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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 18TH DAY OF AUGUST 2026 / 27TH SRAVANA, 1948

CRL.A NO. 695 OF 2021

CRIME NO.335/2011 OF Nattukal Police Station, Palakkad

AGAINST THE JUDGMENT DATED IN SC NO.247 OF 2013 OF SPECIAL

COURT-TRIAL OF OFFENCE UNDER SC/ST(POA)ACT1989, MANNARKKAD

APPELLANTS/ACCUSED 1 & 2:

- 1 MAJEED
AGED 42 YEARS
S/O.HAMSA, THALIYILPUYTHAN HOUSE, NATTUKAL P.O.,
MANNARKKAD, PALAKKAD DISTRICT.
- 2 MUHAMMED FAISAL
AGED 37 YEARS
S/O.KUNHIKAMMU, KAKKATTIL HOUSE, NATTUKAL P.O.,
MANNARKKAD, PALAKKAD DISTRICT.
BY ADV.SRI.NIREESH MATHEW

RESPONDENT/COMPLAINANT - STATE:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI - 682 031.
BY PUBLIC PROSECUTOR SRI.M.A.SHIHAB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17.07.2026,
THE COURT ON 18.08.2026 DELIVERED THE FOLLOWING:



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JUDGMENT

Dated this the 18th day of August, 2026

Accused Nos.1 and 2 in S.C.No.247/2013 on the files of the Additional Sessions Court/Special Court for the Scheduled Castes/the Scheduled Tribes (Prevention of Atrocities) Act Cases, Mannarkkad, have filed this appeal challenging the judgment in the above case, dated 22.09.2021.

2. Heard the learned counsel for the appellants/accused Nos.1 and 2 and the learned Public Prosecutor, in detail. Perused the judgment under challenge along with the records of the Special Court.

3. The prosecution case is that at about 9 a.m. on 05.11.2011, due to animosity in the matter of questioning the act of the accused in removing the rope, which was tied in the compound wall of the de facto complainant (PW6), accused Nos.1 and 2 in furtherance of their common intention to cause death of PW6, criminally trespassed

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upon the hall of the house, bearing Reg.No.III/123 of Thachanattukara Grama Panchayath where PW6 along with her family were residing. Thereafter, the 2nd accused abused PW6 by using obscene words and the 1st accused assaulted her with intention to cause culpable homicide not amounting to murder. Though PW6 sustained serious injuries including fracture, she survived. It is on this premise, the prosecution alleges commission of offences punishable under Sections 452, 341, 354, 326, 427, 294(b), 506(i) and 308 r/w 34 of the Indian Penal Code (for short, 'the IPC' hereinafter), by the accused.

4. In this matter, the learned Special Judge framed charge for the aforesaid offences and proceeded with trial. During trial, PW1 to PW10 were examined, Exts.P1 to P15 and MO1 to MO3 were marked on the side of the prosecution. No defence evidence was adduced.

5. On appraisal of the evidence, the Special Court found that the appellants/accused Nos.1 and 2 committed offences punishable

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under Sections 452, 341, 326, 427, 506(i) and 308 r/w 34 of the IPC and they were convicted and sentenced as under:

“Accordingly accused are sentenced to undergo simple imprisonment for 2 years and a fine of Rs. 5,000/- in default of payment of fine, simple imprisonment for one month for the offence punishable u/s. 452 IPC, simple imprisonment for one month for the offence punishable u/s. 341 IPC, simple imprisonment for 3 years and a fine of Rs.10,000/- each, in default of payment of fine, simple imprisonment for 3 months for the offence punishable u/s. 326 IPC, simple imprisonment for 6 months for offence punishable u/s. 427 IPC, simple imprisonment for 6 months for the offence punishable u/s. 506(i) IPC and simple imprisonment for 3 years and a fine of Rs. 25,000/-each, in default of payment of fine, simple imprisonment for 6 months for the offence punishable u/s. 308 IPC. Sentences shall run concurrently. Accused are entitled to get set off the period that they had already undergone under judicial custody. If the fine amount is recovered Rs. 25,000/- shall be given to PW6 as compensation u/s.357(1) of Cr.PC. MO1 to MO3 shall

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be destroyed after the appeal period.”

