

State of Kerala vs Ismail

State of Kerala vs Ismail

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Court : Kerala

Decided On : Oct-15-2024

Judge : Honourable Mr. Justice P.B.Suresh Kumar, Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : CRL.A/988/2016

Appellant : State of Kerala

Respondent : Ismail

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR TUESDAY, THE 15TH DAY OF OCTOBER 2024 / 23RD ASWINA, 1946 CRL.A NO. 988 OF 2016 AGAINST THE JUDGMENT DATED 15.06.2016 IN SC NO.609 OF 2015 AND SC NO.1234 OF 2015 (CLUBBED AND CONSOLIDATED FOR SINGLE TRIAL) OF THE COURT OF THE SPECIAL ADDITIONAL SESSIONS JUDGE (MARAD CASES), KOZHIKODE. APPELLANT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE INSPECTOR OF POLICE, NADAPURAM POLICE STATION, WHO IS REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT ERNAKULAM. BY ADV S.U.NAZAR, SPECIAL PUBLIC PROSECUTOR RESPONDENTS/ACCUSED NO.1 TO 17: 1 ISMAIL AGED 28 YEARS, S/O. ABOOBACKER @ POCKER, THEYYAMBADI HOUSE, MEETHALE PUNACHIKKANDI, THOONERI AMSOM, VELLUR DESOM, KODENCHERI, VATAKARA TALUK, KOZHIKODE DISTRICT. 2 MUNEEER AGED 30 YEARS S/O. ABOOBACKER @ POCKER, THEYYAMBADI HOUSE, MEETHALE PUNACHIKKANDI, THOONERI AMSOM, VELLUR DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT. 3 ASLAM(EXPIRED) :- 2 :-

AGED 20 YEARS, S/O. ABDULLA, KALIYARAMBATH, THAZHEKUNIYIL HOUSE, THOONERI AMSOM DESOM. 4 SIDHIQUE AGED 30 YEARS, S/O. MOIDU, VARANKI THAZHEKUNI HOUSE, THUNERI AMSOM, VELLUR, VATAKARA TALUK, KOZHIKODE DISTRICT. 5 MUHAMMED ANEES AGED 19 YEARS, S/O. IBRAHIM, MANIYANTAVIDA HOUSE, THUNERI AMSOM, KODENCHERI, VATAKARA TALUK, KOZHIKODE DISTRICT. 6 SHUHAIB AGED 20 YEARS, S/O. MOIDU, KALAMULLATHIL KUNNI HOUSE, THUNERI AMSOM, KODENCHERI, VATAKARA TALUK, KOZHIKODE DISTRICT. 7 MADATHIL SHUHAIB AGED 25 YEARS, S/O. ABOOBACKER @ POCKER, MADATHIL HOSUE, MUDAVANTHERI DESOM, THUNERI AMSOM, VATAKARA TALUK, KOZHIKODE DISTRICT. 8 NASER AGED 36 YEARS, S/O. SOOPOY HAJI, MOTTEMMAL HOUSE, THUNERI AMSOM, PERODE DESOM, NOW RESIDING AT POOKANDIYIL HOUSE, NEAR THUNERI TEMPLE, VATAKARA TALUK, KOZHIKODE DISTRICT. 9 MUSTHAF A @ MUTHU AGED 25 YEARS, S/O. MUHAMMED, CHAKKODATHIL HOUSE, NADAPURAM AMSOM, DESOM,VATAKARA TALUK, KOZHIKODE DISTRICT. 10 FAZAL AGED 24 YEARS, S/O. ABDULLA, EDADIYIL HOUSE, THUNERI AMSOM, VATAKARA TALUK, KOZHIKODE DISTRICT. 11

YOONUS AGED 36 YEARS, S/O. KUTTIALI, RAMATH HOSUE, NEAR -
: 3 :-

KANIYANDI PALAM, VILLIAPPALLY, VATAKARA TALUK, KOZHIKODE DISTRICT. 12 SHAFEEQUE AGED 26 YEARS, S/O. ABDULLA, KALLERINTAVIDA HOSUE, NADAPURAM AMSOM DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT. 13 IBRAHIM KUTTY, AGED 54 YEARS, S/O. MUHAMMED, MANCHAPPRAMMAL HOUSE, VELLAYIKKODE, PERUMANNA, PANTHEERANKAVU POST. 14 SOOPY MUSALIAR AGED 52 YEARS, S/O. AMMAD, VYSIAN HOUSE, KOTTATHARA, VENNIYODE DESOM. 15 JASIM AGED 20 YEARS, S/O. KUNHALI, KOCHENTAVIDA HOUSE, THUNERI AMSOM, VELLUR DESOM, KODENCHERI POST. 16 SAMAD @ ABDUL SAMAD AGED 25 YEARS, S/O. AMMAD, KADAYAMKOTTUMMAL HOUSE, THUNERI AMSOM, VELLUR, KODENCHERI. 17 AHAMMED HAJI @ AMAD @ AMMAD AGED 55 YEARS, S/O. ANTHRU HAJI, POOVULLATHIL VEEDU, VANIMEL AMSOM, KODIYOORA.

BY ADVS. SRI.SUNNY MATHEW MUHAMMED SHAFI .M R.ANIL R MARTIN JOSE P P.VIJAYA BHANU (SR.) ADHEELA NOWRIN P.M.RAFIQ M.REVIKRISHNAN MITHA SUDHINDRAN RAHUL SUNIL SRUTHY N. BHAT -: 4 :-

AJEESH K.SASI POOJA PANKAJ B.RAMAN PILLAI (SR.) M.SUNILKUMAR SUJESH MENON V.B. T.ANIL KUMAR THOMAS ABRAHAM (NILACKAPPILLIL) THOMAS SABU VADAKEKUT MAHESH BHANU S. S.LAKSHMI SANKAR S.RAJEEV S V.VINAY M.S.ANEER SARATH K.P. PRERITH PHILIP JOSEPH P.PRIJITH THOMAS P.KURUVILLA R.GITESH AJAY BEN JOSE MANJUNATH MENON HARIKRISHNAN S. ANNA LINDA EDEN SACHIN JACOB AMBAT T.RASINI S.SREEKUMAR (SR.) C.K.SREEDHARAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05.09.2024 ALONG WITH CRA(V)NOS.62/2017 AND 107/2017, THE COURT ON 04.10.2024 DELIVERED THE FOLLOWING JUDGMENT

OF CONVICTION: THE COURT ON 15.10.2024 PASSED THE FOLLOWING

JUDGMENT ON SENTENCE:

