IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 29TH DAY OF AUGUST 2024 / 7TH BHADRA, 1946

CRL.REV.PET NO. 679 OF 2024

CRIME NO.1686/2012 OF Chadayamanagalam Police Station, Kollam

AGAINST THE JUDGMENT DATED 05.09.2023 IN CRA NO.98 OF 2021 OF ADDITIONAL SESSIONS COURT - V, KOLLAM ARISING OUT OF THE JUDGMENT DATED 19.01.2021 IN SC NO.919 OF 2013 OF ASSISTANT SESSIONS COURT, KOTTARAKKARA

REVISION PETITIONER/APPELLANT/ACCUSED:

ANIL
AGED 42 YEARS
S/O. MOHANAN, ANIL VILASAM, ANDOORPACHA ROAD PURAMBOKKU, URUKUNNU MURI, EDAMAN VILLAGE, KOTTARAKKARA, KOLLAM DISTRICT, NOW LODGED IN CENTRAL PRISON, POOJAPPURA, THIRUVANANTHAPURAM, PIN – 695012.

BY ADVS.
T.U.SUJITH KUMAR
WINSTON K.V

RESPONDENT/RESPONDENT/STATE & COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM DISTRICT, PIN - 682031

PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 07.08.2024, THE COURT ON 29.08.2024 PASSED THE FOLLOWING:

"C.R"

A. BADHARUDEEN, J.

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Crl.R.P.No.679 of 2024

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Dated this the 29th day of August, 2024

O R D E R

This Criminal Revision Petition has been filed under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging the judgment in Crl.A.No.98/2021 on the files of the Additional Sessions Court-V, Kollam, arising out of judgment in S.C.No.919/2013 on the files of Additional Sessions Court, Kottarakkara.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Perused the relevant documents

3. In a nut shell, the prosecution allegation is as under:

The accused, who married the victim on 22.08.2003, while they were residing at the house bearing No.XVI/43 belongs to victim, situated at Nadukkunnu, Keezhattur, Edamulackal Panchayat, used to harass her by demanding more dowry, both mentally and physically. Later, the accused was expelled from that house. Again, consequent to the intervention of mediators, the dispute was compromised and the accused started to live along with the victim at her house. While so, on 24.12.2012 at about 2.15 a.m, when the victim was sleeping at her room in the middle portion of the house, the accused caught hold of her neck and cut her throat with a knife with intent to kill her, suspecting that the victim had extramarital affairs. As a result, she sustained grievous injuries on her throat. Thus, the prosecution would allege that the accused had committed the offences punishable under Sections 498A and 307 of the Indian Penal Code ('IPC' for short).

4. The learned Assistant Sessions Judge proceeded with trial after completing pre-trial formalities. Thereafter, PW1 to PW15 were examined and Exts.P1 to P16 were marked on the side of the prosecution. M.Os 1 to 4 were also marked. Ext.D1 was also marked on the side of the

defence. Then the accused was questioned under Section 313(1)(b) of the Criminal Procedure Code (`Cr.P.C' for short) and provided opportunity to adduce defence evidence, but no evidence adduced. Trial court raised the following points for determination:

(1) Whether the accused had subjected CW2 to cruelty and thereby committed the offence punishable under Section 498A of IPC?

(2) Whether the accused had attempted to murder CW2 and thereby committed the offence punishable under Section 307 of IPC?

(3) Whether the prosecution has succeeded in establishing the guilt of the accused beyond the shadow of any reasonable doubt?

(4) If so, what is the sentence or order?

5. Thereafter on meticulous evaluation of the evidence along with the injuries sustained, as shown in Ext.P5 wound certificate, the learned Assistant Sessions Judge found that the accused committed offence punishable under Section 307 of IPC, while acquitting him for the offence punishable under Section 498A of IPC. Accordingly, he was convicted and sentenced for the offence punishable under Section 307 of IPC.

6. Though appeal was filed challenging the said conviction and sentence, the learned Additional Sessions Judge dismissed the appeal confirming the conviction and sentence imposed by the trial court.

7. While arguing to upset the concurrent verdicts of conviction as well as sentence imposed by the trial court and confirmed by the appellate court, the learned counsel for the petitioner would submit that the appellate court disposed of the appeal without hearing the appellant/revision petitioner herein and, therefore, the revision petitioner was not in a position to argue the point which would support his case before the first appellate court. He argued further that going by the evidence adduced, the trial court as well as the appellate court relied on the evidence of PW2, the victim, as well as PW3, the daughter of the accused, apart from Ext.P5 wound certificate, without proof of the same.