6. The learned counsel for the appellants/accused Nos.1 and 2 would submit that the evidence relied on by the prosecution mainly that of PW6, the injured, and PW5, the informant, along with medical evidence, in no way, sufficiently established commission of offences punishable under Sections 452, 341, 326, 427, 506(i) and 308 r/w 34 of the IPC, by the appellants. It is pointed out that even as per the evidence of PW6, no specific overt acts against accused No.2 was spoken by PW6. Therefore, the learned Special Judge went wrong in finding commission of the above offences, by accused Nos.1 and 2 with the aid of Section 34 of the IPC. According to the learned counsel, the evidence of PW6 with that of PW5 are contrary and therefore, the appellants/accused Nos.1 and 2 are entitled to get benefit of doubts to record their acquittal.

7. Whereas, the learned Public Prosecutor vehemently opposed the contentions raised by the learned counsel for the

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appellants/accused Nos.1 and 2 and submitted that the evidence of PW6, supported by PW5, categorically established the ingredients for the offences found to be committed by the learned Special Judge, supported by the evidence of PW2, the Doctor, who had examined PW6, soon after the occurrence who noted four injuries including fracture on the right zygomatic maxillary complex and right orbital fracture. Therefore, the prosecution case is well established and in such a case, the conviction and sentence do not require any interference.

8. Adverting to the rival contentions, the points arise for consideration are;

- i) *Whether the Special Court is right in holding that the appellants/accused Nos.1 and 2 committed offence punishable under Section 452 r/w 34 of the IPC?*
- ii) *Whether the Special Court is justified in holding that the appellants/accused Nos.1 and 2 committed offence punishable under Section 341 r/w 34 of the IPC?*
- iii) *Whether the Special Court is right in holding that*

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the appellants/accused Nos.1 and 2 committed offence punishable under Section 326 r/w 34 of the IPC?

iv) Whether the Special Court is justified in holding that the appellants/accused Nos.1 and 2 committed offence punishable under Section 427 r/w 34 of the IPC?

v) Whether the Special Court is right in holding that the appellants/accused Nos.1 and 2 committed offence punishable under Section 506(i) r/w 34 of the IPC?

vi) Whether the Special Court is right in holding that the appellants/accused Nos.1 and 2 committed offence punishable under Section 308 r/w 34 of the IPC?

vii) Is it necessary to interfere with the impugned judgment in any manner?

viii) The order to be passed?

Point Nos.(i) to (viii)

9. When PW5 who had given Ext.P5 FIS in this case was

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examined before the court, she deposed that she was residing along with PW6 and her two children, as her husband was employed in the Gulf. She identified the accused at the dock and deposed that they were her neighbours. According to her, the occurrence was at 9.00 a.m. on 05.11.2011. At the time of occurrence, she along with her children were sitting at the sit out. Some property was purchased from the 2nd accused by paying Rs.25,000/- and the property purchased was separated from the remaining property by putting a rope to put up boundary. But accused Nos.1 and 2 pushed the above rope towards the property of PW6, and then, PW6 restrained the same. Accused Nos.1 and 2 made problems and both of them trespassed upon the sit out of the house and reached in front of them and the 1st accused carried a stick in his hand. Then, both of them trespassed upon the house when PW5 and PW6 gone inside the house, and the 1st accused, Majeed caught hold of the hand of PW6 and beat her on the head with a stick, thereby causing serious injuries to her head, resulting in profused bleeding. That apart, she