-: 5 :-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR TUESDAY, THE 15TH DAY OF OCTOBER 2024 / 23RD ASWINA, 1946 CRA(V) NO. 62 OF 2017 AGAINST THE JUDGMENT DATED 15.06.2016 IN SC NO.609 OF 2015 AND SC NO.1234 OF 2015 (CLUBBED AND CONSOLIDATED FOR SINGLE TRIAL) OF THE COURT OF THE SPECIAL ADDITIONAL SESSIONS JUDGE (MARAD CASES), KOZHIKODE. APPELLANT/VICTIM: C.K.BHASKARAN, AGED 52 YEARS, S/O.KANARAN, RESIDING AT CHEEKILOTTU THAZHE KUNIYIL, KODENCHERRY P.O., KOZHIKODE DISTRICT. BY ADVS. K.VISWAN D.ARUN BOSE RESPONDENTS/ACCUSED 1 TO 17 AND STATE: 1 ISMAIL AGED 29 YEARS, S/O. ABOOBACKER @ POCKER, THEYYAMBADI HOUSE, MEETHALE PUNACHIKKANDI, THOONERI AMSOM, VELLUR DESOM, KODENCHERI POST. 2 MUNEER AGED 31 YEARS, S/O. ABOOBACKER @ POCKER, THEYYAMBADI HOUSE, MEETHALE PUNACHIKKANDI, -: 6 :-

THOONERI AMSOM, VELLUR DESOM, KODENCHERI POST. 3 ASLAM AGED 21 YEARS, S/O. ABDULLA, KALIYARAMBATH, THAZHEKUNIYIL HOUSE, THOONERI AMSOM DESOM. 4 SIDHIQUE AGED 31 YEARS, S/O. MOIDU, VARANKI THAZHEKUNI HOUSE, THUNERI AMSOM, VELLUR. 5 MUHAMMED ANEES AGED 20 YEARS, S/O. IBRAHIM, MANIYANTAVIDA HOUSE, THUNERI AMSOM, KODENCHERI. 6 SHUHAIB AGED 21 YEARS, S/O. MOIDU, KALAMULLATHIL KUNNI HOUSE, THUNERI AMSOM, KODENCHERI. 7 SHUHAIB AGED 25 YEARS, S/O. ABOOBACKER @ POCKER, MADATHIL HOSUE, MUDAVANTHERI DESOM, THUNERI AMSOM. 8

NASER AGED 37 YEARS, S/O. SOOPPY HAJI, MOTTAMMAL VEEDU, THUNERI AMSOM, PERODE DESOM, NOW RESIDING AT POOKANDIYIL HOUSE, NEAR THUNERI TEMPLE. 9 MUSTHAFA @ MUTHU AGED 26 YEARS, S/O. MUHAMMED, CHAKKODATHIL HOUSE, NADAPURAM AMSOM, DESOM. 10 FAZAL AGED 25 YEARS, S/O. ABDULLA, EDADIYIL VEEDU, THUNERI AMSOM DESOM. 11 YOONUS AGED 37 YEARS, S/O. KUTTIALI, RAMATH HOSUE, NEAR KANIYANDI PALAM, VILLIAPPALLY. 12 SHAFEEQUE :- 7 :-

AGED 27 YEARS, S/O. ABDULLA, KALLERINTAVIDA VEEDU, NADAPURAM AMSOM DESOM. 13 IBRAHIM KUTTY, AGED 55 YEARS, S/O. MUHAMMED, MANCHAPPRAMMAL HOUSE, VELLAYIKKODE, PERUMANNA, PANTHEERANKAVU POST. 14 SOOPY MUSALIAR AGED 53 YEARS, S/O. AMMAD, VYSIAN HOUSE, KOTTATHARA AMSOM, VENNIYODE DESOM. 15 JASIM AGED 21 YEARS, S/O. KUNHALI, KOCHENTAVIDA HOUSE, THUNERI AMSOM, VELLUR DESOM, KODENCHERI POST. 16 SAMAD @ ABDUL SAMAD AGED 26 YEARS, S/O. AMMAD, KADAYAMKOTTUMMAL VEEDU, THUNERI AMSOM, VELLUR DESOM, KODENCHERI POST. 17 AHAMMED HAJI @ AMAD @ AMMAD AGED 56 YEARS, S/O. ANTHRU HAJI, POOVULLATHIL VEEDU, VANIMEL AMSOM, KODIYOORA. 18 STATE KERALA, REPRESENTED BY PUBIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADVS. MUHAMMED SHAFI .M MARTIN JOSE P ADHEELA NOWRIN SUNNY MATHEW C.K.SREEDHARAN P.PRIJITH THOMAS P.KURUVILLA R.GITESH AJAY BEN JOSE MANJUNATH MENON T.RASINI :- 8 :- HARIKRISHNAN S. SACHIN JACOB AMBAT ANNA LINDA EDEN S.SREEKUMAR (SR.) SRI.S.U.NAZAR SPECIAL PUBLIC PROSECUTOR THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING BEEN FINALLY HEARD 05.09.2024 ALONG WITH CRL.A.NO.988/2016 AND CRL(V) NO.107/2017, THE COURT ON 04.10.2024 DELIVERED THE FOLLOWING JUDGMENT OF CONVICTION: THE COURT ON 15.10.2024 PASSED THE FOLLOWING

JUDGMENT ON SENTENCE: -: 9 :-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR TUESDAY, THE 15TH DAY OF OCTOBER 2024 / 23RD ASWINA, 1946 CRA(V) NO. 107 OF 2017 AGAINST THE JUDGMENT DATED 15.06.2016 IN SC NO.609 OF 2015 AND SC NO.1234 OF 2015 (CLUBBED AND CONSOLIDATED FOR SINGLE TRIAL) OF THE COURT OF THE SPECIAL ADDITIONAL SESSIONS JUDGE (MARAD CASES), KOZHIKODE. APPELLANTS/PWS.2 & 4 TO 7:

1 AKHIL AGED 26 YEARS, S/O.RAJAN, PUTHALATH (H), VELLOOR, THOONERI, KOZHIKODE DISTRICT. 2 LINEESH AGED 26 YEARS, S/O.BALAN, EASWARAVALLYATH(H), VELLOOR, THOONERI, KOZHIKODE DISTRICT 3 VIJEESJ.V.T.K AGED 28 YEARS, S/O.NANU, VARANKI THAZHE KUNIYIL, VELLORR, THOONERI, KOZHIKODE DISTRICT 4 ANEESH AGED 30 YEARS, S/O.KELAPPAN, MEETHALEPPILLAYIL(H), VELLOOR, THOONERI, KOZHIKODE DISTRICT. 5 RAJESH AGED 29 YEARS, S/O.RAJAN, CHERIYA VADAKKEVEETIL -: 10 :-

