IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 3RD DAY OF AUGUST 2022 / 12TH SRAVANA, 1944

CRL.A NO. 331 OF 2007

AGAINST THE JUDGMENT DATED 22.01.2007 IN SC 353/2004 OF ADDITIONAL SESSIONS COURT (ADHOC)-II), THODUPUZHA

APPELLANT/ACCUSED:

SAJU, S/O. MATHEW,
ELLIL VEETTIL, VELLAMCHIRA BHAGAM, KODIKULAM VILLAGE.
BY ADV SRI.M.RAMESH CHANDER

RESPONDENT/STATE & COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM.

BY ADV PUBLIC PROSECUTOR SMT.NIMA JACOB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03.08.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

JUDGMENT

The sole accused in S.C.No.353/2004 on the files of the Additional Sessions Court (Adhoc)-II, Thodupuzha has preferred this appeal under Section 374(2) of Cr.P.C. assailing conviction and sentence imposed against him in the above case as per judgment dated 22.01.2007. The respondent herein is the State of Kerala.

2. Heard the learned counsel for the appellant, Adv.Ramesh Chander and the learned Public Prosecutor appearing for the State.

3. Shown off unnecessary details, the prosecution case is as under:

It is alleged by the prosecution that on 16.12.2002 at about 7.30 p.m., the accused herein, with intention to do

away the defacto complainant, stabbed him with a knife, on the left side of his abdomen and thereby caused grievous injury and consequential removal of his kidney. On the above facts, crime No.171/2002 was registered by Kaliyar Police and the matter was investigated. Finally, charge alleging commission of offence under Section 307 of IPC by the accused was laid before the Judicial First Class Magistrate Court-II, Thodupuzha. The jurisdictional Magistrate committed the case to the court of Sessions, Thodupuzha and in turn, the case was made over to the Additional Sessions Court, Thodupuzha for trial and disposal.

4. The learned Additional Sessions Judge, after hearing the accused and the prosecution, framed charge alleging commission of offence under Section 307 of IPC and proceeded with trial.

5. During trial, PW1 to PW13 were examined and

Exts.P1 to P14 and MO1 to MO4 were marked on the side of the prosecution.

6. On close of prosecution evidence, the accused was questioned under Section 313(1)(b) of Cr.P.C and the accused denied the incriminating circumstances found in the evidence against him and he filed a written statement to the effect that the accused was not present at the spot of occurrence at the time of occurrence.

7. Thereafter, DW1 and DW2 examined and Ext.D1 marked on the side of the defence.

8. The learned Sessions Judge appraised the evidence and found that the accused committed offence under Section 307 of IPC and was convicted and sentenced to undergo rigorous imprisonment for a period of eight years and to pay fine of Rs.50,000/-. In default of payment of fine, rigorous imprisonment for a period of one

year also was imposed with direction to pay the same as compensation to the injured/PW1.

9. The learned counsel for the accused argued that the learned Sessions Judge relied on feeble evidence to convict and sentence the accused in this matter, where the prosecution miserably failed to prove commission of offence under Section 307 of IPC by the accused beyond the reasonable doubt. He had given emphasis to the deposition of PW1, whereby PW1 deposed during cross-examination that he had disclosed the name of the assailant before the doctor with submission that the said portion of evidence is a contradiction, since PW1 not given any such statement before the defence. Apart from that, the learned counsel placed plea of alibi relying on the evidence of DW1 and DW2 and Ext.D1 positing that the accused was not present at the time of occurrence in the place of occurrence.

10. Dispelling this argument, the learned Public Prosecutor vehemently supported the conviction and sentence imposed by the trial court, pointing out the fact that PW1, the injured/defacto complainant and two independent witnesses, viz., PW2 and PW6 supported the occurrence in a convincing manner though PW7, another occurrence witness, did not support the prosecution fully. The learned Public Prosecutor also highlighted medical evidence in this case in support of the conviction and sentence. Accordingly, it is submitted that the conviction and sentence do not require any interference.