8. Inasmuch as the question as to whether there is any illegality committed by the appellate court in disposing the appeal on merits without hearing the appellant or without appointing an Amicus Curiae is concerned, the law is well settled.

9. In the decision reported in [2023 KHC OnLine 723 :

2023 KHC 723 : 2023 KER 51721], ***Sajan v. State of Kerala***, this Court considered the above question and observed in paragraphs 7 to 13 as under:

> "7. The questions pose herein are;
>
> (i) Whether an appeal against the conviction and sentence filed by an accused can be dismissed on the ground of non-representation, or for non-prosecution ?
>
> (ii) How does an appellate court can dispose of an appeal when the appellant or his counsel is not ready to argue the matter on merits ?
>
> 8. In this connection it is relevant to refer a decision of the Apex Court in [AIR 1987 SC 1500], ***Ram Naresh Yadav v. State of Bihar***, wherein the Apex Court held as under:
>
> "It is an admitted position that neither the appellants nor counsel for the appellants in support of the appeal challenging the order of conviction and sentence, were heard. It is no doubt true that if counsel do not appear when criminal appeals are called out it would hamper the working of the court and create a serious problem for the court. And if this happens often the working of the court would become wellnigh impossible. We are fully conscious of this dimension of the matter but *in criminal matters the convicts must be heard before their matters are decided on merits. The court can dismiss the appeal for non-prosecution and enforce discipline or refer the matter to the Bar Council with this end in view. But the matter can be disposed of on merits only after*

hearing the appellant or his counsel. The court might as well appoint a counsel at State cost to argue on behalf of the appellants."

9. But the ratio in ***Ram Naresh Yadav***'s case (*supra*) was rendered without noting an earlier decision in [AIR 1971 SC 1606], ***Shyam Deo Pandey v. State of Bihar***, where the Apex Court held that *once the appellate court has admitted the appeal to be heard on merits, it cannot dismiss the appeal for non-prosecution for non-appearance of the appellant or his counsel, but must dispose of the appeal on merits after examining the record of the case. It next held that if the appellant or his counsel is absent, the appellate court is not bound to adjourn the appeal but it can dispose it of on merits after perusing the record*.

10. In ***Ram Naresh Yadav***'s case (supra), the Apex Court did not analyse the relevant provisions of the Code nor did it notice the view taken in ***Shyam Deo*** case but held that if the appellant's counsel is absent, the proper course would be to dismiss the appeal for non-prosecution but not on merits; it can be disposed of on merits only after hearing the appellant or his counsel or after appointing another counsel at State cost to argue the case on behalf of the accused.

11. The correctness of the above decisions was considered by a 3 Bench of the Apex Court in the decision reported in [(1996) 4 SCC 720 : AIR 1996 SC 2439], ***Bani Singh & Ors. v. State of U.P*** and the Apex Court overruled the decision in ***Ram Naresh***'s case (*supra*) while approving the ratio in ***Shyam Deo Pandey'***s case (*supra*) and in para.14 the Apex Court held as under:

"14. We have carefully considered the view expressed in the said two decisions of this Court and, we may

state that the view taken in ***Shyam Deo****'s case (AIR 1971 SC 1606) appears to be sound except for a minor clarification which we consider necessary to mention. The plain language of S.385 makes it clear that if the Appellate Court does not consider the appeal fit for summary dismissal, it `must' call for the record and S.386 mandates that after the record is received, the Appellate Court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of Ss.385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the Appellate Court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial Court in the judgment,but by cross checking the reasoning with the evidence on record with a view to satisfy itself that the reasoning and findings recorded by the trial Court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record. Therefore, with respect, we find it difficult to agree with the suggestion in* ***Ram Naresh Yadav****'s case (AIR 1987 SC 1500) that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution."*

12. It was held further in para.15 that:

"…… The law does not enjoin that the Court shall adjourn the case if both the appellant and his lawyer are

absent. If the Court does so as a matter of prudence of indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial Court. We would, however, hasten to add that if the accused is in jail and cannot, on his own, come to Court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the accused-appellant if his lawyer is not present. If the lawyer is absent, and the Court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so. We are, therefore, of the opinion and we say so with subject that the Division Bench which decided ***Ram Naresh Yadav****'s case (AIR 1987 SC 1500) did not apply the provision of Ss.385-386 of the Code correctly when it indicated that the Appellate Court was an obligation to adjourn the case to another date if the appellant or his lawyer remained absent."*