(H), VELLOOR, THOONERI, KOZHIKODE DISTIRCT. BY ADVS. D.ARUN BOSE SRI.AKHIL S.VISHNU P.S.POOJA RESPONDENTS/STATE/ACCUSED NOS.1 AND 2 AND 4 TO 17:

1 STATE OF KERALA REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE, NADAPURAM POLICE STATION, REP.BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT ERNAKULAM 2 ISMAIL AGED 30 YEARS, S/O. ABOOBACKER @ POCKER, THEYYAMBADI HOUSE, MEETHALE PUNACHIKKANDI, THOONERI AMSOM, VELLUR DESOM, KODENCHERI, VATAKARA TALUK, KOZHIKODE DISTRICT-673 101. 3 MUNEER AGED 32 YEARS S/O. ABOOBACKER @

POCKER, THEYYAMBADI HOUSE, MEETHALE PUNACHIKKANDI, THOONERI AMSOM, VELLUR DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT 673 101. 4 SIDHIQUE S/O. MOIDU, AGED 32 YEARS, VARANKI THAZHEKUNI HOUSE, THUNERI VELLUR, VATAKARA TALUK, KOZHIKODE DISTRICT-673 101. 5 MUHAMMED ANEES S/O. IBRAHIM, AGED 21 YEARS, MANIYANTAVIDA HOUSE, THUNERI, KODENCHRI, VATAKARA TALUK, KOZHIKODE DISTRICT-673 101. 6 SHUHAIB S/O. MOIDU, AGED 22 YEARS, KALAMULLA THAZHEKUNI HOUSE, THUNERI, KODENCHERI, VATAKARA TALUK, KOZHIKODE DISTRICT-673 101 :- 11 :-

7 MADATHIL SHUHAIB S/O. ABOOBACKER AGED 27 YEARS, MADATHIL HOUSE, MADUVANTHERI, THUNERI, VATAKARA TALUK, KOZHIKODE DISTRICT-673101. 8 NASER S/O. SOOPI HAJI, AGED 38 YEARS, MOTTEMMAL HOUSE, THOONERI, PERODE, NOW RESIDING NEAR THUNERI TEMPLE, VATAKARA TALUK, KOZHIKODE DISTRICT- 673101. 9 MUSTHAFA @ MUTHU S/O. MUHAMMED, AGED 27 YEARS, CHAKKODATHIL HOUSE, NADAPURAM AMSOM, DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT-673101. 10 FAZAL S/O. ABDULLA, AGED 26 YEARS, EDADIYIL HOUSE, THUNERI AMSOM, VATAKARA TALUK, KOZHIKODE DISTRICT-673101. 11 YOONUS S/O. KUTTIALI, AGED 38 YEARS, AMATH HOUSE, VILLAPPALLY, VATAKARA TALUK, KOZHIKODE DISTRICT-673101. 12 SHAFEEQ S/O. ABDULLA, AGED 28 YEARS, KACHERIYINTAVIDA HOUSE, NADAPURAM, VATAKARA TALUK, KOZHIKODE DISTRICT-673101. 13 IBRAHIM KUTTY S/O. MUHAMMED, AGED 56 YEARS, MANCHAPPRAMMAL HOUSE, VELLAYIKKODE, PERUMANNA, PANTHEERANKAVU, KOZHIKODE DISTRICT-673101 14 SOOPY MUSLIAR S/O. AMMAD, AGED 54 YEARS, VYSIAN HOUSE, KOTTATHARA, VENNIYODE DESOM, KOZHIKODE DISTRICT- 673101. :- 12 :-

15 JASIM S/O. KUNHALI, AGED 22 YEARS, KOCHENTAVIDA HOUSE, THUNERI, VELLUR KODENCHERI, KOZHIKODE DISTRICT- 673101. 16 SAMAD @ ABDUL SAMAD S/O. AMMAD, AGED 27 YEARS, KADAYAMKOTUMMAL HOUSE, THUNERI AMSOM, VELLUR, KODENCHERI, KOZHIKODE DISTRICT-673101. 17 AHAMMED HAJI @ AHAMMED S/O. ANTHRU HAJI, AGED 57 YEARS, POOVULLATHIL HOUSE, VANIMEL DESOM, KODIYOORA, KOZHIKODE DISTRICT-673 101..

BY ADVS. MUHAMMED SHAFI .M MARTIN JOSE P P.VIJAYA BHANU (SR.) ADHEELA NOWRIN P.PRIJITH THOMAS P.KURUVILLA R.GITESH AJAY BEN JOSE MANJUNATH MENON SACHIN JACOB AMBAT ANNA LINDA EDEN HARIKRISHNAN S. T.RASINI S.SREEKUMAR (SR.) P.M.RAFIQ M.REVIKRISHNAN AJEESH K.SASI MITHA SUDHINDRAN RAHUL SUNIL POOJA PANKAJ SRUTHY N. BHAT C.K.SREEDHARAN S.U.NAZAR SPECIAL PUBLIC PROSECUTOR -: 13 :-

THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING BEEN FINALLY HEARD ON 05.09.2024, ALONG WITH CRL.A.NO.988/2016 AND CRL(V) NO.62/2017, THE COURT ON 04.10.2024 DELIVERED THE FOLLOWING JUDGMENT OF CONVICTION: THE COURT ON 15.10.2024 PASSED THE FOLLOWING JUDGMENT ON SENTENCE:: -: 14 :- P.B.SURESH KUMAR & C.PRATHEEP KUMAR, JJ. ----- Crl.Appeal No.988 of 2016 & Crl.Appeal (v) Nos.62 & 107 of 2017 -----
Dated this the 4th day of October, 2024

JUDGMENT

P.B.Suresh Kumar, J.

These appeals arise from S.C.Nos.609 of 2015 and

1234 of 2015 on the files of the Court of the Special Additional Sessions Judge (Marad Cases), Kozhikode. The cases were tried together as they were registered in respect of the same occurrence. There were altogether 17 accused, and the trial court acquitted all of them. Crl.Appeal.No.988 of 2016 is preferred by the State challenging the acquittal of the accused. The remaining appeals are preferred by the victims, of which Crl.Appeal (v) No. 62 of 2017 is by the father of Shibin who succumbed to the injuries sustained in the occurrence and Crl.Appeal (v) No.107 of 2017 is preferred by some among the

-: 15 :- persons who sustained injuries in the occurrence.