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also sustained injuries to her eye and cheek, and she did not know how many times the 1st accused had beaten her. Then, PW6 fell down and she cried aloud. Then, Ayisha, (PW7), a neighbour and other persons reached. When people gathered, the appellants/accused Nos.1 and 2 threatened to kill them and left the place. While returning, the 1st accused Majeed beat on the glass of the window by using a stick and the window glass was broken. The 2nd accused throw stone on the glass of the window and thereby, window glass also was broken. Then, PW6 was taken to Moulana Hospital, Perinthalmanna and police recorded her Ext.P5 statement and she had shown the place of occurrence to police and also shown the stick used by the 1st accused to beat PW6, the same was found on the near way. The stone and the broken glass were also found at the place of occurrence and the police collected the same. The maxi worn by PW6 also was produced before the police. She identified MO1 as the stick and the MO2 as the stone and MO3 as the broken window glass piece. She also deposed that loss to the tune of

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Rs.1,000/- was sustained due to breakage of the glasses. During cross-examination, the main contention raised was that no property from the 2nd accused Faisal was purchased by PW6, since the title deed of the same was not produced. During further cross-examination, PW5 given evidence that there was no boundary dispute between them otherwise and the 2nd accused was not residing in the property. But, the 1st accused was residing on the east of their residence and she, in fact, put up the rope. She also deposed that the labourers engaged by the 2nd accused also reached to make boundary after pulling the rope towards their property. In fact, no material contradictions were extracted to disbelieve the version of PW5 in fact spoke in support of the occurrence.

10. Apart from the evidence of PW5, PW6, the injured and the mother-in-law of PW5 and PW7, a neighbor got examined by the prosecution. PW6 is the injured in this case, and she deposed to the effect that the incident had taken place at 9.00 a.m. on 05.11.2011. At that time, she was sitting at the sit-out of their house along with

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PW5 and her children. She had purchased some property from accused No.2 for a consideration of Rs.25,000/-. The property of accused No.2 was situated on the boundary of their property. They had tied a rope along the boundary of the property which they had purchased from accused No.2. While so, on the date of occurrence, some workers were engaged in putting up a boundary wall to the property of accused No.2. The accused pushed the rope tied along the boundary of the said property towards the property of PW6. Seeing the same, she asked them not to push it towards her side. At that time, the accused abused her and rushed towards their house. On seeing the accused rushing towards them, both she and PW5 entered their house. The accused also entered their house behind them. Accused No.1 was holding a stick in his hand. Accused No.1 beat her on her head and forehead with the said stick. Thereafter, by holding her hand, he outraged her modesty. At that time, both of them made hue and cry. She deposed that, her cheekbone was fractured in the occurrence. Nearby people gathered there, and PW7

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also came there. According to her, if she had not avoided the attack made by accused No.1, it would have resulted in her death. Thereafter, she was taken to Moulana Hospital, Perinthalmanna, and was admitted to the ICU. She had identified MO1. According to her, it was only after she had returned home following her discharge from the hospital that she had seen the window glasses damaged.

11. The neighbour of PW5 and PW6 was examined as PW7 to prove the occurrence. PW7 deposed to the effect that PW5 and PW6, as well as the accused, were her neighbours. On 05.11.2011 at about 9.00 a.m., she was at her house. While so, she heard some hue and cry from the house of PW5. Hearing the sound, she rushed there. At that time, accused No.1 was found beating PW6 and he was uttering that why they would prevent them from putting up the boundary wall to their property. Accused No.1 repeatedly beat PW6 and she sustained an injury on her head and blood oozed out from the injuries. Hearing the hue and cry, the neighbouring people gathered

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there. At that time, both the accused left the place. While they were leaving the place of occurrence, accused No.1 destroyed the window glass with a stick, and accused No.2 threw a stone at the window glass, thereby causing damage to the window panes.

12. Ext.P6 scene mahazar was tendered in evidence through PW8 and he admitted signature therein. Recording of Ext.P5 statement was deposed by PW9, Grade Additional Sub Inspector attached to Nattukal Police Station as on 05.11.2011.