11. In this case, the prosecution allegation is that the accused caused stab injury on the left side of the abdomen of PW1 on 16.12.2002 at Vellamohira in Kodikulam – Vellamchira road at 7.30 p.m., by using a knife with intention to do away him. PW1 is the defacto complainant and the injured. PW1 deposed that the occurrence was at 7.30 p.m. on

16.12.2002 at Millumpady bagam in Kodikulam. His evidence further is that while he was talking with his wife by sitting on the veranda of the house, the accused came there holding a knife. Then he rushed towards PW1 for stabbing him. PW1 ran to the house of Jolly (PW7) for the purpose of telephoning the Panchayat Vice President to inform the stab attempt. But he did not get the Panchayat Vice President on line. When PW1 came to the road from the house of PW7, the accused came in front of him and stabbed on the left side of his abdomen with the knife he held. Thereby PW1 sustained injury and he was taken to Holly Family Hospital, Muthalakkodam in an auto-rickshaw and then to Co-operative Hospital, Thodupuzha and then to Medical College Hospital, Kolencherry. A surgery was conducted and one of his kidneys was removed. He admitted that he had given Ext.P1 FI statement. The evidence of PW1 further is that PW1 and the accused are

rubber tappers and the accused stabbed him with intention to kill him, on the belief that it was PW1, who had told others that the accused had stolen latex. PW1 identified MO1 as the knife used by the accused to stab him. Similarly, he identified MO2 - shirt and MO3 - lungi worn by him at the time of occurrence.

12. During cross-examination, as pointed out by the learned counsel for the accused, PW1 given evidence that he told the name of the assailant to the doctor, who treated him. But it was suggested that no such statement was given, without reference to the relevant previous statement in this regard. Therefore, the attempt to contradict the witness in the matter of this omission is not succeeded since the previous statement regarding the same was not referred to the witness. That apart, when the doctor was examined as PW8, no question asked to him to prove the contradiction otherwise. Therefore, the

attempt to contradict PW1 regarding the said omission, in fact, failed.

13. Although during chief examination, PW1's evidence was that he ran to the house of Jolly, during cross examination, it was stated that he ran towards the house of Tandel Omana, since the said house was closed, he ran towards the house of Jolly (PW7), which is adjacent to his house. In fact, this aspect is of no much significance. Thus it appears that nothing extracted during examination by PW1 to disbelieve him in any manner and PW1 withstood the cross-examination by supporting the prosecution case without any ambiguity.

14. PW2, PW6 and PW7 are the other occurrence witnesses examined by the prosecution. Among them, PW6 is the wife of PW1. PW6 corroborated the evidence of PW1 without any ambiguity and nothing extracted to disbelieve the version of PW6 also during cross

examination. That apart, PW2, another occurrence witness, also deposed fully in support of the prosecution. PW2 deposed that when PW2 and her husband - Raju were at Millumpady bus stop for picking the bus towards Kaliyar at 7:40 pm, in front of the house of PW1, and when PW2 and her husband were talking with PW1, at the bus stop, the accused came there shouting that he would not spare PW1 and attempted to stab PW1 and PW1 ran away. PW1 ran towards the house of Jolly (PW7) and the accused chased him with a knife and the wife of the accused was also followed the accused with intention to dissuade the accused from stabbing PW1. But the accused stabbed on the left side of the abdomen of PW1 with the knife he held. Later, PW2 and her husband boarded the bus towards Kaliyar. During cross examination, the defence counsel failed to shake the version of PW2 also.

15. It is true that PW7 not supported the

prosecution since he deposed that he did not see the accused stabbing PW1 with a knife. But he admitted that PW1 had reached his house while he was offering prayers, to telephone the Panchayat Vice President and PW7 allowed to make the call. But having failed to connect to the Panchayat Vice President, he went out of the house. Then PW7 continued his prayers and he then heard sound from outside and later he saw PW1 was lying injured. In this matter, though PW7 turned hostile to the prosecution in so far as the overt-act of stabbing alleged to be done by the accused, he supported the prosecution case prior to the occurrence of stabbing and the subsequent event in tune with the versions of PW1, PW2 and PW6.