2. The occurrence took place on 22.01.2015.

Apart from the accused, one Muhammed Aseeb, a juvenile in conflict with law, hereinafter referred to as the Juvenile, was also involved in the crime. There was a religious ceremony in the house of the Juvenile on 22.01.2015. Food was taken from the house of the Juvenile after the ceremony to the house of the first accused by the sixth accused in a motor cycle bearing registration No.KL-18/D 6024 with the fifth accused in the pillion of the motor cycle. When the motor cycle passed through the road leading to Vellur from Thuneri, a few activists of the organisation DYFI namely Akhil, Rakhil, Lineesh and the deceased, Shibin were standing on the side of the road in front of the house of one Anilkumar. As the re-formation work of the said road was going on, dust scattered when the sixth accused had ridden the motor cycle through the same. The DYFI activists questioned the sixth accused for having ridden the motor cycle in such a manner causing dust to scatter and there occurred a verbal altercation between the DYFI activists and accused 5 and 6 on account of the same. After providing food

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in the house of the first accused, accused 5 and 6 returned through the same road. This time, the fifth accused was not in the pillion of the motor cycle. Instead, he was riding another motor cycle bearing registration No.KL-18/D 7061. At about 10.00 p.m., an altercation took place on their way back also at the same place. The accusation in the case is that when the altercation was going on between the

DYFI activists on one hand and accused 5 and 6 on the other hand, accused 2, 4, 7, 8, 16 and the Juvenile arrived at the said place and supported accused 5 and 6 and thereupon, there occurred a quarrel between the groups. It is alleged that on hearing the noise from the quarrel, three persons namely, Vijeesh, Aneesh and Rajesh who were in the midst of some work in the vicinity arrived there and tried to pacify the groups involved in the quarrel and attempted to separate them to the two sides of the road, the accused to the western side and the DYFI activists to the eastern side. It is also alleged that accused 1, 3 and 15 then arrived there in a scooter bearing registration No.KL18/M- 8285 carrying few weapons. Accused 1, 3 and 15 thereupon asked the remaining accused who were present there then to

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come towards them, handed over to them the weapons which they carried and gave some instructions. It is further alleged that thereupon, accused 1 to 8, 15, 16 and the Juvenile formed themselves into an unlawful assembly with the common object of committing murder of the DYFI activists, namely, Akhil, Rakhil, Lineesh and Shibin as also Vijeesh, Aneesh and Rajesh and attacked them with the weapons carried by the said accused and also with a torch. It is further alleged that the third accused started the attack by beating Aneesh with the torch carried by him on the face of Aneesh and also on his left hand and thereupon, the sixteenth accused beat Vijeesh with an iron rod on his head, the second accused caught hold of Rakhil and the third accused caused a cut injury on his back with an axe, the first accused caused a cut injury with an axe on the back of Lineesh, the fourth accused caused a cut injury on the hand of Lineesh with a sword and the fifteenth accused snatched a knife from the fifth accused and caused an injury on the back of Rajesh with the same. It is also alleged that due to the attack by the third accused, Akhil sustained fracture on his mandible and his teeth were loosened, Aneesh sustained

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fracture on his left mandible, left side of face as also left index finger, Rakhil sustained grievous hurt on his back and Vijeesh and Rajesh sustained hurt. It was also alleged that the first accused caused a cut injury on the right chest of Shibin

with an axe and when he fell down, the second accused hacked him with a sword on his back and that Shibin succumbed to the said injuries. On the aforesaid allegations, accused 1 to 8, 15 and 16 were charged with the offences punishable under Sections 143, 148, 326, 324, 307 and 302 read with Section 149 of the Indian Penal Code (IPC). There were also charges against the aforesaid accused and accused 9 to 14 under Sections 201 and 212 of IPC.

3. The accused denied the charges. The

prosecution thereupon examined 66 witnesses as PWs 1 to 66 and proved through them 151 documents as Exts.P1 to P151. MOs 1 to 65 are the material objects identified by the witnesses. Exts.D1 to D11 are the documents proved by the accused through the prosecution witnesses, and among them, Exts.D1 and D5 to D10 are case diary statements of some of the witnesses. On the closure of the evidence of the

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prosecution, when the accused were questioned under Section 313 of the Code of Criminal Procedure (the Code), they denied the incriminating circumstances against them and pleaded that they are innocent. As the Court of Session did not find the case to be one fit for acquittal under Section 232 of the Code, the accused were called upon to enter on their defence. The accused did not adduce any evidence. Thereupon, as noted, on a consideration of the evidence on record, the Court of Session found the accused not guilty of the charges and acquitted them.

4. When the appeals were taken up for hearing, it was reported by the learned Public Prosecutor that the third accused died after his acquittal and the charges against him have thus abated.

5. Heard Sri.S.U.Nazer, the learned Special Public

Prosecutor, Sri.K.Viswan, the learned counsel for the appellant in Crl.Appeal (v) No.62 of 2017 and Sri.Arun Bose, the learned counsel for the appellants in Crl.Appeal (v) No.107 of 2017. Even though the appeals were instituted challenging the acquittal of all the accused, the learned Public Prosecutor and -:

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the learned counsel for the appellants in the victim appeals did not pursue the appeal as against the accused against whom charges were framed only under Sections 201 and 212 IPC. We have also heard Sri.B.Raman Pillai, the learned Senior Counsel for accused 4 and 16, Sri.P.Vijaya Bhanu, the learned Senior Counsel for the eighth accused, Sri.S.Sreekumar, the learned Senior Counsel for accused 5, 6 and 15, Sri.C.K.Sreedharan, the learned counsel for accused 1 and 2, and Sri.S.Rajiv, the learned counsel for the seventh accused.

6. The essence of the elaborate submissions

made by the learned Public Prosecutor as also the learned counsel for the appellants in the victim appeals is that the acquittal of accused 1 to 8, 15 and 16 is vitiated by errors of law and facts. Per contra, the learned counsel for accused 1, 2, 4 to 8, 15 and 16 argued that, as it cannot be contended that the view taken by the Court of Session on the facts and evidence to acquit the accused is not a possible or at least a plausible view, the decision of the Court of Session does not call for interference in the appeals. Apart from supporting the view taken by the Court of Session on the reasons stated in the

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impugned judgment, the learned counsel for the accused also pointed out several other reasons to sustain the impugned judgment. The essence of the elaborate submissions advanced by the learned counsel for the accused is that the complicity of the said accused in the crime has not been established beyond reasonable doubt.

7. The points that fall for consideration are (1)

whether the decision of the Court of Session acquitting accused 1 to 8, 15 and 16 can be said to be vitiated by errors of law or facts, (2) if so, the offences, if any, committed by accused 1 to 8, 15 and 16 or any of them and (3) the sentences to be passed against the accused who are found guilty.