13. The decision in ***Bani S*****ingh***'s* case (*supra*) was rendered on 9th July, 1996. Prior to ***Bani S*****ingh***'s* case (*supra*), in the decision reported [(1996) 9 SCC 372], ***Kishan Singh v. State of U.P.,*** delivered on 2nd March, 1992, another 3 Bench of the Apex Court held that *the duty of the appellate court to examine the petition of appeal and the judgment under challenge and to consider the merits of the case before dismissing the appeal summarily is not dependent on the appellant or his counsel appearing before the Court to press the appeal. As soon as a petition of appeal is presented under Section 382 or 383 it becomes the duty of the appellate court to*

consider the same on merits, even in the absence of the appellant and his counsel before dismissing the same summarily. In a case where the appellant has been sentenced to imprisonment and he is not in custody when the appeal is taken up for preliminary hearing, the appellate court can require him to surrender, and if the appellant fails to obey the direction, other considerations may arise, which may render the appeal liable to be dismissed without consideration of the merits. In the present case the High Court should have either examined the appellant's petition of appeal and the judgment under challenge itself or appointed a counsel to assist the Court, but could not have proceeded to dismiss the same on the ground that the advocate for the appellant was not present. The position of a criminal appeal is not the same as in a civil appeal governed by the Civil Procedure Code. A comparison of the provisions of Section 384 with those of Order 41, Rules 11 and 17 of the Civil Procedure Code clearly brings out the difference. Rule 17, Order 41 of the Civil Procedure Code in express terms provides that an appeal may be dismissed on the ground of absence of the appellant when the appeal is called out, and Rule 19 provides for its restoration on the appellant offering sufficient cause for his non-appearance. In the case of a criminal appeal the corresponding provisions are not to be found in the Code of Criminal Procedure. On the other hand the Code in express terms requires the matter to be considered on merits. Thus a criminal appeal cannot be dismissed for non- prosecution, and this is the reason as to why the Criminal Procedure does not contain any special provision

like Order 41, Rule 19."

10. In ***Kishan Singh v. State of U.P.***'s case (*supra*), the three Bench of the Apex Court overruled the decision in ***Ram Naresh***'s case (*supra*) and affirmed the decision in ***Shyam Deo Pandey'***s case (*supra*), even prior to ***Bani S*****ingh** *'s* case (*supra*).

11. In the latest decision of the Apex Court reported in [2022 KHC 6710], ***Dhananjay Rai @ Guddu Rai v. State of Bihar***, the Apex Court considered ***Bani S*****ingh** *'s* case (*supra*) as well as the decision in ***Shyam Deo Pandey'***s case (*supra*), [(2013) 2 SCALE 492 = (2014) 14 SCC 222], ***Surya Baksh Singh v. State of Uttar Pradesh*** and [(2013) 3 SCC 721], ***K.S.Panduranga v. State of Karnataka*** and reiterated the legal position and held that there is no ground to dismiss an appeal against conviction, which was already admitted for final hearing, for non-prosecution, without adverting to merits.

12. Thus the legal position emerges is that when an appeal is not summarily dismissed under Section 384 of Cr.P.C and the appellate court admits the appeal, the same cannot be dismissed for non-representation or non-prosecution without adverting to the merits of the

appeal. Further the appellate court is not bound to adjourn the appeal if both the appellant and his counsel are absent, but the appellate court can adjourn the matter to provide opportunity to the appellant or his counsel to argue the matter though the appellate court is not bound to do so. Even in the absence of appellant or his counsel, the appellate court can dispose of the appeal on merits after perusing the records, evidence and the judgment of the trial court by a reasoned order detailing the manner in which re-appreciation of evidence has been done. The appellate court can also appoint a State Brief or Amicus Curiae to assist the court in disposing the appeal on merits, as an alternative. If the case would be decided on merits on perusal of the records and on re-appreciation of the evidence available in the absence of the appellant's counsel or without the aid of State Brief or Amicus Curiae, the Higher Court would remedy the situation to avoid failure of justice, if any. In ***Sajan V. v. State of Kerala***'s case (*supra*), this Court affirmed the said view. No doubt, law clearly expects the appellate court to dispose of the appeal on merits, not merely perusing the reasoning of the trial court Judge, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and

findings recorded by the trial court are consistent with the material on record. The language of S.385 shows that the court sitting in appeal governed thereby is required to call for the records of the case from the concerned court below. The same is an obligation, power coupled with a duty, and only after the perusal of such records would an appeal be decided {see decision reported in [2023 KHC 6450 : 2023 (2) KLD 219 : 2023 LiveLaw (SC) 347 : 2023 SCC OnLine SC 485 : 2023 INSC 419 : 2023 KLT OnLine 1713 : 2023 (5) KLT SN 32], ***Jitendra Kumar Rode v. Union of India***}.