16. As far as the injury sustained to PW1 as a result of stabbing is concerned, PW8 and PW9 given evidence supporting Ext.P5 wound certificate and Ext.P6 discharge summary. PW8 given evidence that while he was working

as Casualty Medical Officer, Medical College Hospital, Kolencherry, at about 9.55 pm, on 16.12.2002, he had examined PW1 and noted a penetrating injury on the lower part of left hypochondrial region 3cm x 2cm. PW8 had given evidence further that the said injury could be caused by stabbing with MO1. He also deposed that the injury was serious and the same in its nature could be sufficient to cause death. Supporting the evidence of PW9, the Urologist attached to Medical College Hospital, Kolencherry deposed that PW8 referred PW1 before him. He was subjected to ultra sound scan and CT scan examinations and the same revealed a tear in the mid portion of left kidney with blood round the kidney and peritoneum. His shock was connected with the blood transfusion. Explorative laprotomy was performed immediately. There was about 4 litres of blood in the abdomen and profused oozing of blood from the lacerated

left kidney. Though initially, it was attempted to repair the injury on the kidney, since the patient was found to going to shock again, his left kidney had to be removed and accordingly, left kidney was removed. He was discharged on 08.01.2003. Thus, it appears that apart from the oral version of PW1, PW2 and PW6, the Doctors also corroborated the stab injury caused on PW1 and which led to removal of left kidney of PW1. PW12 and PW13 are the investigating officers. In this case PW12, who recorded FIS and registered the FIR, supported the prosecution case in that regard.

17. Apart from that, it was PW12, who arrested the accused and recovered MO1 knife at the instance of the accused under Section 27 of the Evidence Act acting on the disclosure statement given by the accused, regarding authorship of concealment of MO1 weapon as stated before PW12 while he was in police custody. PW12 given

evidence that he had arrested the accused on 20.12.2002 and Ext.P9 is the arrest memo. While the accused was in police custody, he had given disclosure statement that the knife was concealed beneath a plantain tree nearby the property of his house and he could show it, if he was brought to the said place. Accordingly, PW12 reached the property as led by the accused, at the place of occurrence and MO1 was recovered by the accused. According to PW12, Ext.P3 is the mahazar prepared at the time of recovery of MO1. It is interesting to note that PW4, examined by the prosecution to prove Ext.P3 mahazar, fully supported the recovery as well as Ext.P3 Mahazar after admitting his signature therein as a witness. Though PW4 was cross-examined, nothing extracted to disbelieve the recovery in any manner and the cross-examination is confined generally on other aspects with a suggestion that PW4 was brought into to support the false case of the

prosecution by giving false evidence. PW13, in fact, verified the investigation as on 01.03.2003 and filed the final report before the jurisdictional magistrate court. Thus the recovery of MO1 as per the disclosure statement as per Ext.P11 is proved without any iota of doubt through the evidence of PW12 and PW4 and as per Ext.P3 mahazar.

18. It is argued by the learned counsel for the appellant that there was delay in recovering MO2 and MO3, shirt and lungi respectively, worn by the injured at the time of accident. PW13, who verified the investigation before filing charge, given evidence that the delay was occasioned since the injured was at the hospital in consequence of serious injuries sustained in this occurrence.

19. It is pointed out by the learned counsel for the appellant that the prosecution witness No.17 (CW17), who

conducted a part of the investigation, was not examined by the prosecution and the same is fatal to the prosecution. While addressing this argument, I have perused the evidence of PW12. It is noticed that vital part of the investigation is the volition of PW12, though CW17 prepared the scene mahazar marked as Ext.P2 and recorded the statements of witness Nos.2 to 8 as deposed by PW12. The prosecution marked Ext.P2 scene mahazar, MO2 shirt and MO3 lungi through PW12 in the absence of CW17. It is true that CW17 was not examined by the prosecution as his presence could not be secured since he was abroad. This fact was deposed by PW12.