8. Points 1 and 2: The prosecution attempted to

prove the occurrence through the evidence of the injured witnesses namely PWs 2 to 7, the evidence of PW1 on whose information the case was registered and PW8, who is stated to be one among those who arrived at the scene on hearing the noise from the quarrel. In order to support the evidence tendered by the ocular witnesses, the prosecution also relies

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on the evidence relating to the recovery of various material objects, medical evidence, forensic evidence etc. As the impugned judgment is attacked on the ground that the same is not only vitiated by errors of law, but also by errors of fact, the evidence let in by the relevant witnesses needs to be scrutinised meticulously.

9. PW1 is one Kumaran. He is a person residing

approximately 100 meters away from the scene of occurrence. PW1 deposed that at about 10.15 p.m. on the date of occurrence, while he was watching television in his house, he heard a noise from the road and when he proceeded to that place, he saw PWs 5 and 6 lying on the road in front of the house of Anilkumar and the first accused hacking on the right side of the chest of Shibin with an axe. It was deposed by PW1 that when Shibin fell down on his chest on account of the attack by the first accused, the second accused knelt down and hacked Shibin with a sword on his back. It was also deposed by PW1 that even though he then saw PWs 3, 6, 7 and others with injuries there, he was unable to depose as to who caused injuries to them. Nevertheless, PW1 confirmed that

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accused 1, 2, 4 and 5 were among the assailants who attacked Shibin as also the injured, and identified them. PW1 also identified MO1 axe as the weapon used by the first accused and MO2 sword as the weapon used by the second accused to inflict injuries on Shibin and MO3 knife as the weapon carried by the fifth accused then. It was also deposed by PW1 that the

accused were exhorting " " while attacking and the accused left the place when the people in the locality rushed to the scene hearing the noise. It was also deposed by PW1 that in the meanwhile, one Balakrishnan, one E.K. Rajan and PW8 namely, Aravindakshan also arrived at the scene and PW1 along with PW8 took PW2, PW6 and Shibin to Vatakara Co-operative Hospital in an auto rickshaw. It was also deposed by PW1 that PW7 was taken in another auto rickshaw to Thalassery Hospital and PW3 was taken to Vatakara Co-operative Hospital in a car. It was also deposed by PW1 that when the car in which PW3 was being taken to the hospital reached near the water tank at Purameri, Shibin was shifted to that car and thereafter they followed that car. It was also deposed by PW1 that when they reached Vatakara Co-

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operative Hospital, Shibin and PW3 were referred to the Medical College Hospital, Kozhikode as the injuries sustained by them were serious and they were accordingly taken to the Medical College in an ambulance. It was also deposed by PW1 that when he was still in Vatakara Co-operative Hospital, somebody informed him about the death of Shibin and PW1 then proceeded to the Medical College Hospital. It was also deposed by PW1 that he returned home only at about 4 a.m. on the following day and on his return, he went to the police station and gave Ext.P1 statement, after taking rest for sometime. In cross-examination, it was affirmed by PW1 that he gave two additional statements to the police after Ext.P1 statement in connection with the occurrence and denied the suggestion that the lights in the compound wall and in the house of Anilkumar were not staying lit at the time of occurrence. Similarly, PW1 denied the suggestion that the activists of the political party, CPM created trouble on the road and Shibin sustained injuries in the clash that took place thereafter between CPM activists and the local people. It was also clarified by PW1 in cross-examination that he is not an

-: 25 :- activist of the political party, CPM and that he is only a well-wisher of that party.

10. PW2 is Akhil who was present at the scene

with Shibin and others when accused 5 and 6 passed through that place by the motor cycle to the house of the first accused. The version of PW2 as regards the occurrence is that some time after the first verbal altercation, accused 5 and 6 came back in two different motor cycles and started picking up a quarrel with Shibin and others for having cautioned accused 5 and 6 to ride their motor cycles without scattering dust: that they also responded to accused 5 and 6 in the same manner and it was in the meanwhile that accused 2, 4, 7, 8, 16 and the Juvenile came there and supported accused 5 and 6. According to PW2, when accused 2, 4, 7, 8, 16 and the Juvenile supported accused 5 and 6, there occurred a commotion and on hearing the noise, PWs 5 to 7 and few others came there, pacified and separated them to the two sides of the road, the accused to the western side and Shibin and others to the eastern side. It was deposed by PW2 that accused 1, 3 and 15 then came there in a black scooter ridden by the fifteenth accused with

-: 26 :- weapons and handed over the weapons to the accused who were present there and gave some instructions. It was the version of PW2 that thereupon accused 1 to 8, 15 and 16

rushed towards PW2 and others exhorting " and attacked them. It was also deposed by PW2 that PWs 5 and 6 were standing then in between the groups to separate them and that the third accused started the attack by hitting on the face of PW6 and also on his left hand with a torch. When PW6 fell down near the house of Anilkumar, the sixteenth accused beat PW5 on his head with an iron rod. PW5 also fell down on account of the attack. The first accused then hacked on the chest of Shibin, and when he fell down on his chest, the second accused knelt down and hacked him with a sword on his back. When PW2 along with PW4 attempted to prevent further attack on Shibin, the third accused hacked with an axe on the neck of PW2 which when prevented by PW2, fell on the left side of his face. It was deposed by PW2 that since his left mandible was fractured on account of the hacking, he had to sit down on the road. PW2 identified accused 1 to 8, 15 and 16 in court. PW2 also identified the motor cycles in which

-: 27 :-

accused 5 and 6 came to the scene as MO5 and MO4 respectively and the scooter in which accused 1, 3 and 15 came to the scene as MO6. PW2 also identified MO1 as the axe used by the first accused, MO2 as the sword used by the second accused, MO7 as the axe used by the third accused, MO9 as the iron rod used by the sixteenth accused to attack him and others and MO10 torch used by the third accused to attack PW6. It was deposed by PW2 that the accused left the scene when the people in the locality rushed to that place. It was also deposed by PW2 that he was taken thereafter to the Co-operative Hospital, Vatakara in an auto-rickshaw and from there to the Medical College Hospital, Kozhikode. PW2 also deposed that the accused are Muslim League Activists residing in the locality and he had previous acquaintance with all of them. In cross-examination, PW2 admitted that he is an activist of DYFI as also the political party CPM. It was also affirmed by PW2 that Shibin and Lineesh are also DYFI activists. It was clarified by PW2 that he does not remember who informed the doctor at the Medical College Hospital, Kozhikode as to how he suffered the injuries.