13. The Investigating Officer in this case got examined as PW10. He deposed that, while he was working as Sub Inspector of Police, Nattukal Police Station, he had registered the crime in this case as per Ext.P5. The FIR registered in the said crime was marked as Ext.P7. He took up the investigation. On 05.11.2011, he had reached the place of occurrence and prepared Ext.P6 scene mahazar. He seized MO1 to MO3 from the place of occurrence. On 08.11.2011, the defacto complainant produced the blood-stained maxi and towel, which were used for tying the injury, before him. He seized the same

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after preparing a mahazar, which was marked as Ext.P8. He produced those properties before the court. The property list was also produced before the court. On 09.11.2011, he had arrested the accused. The arrest memos were marked as Ext.P9 series and the inspection memos were marked as Ext.P10 series. He had produced the accused persons before the court. The remand report was marked as Ext.P11. He had filed Ext.P12 report for adding Section 308 of the IPC. He had also filed a report showing the address of the accused, which was marked as Ext.P13. He received Ext.P2 from PW2, Ext.P3 from PW3 and Ext.P4 from PW4 and produced the same before the court. He had filed a further report showing the exact division of the house number, which was marked as Ext.P14. As, during the course of time, the dresses seized had got damaged, he filed a report to that effect, which was marked as Ext.P15. After completing the investigation, he laid the charge sheet.

14. Apart from this evidence, the evidence of PW2, the Doctor is very relevant. Dr.Vasudeva Rao examined as PW2 deposed that

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while he was working as the CMO at Moulana Hospital, Perinthalmanna, at 9.30 a.m., he had examined Subaida, aged 44 years (PW6) came with history of alleged assault by neighbours. On examination, the Doctor had noted the following injuries:

- 1) Lacerated wound 4x3 cm over right temporal region*
- 2) Lacerated wound 3x1 cm mid frontal region*
- 3) Swelling over face with black eye*
- 4) Swelling over left maxillary region*

His further version was that the injuries noted in Ext.P2 could have been caused with the stick shown to him as MO1. He deposed further that zygomatic maxillary complex is below the eye portion and it is a bone. During cross-examination, he had deposed as under:

Zygomatic Maxillary complex is the projected portion of bone below the eye. Both fracture noted are close to each other. These fractures can be cause of a full.

15. It was PW1, who had seized the dress worn by PW6 as per

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Ext.P1 seizure mahazar. He supported the same by stating that he had seized the said dress while working as Senior CPO attached to Nattukal Police Station on 08.11.2011. Ext.P3 is the ownership certificate of the house (place of occurrence) tendered in evidence through PW3. Ext.P4 scene plan showing the lie of the place of occurrence was tendered in evidence through PW4, the then Village Officer, Thachanattukara -I.

16. Here, on evaluation of evidence, the learned Special Judge found commission of offences punishable under Sections 452, 341, 326, 427, 506(i) and 308 r/w 34 of the IPC and according to the learned counsel for the appellants/accused Nos.1 and 2, the evidence available in no way would suggest that the appellants/accused Nos.1 and 2 committed the above offences. Further, the evidence available is insufficient to find the offences to be committed by the appellants.

17. In this connection, it is relevant to refer the ingredients for the offences punishable under Sections 308, 452, 341, 326, 427 and 506(i) of the IPC are as under:



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“308. Attempt to commit culpable homicide.—

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 culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

(a) Essential Ingredients.- *An offence under this section has following essential ingredients:*

- (i) That an act was committed by the accused;*
- (ii) That the said act was done with the intention or knowledge that he shall be guilty of culpable homicide not amounting to murder;*
- (iii) That culpable homicide does not amount to murder,*
 - (a) if the act is done with the intention or knowledge referred to in section 300 of the Indian Penal Code, 1860, but under circumstances which would bring the case within one of the exceptions mentioned in that section, or*



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(b) if the act is done with the intention or knowledge referred to in section 299 but not falling under clauses (2), (3) and (4) of section 300 of the Indian Penal Code, 1860.