20. Thus a question arises for consideration is as to whether non-examination of CW17, who conducted part of the investigation is a reason to disbelieve the prosecution case in toto and to acquit the accused for the said reason alone. It is true that the prosecution is duty bound to

examine all material witnesses, particularly, the investigating officer to prove the prosecution case. But such examination is possible in relation to witnesses whose presence could be secured by the means known to law. If a crucial witness or the investigating officer dies or their presence could not be secured for valid reasons, non-examination of crucial witnesses or the investigating officer by itself is not a ground to disbelieve the prosecution case in toto, if the evidence adduced otherwise emphatically established the prosecution case. That apart, in this case, CW17 prepared the scene mahazar as Ext.P2 and for which no serious challenge raised by the accused. Similarly, CW17 recorded the previous statements of witness Nos.2 to 8. In fact, no material contradiction extracted during cross-examination of the witnesses so as to get the contradiction proved by the evidence of CW17. It is relevant to note that Ext.P1

FIS was recorded by PW12 and Ext.P8 FIR was registered by him. The arrest of the accused, recording of his disclosure statement and recovery of MO1 knife were at the instance of PW12 and thus it appears that the major part of the investigation in this case is that of PW12 and in such a case, non-examination of CW17, the investigating officer, cannot be the sole ground for acquittal of the accused. Therefore, this argument cannot be appreciated.

21. Therefore, non-examination of CW17 is not a reason to disbelieve the entire case put up by the prosecution in a convincing manner. In this case, after appreciating the evidence, the learned Sessions Judge found that the accused committed offence under Section 307 of IPC.

22. Section 307 provides that whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he

would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is herein before mentioned.

23. In the decision reported in **Sagayam v. State of Karnataka (AIR 2000 SC 2161 : (2000) 4 SCC 454 : 2000 SCC (Cri) 819 : 2000 Cr LJ 3182),** the Apex Court held that in order to justify conviction under section 307 I.P.C, it is not essential that bodily injury capable of causing death should have been inflicted. An attempt in order to be criminal need not be the penultimate act foreboding death. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof, such act being proximate to the crime intended and if the attempt has gone so far that it would

have been complete but for the extraneous intervention which frustrated its consummation. There are different stages in a crime. First, the intention to commit it; second, the preparation to commit it; third, an attempt to commit it. If at the third stage, the attempt fails, the crime is not complete but the law punishes for attempting the same. An attempt to commit crime must be distinguished from an intent to commit it or preparation of its commission.

24. Similarly in another decision reported in **R.Prakash v. State of Karnataka (AIR 2004 SC 1812 : 2004 Cr LJ 1391),** the Apex Court held that it is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted.

25. In another decision reported in **State of**

Madhya Pradesh v. Kanha (AIR 2019 SC 713), the Apex Court held that Eleven punctured and bleeding wounds found on body of injured allegedly were caused by firearm. As such circumstances clearly indicate that there was intention to murder, lack of forensic evidence to prove grievous injury cannot be basis to hold that section 307 is inapplicable.

26. In another decision reported in **State of Madhya Pradesh v. Harjeet Singh and Another (2019 KHC 6192 : AIR 2019 SC 1120 : 2019 Cri LJ 2093),** the Apex Court, while dealing with an appeal filed by the State against acquittal of accused Nos.1 and 2 in a case alleging commission of offence under Section 307 of IPC, while reversing the acquittal of the first accused, the Apex Court referred the decision reported in **State of Madhya Pradesh v. Mohan and Others (2014 SCC 116**), wherein it was observed that if the assailant acts with the

intention or knowledge that such action might cause death, and hurt is caused, then the provisions of S.307 I.P.C. would be applicable. There is no requirement for the injury to be on a "vital part" of the body, merely causing 'hurt' is sufficient to attract S.307 I.P.C.

27. Similarly, in the decision reported in **Jage Ram v. State of Haryana (2015 (11) SCC 366),** the Apex Court held that, for the purpose of conviction under S.307 IPC, prosecution has to establish (i) the intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution that accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under S.307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury

actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given etc.