-: 28 :-

11. PW3 is Rakhil who was also present at the

scene of occurrence with PWs 2, 4 and Shibin when accused 5 and 6 passed through that place. PW3 is also an activist of the political party CPM, and DYFI. PW3 also deposed as regards the background of the occurrence as deposed by PW2. As in the case of PW2, PW3 also deposed that he had previous acquaintance with accused 1 to 8, 15 and 16, and identified all of them in court. PW3 also identified the motor cycles in which

accused 5 and 6 came to the scene as MO5 and MO4 respectively and the scooter in which accused 1, 3 and 15 came to the scene, as MO6. The version of PW3 as regards the occurrence was that after the arrival of accused 1, 3 and 15 with weapons and after the said accused gave instructions to the remaining accused who were present there, all of them together approached PWs 2, 4, Shibin and himself exhorting

" ". It was deposed by PW3 that some among them hit PWs 5 and 6 first and when they fell down, the first accused hacked on the chest of Shibin with an axe. When Shibin fell down on his chest, the second accused hacked him on his back with a sword. It was the version of PW3 -: 29 :-

that thereupon, the second accused caught hold on the back of the neck of PW3 and made him bend down and that the third accused then hacked twice on the back of PW3 with an axe and also on the back of his hands. PW3 identified MO1 as the axe used by the first accused, MO2 as the sword used by the second accused and MO7 as the axe used by the third accused. It was also deposed by PW3 that the third accused hacked him on the back of his hands also. PW3 also deposed that he was taken first in a car to Vatakara Hospital, via Purameri and Shibin was shifted to that car from the auto- rickshaw at Purameri. It was also deposed by PW3 that he was referred to the Medical College Hospital, Kozhikode from Vatakara Hospital.

12. PW4, Lineesh is another person who was

present at the scene with PWs 2, 3 and Shibin when accused 5 and 6 passed through that place. PW4 is also an activist of the political party, CPM. PW4 also deposed as regards the background of the occurrence as deposed by PWs 2 and 3. As in the case of PWs 2 and 3, PW4 also deposed that he had previous acquaintance with accused 1 to 8, 15 and 16, and

-: 30 :-

identified all of them in court. PW4 also identified the motor cycles in which accused 5 and 6 came to the scene as MO5 and MO4 respectively and the scooter in which accused 1, 3 and 15 came to the scene as MO6. As regards the occurrence, the version of PW4 was that the third accused gave a hit to PW6 with MO10 torch carried by him and the sixteenth accused gave a hit on the head of PW5 with MO9 iron rod. According to PW4, when PWs 5 and 6 fell down near the house of Anilkumar, the first accused hacked Shibin with MO1 axe and when Shibin fell down on his chest, the second accused hacked on the back of Shibin with MO2 sword. It was also deposed by PW4 that when he along with PW2

attempted to carry Shibin, the third accused hacked on the face of PW2 with MO7 axe and the fourth accused hacked on the right hand of PW4 with MO8 sword. It was also deposed by PW4 that the first accused then hacked on the back of PW4 with MO1 axe. It was further deposed by PW4 that it was thereafter, the second accused made PW3 bend down and the third accused hacked on the back of PW3 with an axe. The evidence given by PW4 as regards the persons and vehicles in which he was taken to the

-: 31 :- hospital was consistent with the evidence tendered by PWs 2 and 3.

13. PW5 is Vijeesh who along with PWs 6 and 7

were engaged in removing flex boards which were erected in the premises of a nearby temple, and came to the scene on hearing the noise from the quarrel. According to PW5, when they reached the scene, they saw an altercation between Shibin and PWs 2 to 4 on one side and accused 2, 4 to 8, 16 and the Juvenile on the other side. It was deposed by PW5 that when they separated them to two sides of the road, accused 1, 3 and 15 came there in MO6 scooter with weapons, handed over the said weapons to the accused who were present there, gave them some instructions and the accused, thereupon, attacked PWs 2 to 4 and others. It was deposed by PW5 that he saw the third accused giving a blow with MO10 torch on the left side of the face of PW6. It was deposed by PW5 that the sixteenth accused then hit him with MO9 iron rod, on the back of his head. It was specifically deposed by PW5 that it was at that point of time that the first accused hacked Shibin with MO1 axe on the right side of his chest and when Shibin fell

-: 32 :- down on his chest on account of the said hack keeping his hand on the injury sustained by him, the second accused hacked on his back with MO2 sword. PW5 also identified accused 1 to 8, 15 and 16 and also the weapons used by accused 1, 2, 3 and 16.

14. PW6 is Aneesh who accompanied PW5 to the

scene. PW6 gave evidence more or less consistent with the evidence given by PW5. It was specifically deposed by PW6 that it was the third accused who gave a

blow on his face with MO10 torch and even though the third accused attempted to hit him using MO10 again, he warded off the said attempt with his left hand. PW6 also gave evidence as to the manner in which Shibin sustained fatal injuries and about the persons who inflicted injuries on Shibin. Likewise, PW6 also gave evidence as to how PWs 3 and 4 sustained injuries as deposed by them. PW6 also identified MO1 as the axe used by the first accused to hack Shibin and MO2 as the sword used by the second accused to hack Shibin. Similarly, PW6 identified MO8 as the sword used by the fourth accused. It was deposed by PW6 that it was the fifteenth accused who caused injuries to

-: 33 :- PW7 with MO3 knife and the said weapon was initially carried by the fifth accused. PW6 also identified accused 1 to 8, 15 and

16. In cross-examination, when PW6 was asked the reason why he did not run away from the scene when the accused used weapons, the answer given by PW6 was that he never thought that he would be attacked.

15. PW7 is Rajesh who accompanied PWs 5 and 6

to the scene of occurrence. PW7 also gave evidence consistent with the evidence given by PWs 5 and 6. In addition, PW7 deposed that after inflicting injury on Shibin, the first accused hit on the back of PW7 with the blunt side of MO1 axe and when PW7 questioned the first accused as to the reason for hitting him, the fifteenth accused snatched MO3 knife from the fifth accused and hacked on his back. Like other witnesses, PW7 also identified accused 1 to 8, 15 and 16 and the weapons used by accused 1 to 4 and 15 in his evidence.

16. PW8 is Aravindakshan referred to by PW1 in

his evidence. PW8 is an activist of the political party, CPM. PW8 came to the scene immediately after the arrival of PW1. PW8 gave evidence as regards the occurrence consistent with the -: 34 :-

evidence given by the injured witnesses. PW8 deposed that among the injured, PWs 2 to 4 and Shibin belonged to CPM, PWs 5 and 7 belonged to Congress Party and PW6 does not have any political affiliation. It was also deposed by PW8

that the accused are activists of the political party, Muslim League. It was also deposed by PW8 that he along with PW1 took PW2, PW5, PW6 and Shibin in an auto rickshaw to the Vatakara Co- operative Hospital and Shibin was lying on the lap of PW8 and PW1 was sitting on the left side of the driver. PW8 also deposed that Shibin was shifted to the car in which PW3 was being taken to the said hospital near the water tank at Purameri. It was also deposed by PW8 that Shibin was taken in an ambulance from the Vatakara Co-operative Hospital to the Medical College Hospital, Kozhikode; that the remaining injured were also taken to the said hospital and that Shibin died on the way to the Medical College Hospital, Kozhikode. PW8 also clarified that he saw PW1 at the Medical College Hospital. Like PW1, PW8 also identified accused 1 to 8, 15 and 16 in court and also the weapons used by accused 1 to 4 and 15.