13. Here the appellate court disposed of the appeal on merits, when the learned counsel for the appellant miserably failed to argue the case even after sufficient opportunities, provided by the court. It is discernible that the appellate court perused the materials and re-appreciated the evidence to confirm the finding of the trial court.

14. Therefore, no illegality could be found in the matter of disposal of the appeal by the first appellate court after re-appreciating evidence in tenure and terms of the grounds of appeal.

15. As far as the ingredients to attract offence punishable

under Section 307 of IPC is concerned, the law is no more *res integra*. In this connection it is relevant to refer Section 307 of IPC. The same reads as under:

> *"307: Attempt to murder:-- 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 urt 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."*

16. In the decision reported in [(2009) 4 SCC 26 : (2009) 2 SCC (Cri) 40 : AIR 2009 SC 1642], ***State of M.P v. Kashiram***, the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held in paragraphs 12 and 13 as under:

> *"12….'13. 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. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307*

IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

14. This position was highlighted in ***State of Maharashtra v. Balram Bama Patil,*** *[(1983) 2 SCC 28 : 1983 SCC (Cri) 320],* ***Girija Shankar v. State of U.P****, [(2004) 3 SCC 793 : 2004 SCC (Cri) 863] and* ***R.Prakash v. State of Karnataka****, [(2004) 9 SCC 27 : 2004 SCC (Cri) 1408].*

xxx xxx xxx xxx

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury.'

See ***State of M.P v. Saleem****, [(2005) 5 SCC 554 : 2005 SCC (Cri) 1329], SCC pp. 559-60, paras 13-14 and 16.*

13. `6. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in ***Sevaka Perumal v. State of T.N****, [(1991) 3 SCC 471 : 1991 SCC (Cri) 724]. (****Saleem*** *case [(2005) 5 SCC 554 : 2005 SCC (Cri) 1329], SCC p.558, para 6)"*

17. In the decision reported in [(2004) 9 SCC 27 : 2004 SCC (Cri) 1408], ***R.Prakash v. State of Karnataka***, in para.9 the Apex Court held that:

> *"9. 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. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Sections makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section." (emphasis supplied)*
>
> *5.6.3. If the assailant acts with the intention or knowledge that such action might cause death, and hurt is caused, then the provisions of Section 307 IPC 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 IPC [**State of M.P. v. Mohan**, (2013) 14 SCC 116 : (2014) 4 SCC (Cri) 119].*
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> *5.6.4. This Court in **Jage Ram v. State of Haryana** reported in [(2015) 11 SCC 366 : (2015) 4 SCC (Cri) 425], held that:(SCC p.370, para.12).*

"12. For the purpose of conviction under Section 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 the 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 Section 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."(emphasis supplied)

5.6.5. This Court in the recent decision of State of M.P. v. Kanha reported in (2019) 3 SCC 605 held that:

"13. The above judgements of this Court lead us to the conclusion that proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 of the Penal Code. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent." (emphasis supplied)

5.7. In view of the above mentioned findings, it is evident that the ingredients of Section 307 have been made out, as the

intention of the Accused /Respondent No. 1 can be ascertained clearly from his conduct, and the circumstances surrounding the offence."

18. In the decision reported in [(2021) 20 SCC 24], ***Surinder Singh v. State (Union Territory of Chandigarh)***, the Apex Court considered a question as to whether the guilt of the appellant under Section 307 IPC has been proved beyond reasonable doubt? and held in paragraphs 19 to 25 as under:

"19. Before we advert to the factual matrix or gauge the trustworthiness of the witnesses, it will be beneficial to brace ourselves of the case law qua the essential conditions, requisite for bringing home a conviction under Section 307 IPC. In ***State of Madhya Pradesh vs. Saleem*** *reported in (2009) 4 SCC 26, this Court, while re-appreciating the true import of Section 307 IPC held as follows:*

"12. To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the

assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. 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. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt." (emphasis supplied)

20. These very ingredients have been accentuated in some of the later decisions, including in ***State of M.P. vs. Kashiram*** *reported in [(2009) 4 SCC 26 : (2009) 2 SCC (Cri) 40],* ***Jage Ram v. State of Haryana*** *reported in [(2015) 11 SCC 366 : (2015) 4 SCC (Cri) 425] and* ***State of M.P. v. Kanha*** *reported in [(2019) 3 SCC 605 : (2019) 2 SCC (Cri) 247].*

21. It is by now a lucid dictum that for the purpose of constituting an offence under Section 307 IPC, there are two ingredients that a Court must consider, first, whether there was any intention or knowledge on the part of accused to cause death of the victim, and, second,

such intent or knowledge was followed by some overt actus rea in execution thereof, irrespective of the consequential result as to whether or not any injury is inflicted upon the victim. The courts may deduce such intent from the conduct of the accused and surrounding circumstances of the offence, including the nature of weapon used or the nature of injury, if any. The manner in which occurrence took place may enlighten more than the prudential escape of a victim. It is thus not necessary that a victim shall have to suffer an injury dangerous to his life, for attracting Section 307 IPC.