*(b) **Evidence.**- To prove an offence under section 308 of the Indian Penal Code, 1860 the prosecution is to prove the following (a) that the accused did some act towards the victim (b) the act was done with such intention or knowledge and under such circumstance that had it caused death, the accused would have been guilty of culpable homicide not amounting into murder.*

Before an accused can be held to be guilty under section 308 of the Indian Penal Code, 1860, it was necessary to arrive at a finding that the ingredients thereof, namely, requisite intention or knowledge was existing. There cannot be any doubt whatsoever that such an intention or knowledge on the part of the accused to cause culpable homicide is required to be proved. Six persons allegedly accosted the injured. They had previous enmity. Although overt-act had been attributed against each of the accused who were having lathis, only seven injuries had been caused and out of them only one of them was grievous, being a fracture on the arm, which

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was not the vital part of the body. The accused, therefore, could not be said to have committed any offence under section 308 IPC. The same would fall under sections 323 and 325 thereof. When, the accused can be attributed only knowledge that by inflicting such injuries he was likely to cause death and an attempt to commit such an offence would be one punishable under section 308 IPC.

Whether the injury was grievous or simple deserved a back seat in face of the charge under section 308 read with section 34 of the Indian Penal Code, 1860. Offence punishable under section 308 IPC postulates doing of an act with such intention of or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not. It is the attempt to commit culpable homicide which is punishable under section 308 IPC whereas punishment for simple hurts can be meted out under sections 323 and 324 and for grievous hurts under sections 325 and 326 IPC. Qualitatively, these offences are different.

452. House-trespass alter preparation for

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hurt, assault or wrongful restraint.—Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

To bring home the offence under section 452 of the Indian Penal Code, 1860, the prosecution is to prove:-

- (a) that the accused committed house – trespass as defined in section 442 of the Indian Penal Code, 1860.*
- (b) that the said house – trespass was committed after the accused made preparation for causing hurt to, or for assaulting, or for wrongfully restraining some person; or for putting some person in fear of hurt, assault or wrongful restraint.*

Essential Ingredients. For a conviction under section 452 of the Indian Penal Code, 1860 it is necessary to prove that the appellant committed house-trespass after making preparation for causing hurt, etc. The mere fact that the appellant entered the office and committed



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assault or caused hurt do not necessarily presuppose such preparation. There must be clear proof of a preparation for causing hurt, etc. When there is no such proof on the record, the conviction of the appellant under section 452 IPC cannot be maintained .

341. Punishment for wrongful restraint.—

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

341.2 : Practice and Procedure:

(a) Essential Ingredients.- *This section prescribes punishment for wrongful restraint. Wrongful restrained has been defined under section 339. Essential ingredients of an offence of wrongful restraint are as follows:*

- (i) That there was same voluntary obstruction caused;*
- (ii) That the obstruction was such as to prevent any person from proceeding in any direction;*
- (iii) That the person obstructed had a right to proceed in that direction.*

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(b) Evidence.- To bring home an offence under section 341 of the Indian Penal Code, 1860 the prosecution must prove (a) that the wronged person had a right to proceed on a particular way over land or water (b) that the accused obstructed or prevented the wronged person from proceeding along the particular way (c) that the accused caused such obstruction voluntarily (d) lastly the obstructor must not have reason to believe in good faith that he had a lawful right to obstruct.

The last element, that is the element (d), i.e., the obstructor had a reasonable belief as such is to be proved by the defence on successful proof of other elements by the prosecution and that this proof can be achieved by preponderance of probability. This is because of section 105 Evidence Act. Section 105 provides that when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, 1860 or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

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326. Voluntarily causing grievous hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with [imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Essential Ingredients.

An offence under this section has following essential ingredients:

- (i) That the accused caused grievous hurt to any person;
- (ii) That such hurt was caused voluntarily;
- (iii) That such grievous hurt (as contemplated under section 320) was caused by any means given under section 324 of the Indian Penal Code, 1860.

427. Mischief causing damage to the amount of fifty rupees.—Whoever commits mischief and thereby



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causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Essential Ingredients. *An offence under this section has following essential elements:*

- (i) That the accused committed mischief;*
- (ii) That he thereby caused loss or damage to the amount of fifty rupees or more.*

506. Punishment for criminal intimidation.—

Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which



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may extend to seven years, or with fine, or with both.