17. PW9 is Anilkumar who is residing on the -: 35 :-

northern side of the scene. He deposed that there was light on his compound wall as also in his house at the time of occurrence. PW9 also deposed that there was light at that time in the house of his neighbours, Gopalan and Kannan as well. It was deposed by PW9 that even though he heard noise from the road at about 10.15 p.m., he did not go to the road as his wife did not allow him to go. It was also deposed by PW9 that after sometime, one Nanu came to his house and informed him that somebody has been hacked near the house of PW9 and that he wanted water to be given to the injured. It was deposed by PW9 that his wife then gave water to Nanu in a jug and when Nanu returned, he accompanied Nanu and he then saw two persons holding Shibin, and PWs 5 and 6 lying on the road near Shibin. PW9 identified MO25 as the jug in which water was taken by Nanu.

18. PW10 is the brother of PW7. PW10 deposed that

on coming to know that there was an occurrence near the house of Anilkumar, he went to that place and when he reached that place, he saw his brother, PW7 lying on the road in a pool of blood. It was also deposed by PW10 that he -: 36 :-

thereupon took PW7 to Thalassery Government Hospital in an auto rickshaw. PW11 is a person residing in the vicinity of the scene. PW11 is a witness to Ext.P6

scene mahazar prepared by PW66. PW11 deposed that he witnessed the recovery of MO25 jug, MO26 series bloodstained boulders and MO27 pearl chain from the scene at the time of preparation of the scene mahazar. PW19 is the Scientific Officer attached to the Forensic Science Laboratory, Wayanad. PW19 deposed that it was she who collected MO26 series bloodstained boulders from the scene of occurrence and handed over the same to PW66.

19. PW22 is a person residing in the vicinity of the

place of occurrence. PW22 deposed that when he went to the scene on the night of 22.01.2015 on hearing about the occurrence, the injured persons were already taken from that place. According to PW22, the police personnel available then at the scene of occurrence required him to arrange for a goods auto rickshaw. It was deposed by PW22 that he arranged a goods auto rickshaw and the police personnel carried two vehicles namely, MO5 motor cycle and MO6 scooter found at the scene in the said vehicle to Nadapuram Police Station. It

-: 37 :- was further deposed by PW22 that since there was lack of space in the goods auto-rickshaw, the third vehicle namely, MO4 motor cycle was taken to the police station separately. PW23 is the mother of Shibin. PW23 identified MO27 as the pearl chain used by Shibin.

20. PW33 was a Civil Police Officer attached to

Nadapuram Police Station during the relevant time. PW33 deposed that he guarded the scene of occurrence from 6.00 a.m. on 23.01.2015 till 2.00 p.m. on 24.01.2015 and that Sub Inspector Vijayan was guarding the scene before he was assigned the guard duty. PW33 affirmed that the police recovered a steel jug, bloodstained boulders and also a broken pearl chain from the scene of occurrence and he witnessed the said recoveries. PW34 was a Grade Assistant Sub Inspector of Police attached to Vatakara Police Station on 22.01.2015. PW34 deposed that on the night of the occurrence while on flying squad duty, at about 2.00 a.m., the Circle Inspector of Police informed him that some untoward incidents took place at Vellur and the persons involved in the said incidents were going to Thiruvallur in an Ertiga Car, and on the basis of the

-: 38 :- said information, the police party found the said car, took custody of the passengers therein and handed over them to the Circle Inspector of Police.

21. PW42 was the Assistant Motor Vehicle

Inspector attached to Regional Transport Office, Vatakara. He deposed that on 03.02.2015, he examined MOs 4, 5 and 6 two wheelers at the premises of Nadapuram Police Station and

issued Exts.P50, P49 and P51 certificates respectively. According to PW42, the vehicles were found to be damaged at the time of inspection. In cross-examination, PW42 clarified that the vehicles inspected by him were not in running condition and the damages caused to the said vehicles were not damages that would occur on account of mere fall.

22. PW47 was working as Assistant Surgeon at the

Taluk Headquarters Hospital, Nadapuram on 23.01.2015. It was PW47 who examined the Juvenile involved in the case and issued Ext.P59 wound certificate. It was deposed by PW47 that at the time of examination, she noticed a lacerated wound 2 x 0.5 cm on the scalp of the Juvenile and the cause of injury was stated to her as 22/1/2015 10 -: 39 :-

, ", 50) . Similarly, it was PW47 who examined sixth accused on that day at about 1.10 a.m. and issued Ext.P60 wound certificate. It was deposed by PW47 that at the time of examination of the sixth accused, she noted (1) abrasion left side of face (2) contusion left side of lower lip (3) conjunctive impression left eye and (4) contused abrasion on his left shoulder joint and that the cause of injury was stated to her as 22-01-2015

10) ". Similarly, it was PW47 who examined the fourth accused on that day at about 1.15 a.m. and issued Ext.P61 wound certificate. It was deposed by PW47 that at the time of examination, she noted (1) abrasion on the forehead (2) multiple linear abrasions all over the body

(3) complaint of lower abdomen pain and passing urine and (4) tenderness in the pubic area and the cause of injury was

stated to her as 22/1/2015 12 " ,) . Blade ". It was also deposed by PW47 that all the injured persons absconded from the hospital at about 1.45 a.m. on the same day and the injuries suffered by them were simple and could be caused in a scuffle. In cross- :- 40 :- examination, PW47 denied the suggestion made to her that the endorsements made in Exts.P60 and P61 certificates that accused 4 and 6 absconded from the hospital, is a false statement.

23. PW48 was a Dental Surgeon attached to the

Government Dental College, Kozhikode on 23.01.2015. It was PW48 who examined PW2 at 12.25 a.m. on that day and issued Ext.P62 certificate. It was deposed by PW48 that the cause of the injury sustained by PW2 was stated to her as caused on account of an assault by a known person and that the injuries include a lacerated wound 4 x 3 x 2 cm on the left cheek, fracture of mandible, left face symphysis and left angle of mandible. It was also deposed by PW48 that the injuries were grievous in nature and PW2 was admitted in the hospital for treatment and was discharged only on 26.01.2015. It was also deposed by PW48 that injury sustained to PW2 was one that could be caused by MO7 axe.