22. It would also be fruitful at this stage, to appraise whether the requirement of "motive" is indispensable for proving the charge of attempt to murder under Section 307 IPC.

23. It is significant to note that "motive" is distinct from "object and means" which innervates or provokes an action. Unlike "intention", "motive" is not the yardstick of a crime. A lawful act with an ill motive would not constitute an offence but it may not be true when an unlawful act is committed with best of the motive. Unearthing "motive" is akin to an exercise of manual brain-mapping. At times, it becomes herculean task to ascertain the traces of a "motive".

*24. This Court has time and again ruled: (**Bipin Kumar Mondal v. State of W.B**. reported in [(2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150], SCC p.97, para.23)*

> *"23. ...that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in*

*cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy." [See:**Shivaji Genu Mohite v. State of Maharashtra** reported in [(1973) 3 SCC 219 : 1973 SCC (Cri) 214] and **Bipin Kumar Mondal vs. State of West Bengal** reported in [(2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150]*

25. We are thus of the considered opinion that whilst motive is infallibly a crucial factor, and is a substantial aid for evincing the commission of an offence but the absence thereof is, however, not such a quintessential component which can be construed as fatal to the case of the prosecution, especially when all other factors point towards the guilt of the accused and testaments of eyewitnesses to the occurrence of a malfeasance are on record."

19. Thus the legal position is well settled that for the purpose of constituting an offence under Section 307 IPC, there are two ingredients that a Court must consider, first, whether there was any intention or knowledge on the part of accused to cause death of the victim, and, second, such intent or knowledge was followed by some overt actus reus

in execution thereof, irrespective of the consequential result as to whether or not any injury is inflicted upon the victim. The courts may deduce such intent from the conduct of the accused and surrounding circumstances of the offence, including the nature of weapon used or the nature of injury, if any. The manner in which occurrence took place may enlighten more than the prudential escape of a victim. It is thus not necessary that a victim shall have to suffer an injury dangerous to his life, for attracting Section 307 IPC. 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. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt. To put it otherwise, if a person commits an act with intention or knowledge that under such circumstance if death has been caused, the offence would

amount to murder or the act itself is of such nature as would cause death in the usual course of its nature, then the person said to have committed offence punishable under Section 307 of IPC, for which the victim shall not suffer any injury/injuries fatal to him.

20. Coming to the question as to whether any patent illegality committed by the trial court or the first appellate court, it is discernible from the available materials that PW2 in this case is none other than the wife of the accused. She had given candid version regarding the assault at the instance of the accused with intention to commit murder. PW3 examined in this case is none other than the daughter of the accused and PW2 and she also fully supported the prosecution without any iota of doubt. Apart from that, Ext.P5 is the wound certificate authored by PW9 doctor, where the following injuries are noted:

"(1) Incised wound 5 X 2 cm over neck anteriorly.

(2) Incised wound 2 X 1 cm over left hand 3rd finger.

(3) Incised wound 2 X 1 cm over left hand 4th finger.

PW1 is the relative of the victim, who gave Ext.P1 FIS regarding this occurrence. Apart from PW9, the prosecution examined PW13 the

Assistant Professor of ENT, Government Medical College Hospital, Thiruvananthapuram, who treated PW2 and issued Ext.P7 treatment certificate, wherein the summary of the fatal injury caused by the accused is shown as under:

> *"Lacerated wound of 10 cm transverse below the level of hyoid bone, exposing the thyroid cartilage opening air way treatment – closure of the wound."*

21. Thus in the instant case, going by the evidence tendered by the witnesses, as discussed above, it is crystal clear that the prosecution succeeded in proving that the accused committed the offence punishable under Section 307 of IPC. Therefore, conviction imposed by the trial court and confirmed by the appellate court doesn't require any interference. Regarding sentence also, considering the nature of injuries and the manner in which it was committed, the sentence also doesn't require any interference.

22. In the above circumstances, this Criminal Revision Petition stands dismissed.

Interim order, if any, granted shall stand vacated.

Registry shall forward a copy of this order to the jurisdictional court for information and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/