidence of a partly reliable witness cannot be relied on to corroborate the evidence of another partly reliable witness. It is pointed

out that after finding that there is no legal evidence against the appellant, the Court below held that it is unsafe to acquit the appellant, which itself is

perverse. I find considerable force in the contentions raised by the counsel for the appellant.

In the result, the appeal is allowed. The judgment dated 13.7.2006 in Sessions Case No.410 of 2002 on the file of the II Additional Sessions Court,

Thiruvananthapuram is set aside and the appellant is acquitted. Bail bond, if any, executed by the appellant and sureties, stands cancelled.