Essential Ingredients. *-The offence of criminal intimidation has been defined under section 503 of the Indian Penal Code, 1860, section 506 provides punishment for it.*

An offence under section 503 has following essentials:

1. Threatening a person with any injury:

(i) to his person, reputation or property; or

(ii) to the person, or reputation of any one in whom that person is interested.

2. The threat must be with intent;

(i) to cause alarm to that person; or

(ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or

(iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.”

18. Going by the evidence of PW6, supported by the evidence of PW5 and PW7, the ingredients for the above offences could be

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found. Even though as argued by the learned counsel for the appellants/accused Nos.1 and 2, the 2nd accused did not do any bodily injury to PW6, he had shared common intention with the 1st accused and the occurrence was the outcome of the said common intention. In Section 34 of the IPC, it has been provided as under:

“34.Acts done by several persons in furtherance of common intention.- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

This section recognises principle of vicarious liability in criminal jurisprudence- Section 34, I.P.Code recognises the principle of vicarious liability in criminal jurisprudence. It is a rule of evidence and does not create a substantive offence-Suresh v State of U.P. AIR 2001 SC 1344: (2001) 3 SCC 673: 2001 Cr LJ 1462.

Ingredients of section. To attract section 34, I.P.Code two postulates are indispensable: (1) The criminal act (consisting of a series of acts) should have been done, not by one person, but more than one person. (2) Doing of every such individual act cumulatively resulting in the

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commission of criminal offence should have been in furtherance of the common intention of all such persons- Suresh v State of U.P. AIR 2001 SC 1344: (2001) 3 SCC 673: 2001 Cr LJ 1462; Mithu Singh v State of Punjab AIR 2001 SC 1929: (2001) 4 SCC 193, Parasa Raja Manikyala Rao ve State of A.P. AIR 2004 SC 132; Girija Shankar v. State of U.P. AIR 2004 SC 1808,

"Act"-Meaning of.- *The "act" referred to in the latter part of section 34 means the ultimate criminal act with which the accused is charged of sharing the common intention-Suresh v State of U.P. AIR 2001 SC 1344: (2001) 3 SCC 673: 2001 Cr LJ 1462.*

Need of overt act of each Immaterial.- *In order to convict any person with the aid of section 34 it is not necessary to establish that such accused has done some overt act. There must be material to show that overt act or acts of one or more of the accused was or were done in furtherance of the common intention of all the accused persons - Rambilas Singh v State of Bihar AIR 1989 SC 1593 : 1989 Cr LJ 1782. But the common intention of all the accused must be to commit the particular crime though the actual crime may be committed by any one having the common intention. Then only others can be held to be guilty - Hardev Singh v State of Punjab AIR*

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1975 SC 179: 1975 Cr LJ 243.

S.34 is applicable even if no injury has been caused by the particular accused himself, For applying S. 34 it is not necessary to show some overt act on the part of the accused: Chaman v. State of Uttaranchal A.I.R. 2009 S.C. 1036.”

19. Thus, the common intention dealt under Section 34 of the IPC is very much established by the prosecution in the instant case and in such a case, there is no reason to read the complicity of each accused in segregation. Otherwise, the prosecution successfully established the ingredients for the offences, as found by the learned Special Judge and therefore, the conviction does not require any interference.

20. Coming to the sentence, the maximum sentence prescribed for the offence under Section 308 of the IPC is three years, while the maximum sentence prescribed under Section 326 of the IPC is also three years. Having noticed the manner in which the

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crime was committed, there is no reason to interfere with the sentence also.

Hence, this appeal fails and is accordingly dismissed by confirming the conviction and sentence imposed by the Special Court. Consequently, the order suspending sentence and granting bail to the appellants/accused Nos.1 and 2 stands cancelled and their bail bonds also stand cancelled. The appellants/accused Nos.1 and 2 are directed to surrender before the Special Court to undergo the sentence, forthwith, failing which, the Special Court is directed to execute the sentence, without fail.

Registry is directed to forward a copy of this judgment to the Special Court, for information and compliance.

Sd/-
A. BADHARUDEEN
JUDGE