28. In this case, the appellant/accused raised plea of alibi on the submission that he was not present at the time of occurrence and the place of occurrence and, therefore, the entire prosecution story against him as false. That apart, he filed a statement after he was questioned under Section 313 Cr.P.C and in the said statement, he put up a case that he was a worker of Kerala Congress (M) and he resigned from the party due

to difference of opinion with witness No.7. Further on the influence of witness No.7, a theft case was registered against him and the same ended in acquittal. Further he stated that on 10.12.2002 at about 5 p.m, there occurred a scuffle in between the workers of Indian National Congress and Kerala Congress(M) and PW1 sustained stab injury in the above scuffle. In fact, no evidence adduced by the accused in support of the above case put up.

29. Now I shall address the plea of alibi attempted to be established by the evidence of DW1 and DW2 and as per Ext.D1 by the accused. The Sessions Judge discussed the said evidence and negatived the plea of alibi as per the narration in paragraph 26 of the judgment. For clarity, I am inclined to extract the same as under:

> "26. In order to prove the alibi raised by the accused he examined DWs 1 and 2 DW1 is Vicar, St George church, Vandamattan. He deposed that he issued Ex D1 certificate stating that Rosa W/o Mathai died on 16.12.02 and that the

funeral was held on 17.12.07. DW1 stated that he does not know the accused in this case. He also does not know about the relationship between the accused and deceased. Hence the evidence of DW1 is not at all helpful to the accused. DW2 deposed that he knows the accused. When asked whether he knows that the father's sister of the accused died on 16.12.02. he deposed that he knows about it. The son of the deceased was a classmate of DW2. DW2 stated that he had seen the accused in the house of the deceased dusk in the cross examination he stated the he does not know the name of the father's sister of the accused. He does not know when and how the father's sister of the accused died. He does not know as to how many brothers and sisters the father of the accused have. DW2 studied only up to 4th standard. After that there was no occasions for him to meet the son of the deceased. There is a distance of 6 kms from his house land the house of the deceased. When asked by the court DW2 stated that only when he was examined before court he knew that it was the father's sister of the accused who died. It was the accused who told him that it was his father's sister who died. When DW2 was examined before court he was

> smelling liquor. He admitted that he had consumed liquor on that day. He does not even know the name of the husband of the deceased. He does not know how many children the deceased had. The evidence of DW2 would clearly show that he is only a hired witness. There is nothing to show that Rosa who died on 16.12.02 was the father's sister of the accused. Even if it was a father's sister of the accused who died on 16.12.02, there is nothing to show that the accused was present in the house of the deceased at 7:30 pm on 16.12.02. Pws1, 2 and 6 have clearly deposed before court that it was the accused who stabbed PW1. The reason for the enmity on the part of the accused towards PW1 is also stated by PWs 1 and 6. Hence it is proved beyond doubt that it was the accused himself who stabbed PW1 with MO1 knife. The alibi raised by the accused stands not proved.

30. On reading paragraph 26 along with deposition of DW1 and DW2, in the evidence of DW1 there is nothing to suggest that the appellant/accused was not at the place of occurrence on the relevant time of occurrence. It is to be noted further that the contents of Ext.D1, a certificate

stating that Rosa, W/o. Mathai died on 16.12.2002 also not proved by extracting the contents of the document from the mouth of DW1. In fact, nothing in the evidence of DW1 to prove the plea of alibi.

31. Coming to the evidence of DW2, as rightly observed by the learned Sessions Judge, he could be held as a hired witness for the reason stated in para.26 of the judgment of the trial court as extracted above. Coming to his evidence, he deposed that he had seen the accused on 16.12.2002 at the house of the deceased (the sister of the father of the accused) at dusk. DW2 not stated the exact time he had seen the accused at the above house though the occurrence in this case is on 16.12.2002 at 7.30 p.m. It is relevant to note that DW2 entered into the witness box with smell of liquor and during cross examination he admitted that he had consumed liquor on that day. During further cross-examination, DW2 failed to

say even the name of the husband of the deceased. His evidence further is that the accused told him that his father's sister was died. Therefore, no credence can be given to the evidence of DW2 to prove the alibi. It is settled law that when plea of alibi is raised, it is the bounden duty of the accused to prove the same in a convincing manner and on failure to do so, the plea of alibi shall be negatived.

