

**Abdul Vaheed, vs State of Kerala,**

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**SooperKanoon Citation :** [sooperkanoon.com/1339580](http://sooperkanoon.com/1339580)

**Court :** Kerala

**Decided On :** Nov-30-2023

**Judge :** Honourable Mr. Justice P.Somarajan

**Appeal No. :** CRL.A/2269/2005

**Appellant :** Abdul Vaheed,

**Respondent :** State of Kerala,

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN  
THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH  
AGRAHAYANA, 1945 AGAINST THE ORDER/JUDGMENT DATED IN  
SC 249/1997 OF ADDITIONAL DISTRICT AND SESSIONS COURT,  
(FAST TRACK COURT NO.I), THIRUVANANTHAPURAM  
APPELLANTS/ACCUSED 1 TO 4:

1 ABDUL VAHEED, S/O.MOHAMMED SALIM, P.C.5331,  
NEDUMANGAD POLICE STATION, FROM LAIALA BHAVAN,  
PAPPALA, PAZHAYAKUNNUMURI, PAZHAYAKUNNINMEL VILLAGE.  
2 SIVASANKARAN, S/O.RAGHAVAN, P.C.4002, NEDUMANGAD

POLICE STATION, KADAYARAPUTHEN VEEDU, AMACHAL MURI, KULATHUMMEL VILLAGE. 3 MUKUNDAN, S/O.GOVINDAN, P.C.3956, NEDUMANGAD POLICE STATION, PEZHVILA VEEDU, OOMAN PALLIKARA DESOM, PAZHAYAKUNNINMEL VILLAGE. 4 SASIDHARAN NAIR, S/O.KOCHUNARAYANA PILLAI, H.C.3931, NEDUMANGAD POLICE STATION, S.S.BHAVAN, VISWAPURAM, PERAYAM, ANAD MURI, PANAVOOR VILLAGE. BY ADVS. S.GOPAKUMARAN NAIR (SR.) SRI.K.SATHEESH KUMAR T.A.UNNIKRISHNAN K.SATHEESH KUMAR

RESPONDENT/COMPLAINANT: STATE OF KERALA REP BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT ERNAKULAM. PP-SRI.SANGEETHARAJ N.R. THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 30.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

It is against the findings of guilt of accused for the offence punishable under Sections 325, 326 r/w 34 IPC and conviction and sentence thereunder, the accused Nos. 1 to 4 came up in appeal.

2. During the pendency of appeal, accused Nos.3

and 4 passed away. Originally, the case was charge sheeted for the offence punishable under Section 302 IPC along with offence under Sections 325 and 331 IPC. But the trial court found that no criminal liability can be extended for the offence under Section 302 IPC against the accused and found that they can be held liable for the offence punishable under Section 326 IPC along with the offence under Section 325 IPC and accordingly convicted thereunder and sentenced to undergo three year rigorous imprisonment and a fine amount of Rs.5000/- for the offence under Section 325 IPC and another five year rigorous imprisonment and a fine of Rs.10,000/- for

the offence under Section 326 IPC.

3. Heard the learned Public Prosecutor and the appellants.

4. In fact, as per the postmortem report, the

injury Nos.9 and 10 are sufficient enough to cause death in its ordinary course and the trauma resulted by virtue of the said injuries has accelerated the death. There is no dispute pertaining to the identity of accused involved in the crime. They were identified by all occurrence witnesses and nothing was brought out to discredit the oral evidence or identification. PW5 is the independent witness examined by the prosecution. He had given a vivid picture as to what actually happened on the alleged day of incident and disclosed the involvement of accused Nos.1 to 4. They were identified at the box. In fact, in the case in hand, there is no dispute pertaining to the identification of accused Nos. 1 to 4 or their alleged involvement in the crime. The dispute raised by the accused is that there is no

corresponding injury received by the victim by the respective overt act alleged against the accused persons. Fracture to four ribs of the victim were reported and it is submitted that it could not be possible to cause such injuries while the victim was leaning against a wall and attack was on his back side. But the opinion given by the doctor that it could be possible by the alleged attack would explain and reject the contention. The victim was aged 65 years at that time. The immediate cause for the attack is the allegation of molestation by the victim towards a young girl, thereon, accused No.1 to 4 unleashed attack indiscriminately on the victim. The antemortem injuries noted comes to more than ten in numbers. Some of the injuries are on the vital part. All these were spoken to by PW5. It will show that there is no justification on the part of the trial court to order acquittal for the offence under Section 302 IPC. The criminal liability under Section 304 or 307 IPC were also not taken

into

consideration by the trial court. The opinion given by the doctor that the injuries sustained are sufficient enough to cause death in its ordinary course was also overlooked by the trial court. But it was submitted by the counsel that accused No.3 and 4 are no more and accused No.1 and 2 are at the age of 81 and 82 respectively and that they are prepared to pay a reasonable amount by way of compensation. Hence, substantive sentence for the offence under Section 326 IPC will stand adjusted towards the period of pre-trial detention, if any undergone and a fine amount of Rs.3,00,000/- (Rupees Three Lakhs only) each, in default, accused No.1 and 2 shall undergo simple imprisonment for a period of six months each. As far as accused No.3 and 4 are concerned, it shall be recovered from their assets. No separate sentence is ordered for the offence under Section 325 IPC. On recovery of the fine amount, an amount of Rs.10,00,000/- (Rupees Ten lakhs only) shall be released to PW10, the daughter of deceased

and the rest of the amount shall be adjusted towards the cost incurred by the State Government in prosecuting the case. The CrI.Appeal will stand allowed accordingly. Sd/- P.SOMARAJAN JUDGE msp

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