

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.800 OF 2020
(Arising out of S.L.P.(Cr1.)No.4500 of 2019)**

Omanakkuttan & Ors. . . .Appellants

Versus

State of KeralaRespondent

J U D G M E N T

R.Subhash Reddy, J.

1. Leave granted.
2. This criminal appeal is filed by the accused/A1 to A3, in Sessions Case No. 20 of 2004, on the file of Additional Sessions Judge, (Adhoc)-1, Kottayam Division, aggrieved by the judgment of conviction and sentence dated 20.04.2004 and the judgment dated 23.02.2018 in criminal appeal No. 711 of 2004, passed by the High Court of Kerala, at Ernakulam.
3. The appellants/accused A1 to A3, were tried for offence punishable under Sections 324, 326 and 308

read with Section 34 of Indian Penal Code, 1860 (for short 'IPC'). On conclusion of trial, by appreciating oral and documentary evidence on record, learned Sessions Judge by judgment dated 20.04.2004, convicted them for the aforesaid offences. They were sentenced to undergo rigorous imprisonment for five years each, for the offence under Section 308 read with Section 34 IPC and for offence under Section 326 IPC, they were sentenced to undergo rigorous imprisonment for five years and also to pay a fine of Rs. 5000/- each, in default of payment of fine, to undergo simple imprisonment for a period of two years each. The fine amount was ordered to be paid to PW-1, as compensation. No separate sentence is awarded for the offence under Section 324 IPC.

4. Aggrieved by the conviction recorded and sentence imposed by the Court of Additional Sessions Judge, (Adhoc-1) of Kottayam Division, the appellants herein have preferred appeal in criminal appeal no.711 of 2004, before the High Court of Kerala, at Ernakulam.

5. Vide judgment dated 23.02.2018, in criminal appeal No.711 of 2004, the High Court while

confirming the conviction, has modified the sentence of rigorous imprisonment for a period of three years and to pay a compensation of Rs.25,000/- for the offence under Section 308 read with Section 34 IPC and in default to undergo simple imprisonment for two years. While maintaining the conviction for offence under Section 326 IPC, reduced the sentence to three years rigorous imprisonment and to pay compensation of Rs.25,000/- and in default to undergo simple imprisonment for two years. At the same time, the High Court has not awarded any separate sentence for offence under Section 324 IPC.

6. We have heard Mr. Adolf Mathew, learned counsel appearing for the appellants and Mr. Nishe Rajen Shonker, learned counsel appearing for the State of Kerala.

7. This Court, vide order dated 06.05.2019, issued notice on the quantum of sentence only.

8. At the outset, learned counsel for the appellants has submitted that appellant nos. 1 and 2 have already served the sentence. As such, he is not pressing the appeal for appellant Nos. 1 & 2

and confined his submissions for appellant No.3 only.

9. It is submitted that though there is no sufficient evidence to prove the guilt of the accused, for the offence alleged, the Trial Court has convicted the appellants and imposed a sentence and same was erroneously confirmed in appeal by the High Court. It is submitted that there was no light at the alleged place of occurrence and they were apprehended after 10 months of the incident. It is further submitted that in any event the alleged incident is occurred on 13.01.2002, and that the appellants as well as injured are relatives, as such a leniency may be shown in imposing the sentence. Further it is submitted that in view of his poor economic condition, he cannot afford to pay compensation of Rs.25,000/- for offence under Section 308 read with Section 34 of IPC and compensation of Rs.25,000/- for offence under Section 326 IPC.

10. Learned counsel for the appellants has made a request to reduce the sentence as well as compensation awarded by the High Court. On the other hand, learned counsel appearing for the

respondent-State, has submitted that multiple fractures were inflicted by the appellants on the injured, as such, no interference is called for.

11. Although learned counsel has made his submissions on the merits of the matter, as this Court has issued notice only on quantum of sentence, we are not inclined to go into the merits of conviction recorded. At the same time, considering the fact that the incident occurred on 13.01.2002 and the 3rd appellant herein has already served more than two years of sentence, and further considering the totality of facts and circumstances of the case, we are of the view that it is a fit case to modify the sentence and reduce the compensation of Rs.25,000/- each for offence under Section 308 read with Section 34 IPC and for conviction under Section 326 IPC.

12. For the aforesaid reasons, while maintaining the conviction recorded by the Trial Court, as confirmed by the High Court, for the offence under Section 308 read with Section 34 IPC and also under Section 326 IPC, we reduce the sentence imposed on the 3rd appellant, for the period already undergone. The compensation awarded for the offence under

Section 308 read with Section 34 IPC is reduced to Rs.5,000/-and similarly compensation of Rs.25,000/- awarded for offence under Section 326 IPC is also reduced to Rs.5,000/-. If the compensation, as awarded, is not paid, the same shall be paid within a period of two months from today to PW-1. At the same time, the judgment of the Trial Court, for the offence under Section 324 IPC, as confirmed by the High Court is confirmed.

13. This criminal appeal is allowed partly, so far as appellant No.3 is concerned, to the extent indicated above and the conviction recorded and sentence imposed by the the High Court, stands modified accordingly.

.....J.
[ASHOK BHUSHAN]

.....J.
[R.SUBHASH REDDY]

**New Delhi;
NOVEMBER 20, 2020**