32. In the decision reported in **[AIR 1997 SC 322], Binay Kumar Singh v. State of Bihar**, the Apex Court while dealing with the plea of alibi held as under:

> *"22. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the*

crime. The burden would not be lessened by the mere fact that the accused had adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the Court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the Court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide Dudh Nath Pandey v. State of Uttar Pradesh, (1981) 2 SCC 166 : (AIR 1981 1 SC 911); State of Maharashtra v.

Narisingrao Gangaram Pimple, AIR 1984 SC 63).

In this case, the plea of alibi raised by the appellant relying on the evidence of DW1 and DW2 is not established at all, though a heavy burden is cast upon him to establish the said plea by strict proof.

33. On re-appreciation of evidence at par with the argument advanced by the learned counsel for the appellant and the learned Public Prosecutor, it has to be held that the available evidence would suggest that the accused reached the house of PW1 by holding a knife and he attempted to stab PW1 uttering that he would not spare PW1. Although PW1 ran away to the house of PW7 to telephone the Panchayat Vice President to inform the attempt, the accused followed him and stabbed him in the presence of his wife (PW6) and PW2, who being a chance witness present at the place of occurrence while awaiting bus to reach Kaliyar. The evidence of the doctors, PW8

and PW9, who were examined, read along with Ext.P5 wound certificate and Ext.P6 discharge summary categorically established that PW1 sustained a fatal injury which, in turn, led to removal of his left kidney. The prosecution well established recovery of MO1 identified by PW1 as the knife used for stabbing at the instance of the accused under Section 27 of the Evidence Act to corroborate the prosecution case espoused by the evidence of the occurrence witnesses and the doctors. Therefore, I am of the view that the prosecution successfully established the ingredients to attract offence under Section 307 of IPC, viz., (i) the intention to commit murder and (ii) the act done by the accused in that attempt. Further, the entire evidence and from the attending circumstances read along with the animosity between PW1 and the accused on the ground that PW1 told others that accused had stolen latex and he had used

MO1, a knife capable of causing fatal injuries to stab PW1, and in his attempt to stab the accused to do away PW1, he caused a stab injury which resulted in removal of the left kidney of PW1, it has to be held that the prosecution succeeded in establishing the offence under Section 307 of IPC. Therefore, the conviction does not require any interference. Therefore, the same stands confirmed.

34. Coming to the sentence, the trial court sentenced the accused by imposing rigorous imprisonment for a period of 8 years and to pay a fine of Rs.50,000/-. In default of payment of fine, default imprisonment for a period of one year also was imposed with direction to give the fine amount as compensation to PW1.

35. Section 307 of IPC provides that a person if found guilty of attempt to commit murder, he shall be punished with imprisonment of either description for a term which may extend to ten years, and also liable to

fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or such punishment as is herein before. It is submitted by the learned counsel for the appellant that the appellant is the only bread winner of his family, and therefore, leniency in the matter of sentence may be shown. In view of the above submission, taking a lenient view, I am inclined to reduce the sentence of rigorous imprisonment for a period of 5 years instead of 8 years imposed by the trial court without altering the fine. Therefore, the sentence is modified as indicated below.

36. In the result, this appeal stands allowed in part. The conviction imposed against the accused under Section 307 of IPC stands confirmed. The sentence stands modified and accordingly, the accused shall undergo rigorous imprisonment for a period of five years and to pay fine of Rs.50,000/- (Rupees Fifty thousand only) and

if the fine is paid or released, the same shall be given to PW1, as compensation.

37. In default of payment of fine the appellant /accused shall undergo default rigorous imprisonment for a period of ten months.

38. Since the bail bond of the accused stands cancelled, the accused is directed to surrender before the trial court within ten days from today to undergo the modified sentence and on failure to do so, the trial court is directed to execute the sentence as per law without fail.

Registry is directed to forward a copy of this judgment within 7 days to the trial court for information and compliance.

Sd/-

A. BADHARUDEEN

JUDGE

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