24. PW49 was the Medical Officer in charge of Medico Legal cases at the Co-operative Hospital, Thalassery. It was PW49 who examined PW7 on 23.01.2015, at about 2.00 :- 41 :-

a.m. at the said hospital and issued Ext.P64 certificate. It was deposed by PW49 that the history of the alleged cause of injury was stated to him as on account of assault by a group of people at around 10.45 p.m. on 22.01.2015 at Thunerivellur. It was deposed by PW49 that the injury noted by him on the body of PW7 at the relevant time was a lacerated wound of 10x4 cm on his upper back and the same was one that could be caused with MO3 knife. It was also deposed by PW49 that PW7 was admitted in the hospital for treatment and he was discharged only on 29.01.2015.

25. PW50 was a Surgeon attached to the Medical

College Hospital, Kozhikode on 22.01.2015. It was PW50 who examined PW3 at about 11.55 p.m. on the said day and issued Ext.P66 wound certificate. It was deposed by PW50 that the alleged cause of injury was stated to him as assault at 10.45 p.m. at Nadapuram and that the injuries noted by him were

(1) stab wound 7 x 2 x 4 cm on the back 1cm right of his

midline (2) stab wound 1 x 1 x 3 cm at the same place 4 cm left of midline and (3) lacerated wound left elbow 4 x 2 x 2 cm. It was also deposed by PW50 that PW3 was admitted in the -: 42 :-

said hospital for treatment and he was discharged only on 30.01.2015. It was also deposed by PW50 that the injuries sustained by PW3 could be caused with MO7 axe and that the same were injuries which could lead to death. PW50 examined PW4 also on 23.01.2015, at 12.15 a.m. and issued Ext.P68 wound certificate. The cause of injury stated to him was assault at 10.30 p.m. at Nadapuram. It was deposed by him that the injuries noted by him were incised wound 12 x 3 x 7 cm on the back and incised wound right elbow 3 x 0.5 x 0.5 cm and that the first injury was possible by contact with a weapon like MO1 and the second injury was possible by contact with a weapon like MO8. It was also deposed by PW50 that PW4 was admitted in the hospital for treatment and he was discharged only on 26.01.2015. PW50 examined PW5 also on 23.01.2015, at 12.15 a.m. and issued Ext.P70 wound certificate. The cause of injury as stated to him was assault at 10.30 p.m. at Nadapuram by unknown men and injury noted was lacerated wound on the left parietal region 5 x 3 cm. It was deposed by PW50 that injury could be caused with a weapon like MO9. It was deposed by PW50 that PW5 was admitted in the hospital

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for treatment and he was discharged only on 26.01.2015. It was PW50 who examined PW6 on 23.01.2015 at 12.30 a.m. and issued Ext.P72 wound certificate. The cause of injury was stated to him as assault and injuries noted were fracture

of left hand and fracture of facial bones. It was deposed by PW50 that injuries are possible by a hit with a weapon like MO10. It was deposed by PW50 that PW6 was admitted in the hospital for treatment and he was discharged only on 30.01.2015. Ext.P73 is the discharge certificate issued in respect of PW6. It was clarified by PW50 that in Ext.P73, it is mentioned that PW6 suffered fracture of left zygomatic bone, fracture of left maxillary bone and fracture of fifth metacarpal of left hand. It was also deposed by PW50 that the fracture suffered by PW6 on the fifth metacarpal of his left hand can be defensive injury. It was deposed by PW50 that Shibin was brought dead at the Medical College Hospital at 12.28 a.m. and the death was intimated to the police as per Ext.P74 communication. It was also clarified by PW50 that the injuries sustained by PWs 4 and 5 were injuries that could lead to death.

26. PW51 is the doctor attached to the :- 44 :-

Government Medical College, Kozhikode, who conducted the post-mortem examination on the body of the deceased. Ext.P75 is the post-mortem certificate issued by PW51. The ante-mortem injuries noted by PW51 at the time of post-mortem examination, as deposed by him, read thus:

1. '>' shaped incised wound; upper oblique portion measured 3.8cmx2 to 2.5cm; lower oblique 1.8cmx 1.5- 1.8 cm, on back of left chest at shoulder blade area. Inner end 8cm below root of neck and 6cm outer to back midline. Upper outer end 6cm below top of left shoulder and 9.5cm outer to back midline. Edges showed slanting down wards, front and to left. This injury was 2cm in deep on subcutaneous tissue plane towards left.

2. Incised wound 17cm x 0.5-1.5cm x subcutaneous tissue

deep, on back of middle of trunk, obliquely vertical; upper portion was wide progressively narrower and shallow towards lower end. Upper outer left end was 16cm below left top of shoulder and 4cm left of midline, lower right end crossed midline to right for 2cm and was 15cm above

waist. There was reverse L(_I) shaped tailing with vertical limb 5.8cm and transverse limb 3.2cm each 0.2cm broad and subcutaneous tissue deep. Injury 1 and 2 were separated by 8cm; transverse portion of lower end of injury no.2 was 115cm above heel. Inner end of injury no. 1 was 146cm above heel.

3. Incised penetrating wound 10.5x0.5-3.5cm on front of right

chest just inner to front fold of axilla; vertical, upper sharp end just below collar bone 10.5cm outer to front midline. Lower sharp end 11.5cm outer to front midline; cut muscles seen protruding. Lower end showed vertical tailing 3cm x0.2cm. Edges were directed backwards and to left (chest wall up to ribs measured 3.5cm in thickness). After cutting muscles wound continued by cutting second rib vertically 6cm right to front midline and first inter costal space; measuring 4cm x 0.1cm. In depth the wound cut inter costal vessels, pleura and terminated by cutting outer aspect of upper lobe of right lung for a size 1.3x0.3x1cm, 4cm below apex. Right lung was collapsed. Right chest cavity contained 400ml fluid blood and clots (hemothorax). Total minimum depth was 5cm. -: 45 :-

PW51 opined in his evidence that the death was due to the cut injury sustained by the deceased on his chest involving lung and associated haemorrhagic shock. It was also opined by PW51 in his evidence that injury 3 could be possible with MO1 axe and injuries 1 and 2 could be possible with MO2 sword. It was clarified by PW51 that injury 1 is an injury that could be caused with the tip of MO2 sword and injury 2 is possible by contact with the blade portion of MO2. It was also clarified by PW51 that injuries 1 and 2 are in the same line and they are possible if somebody hacks on the body of another who is lying down by bending down and that injuries 1 and 2 are injuries possible in a single action.

27. PW60 was the Sub Inspector of Police in

charge of Nadapuram Police Station on 22.01.2015. PW60 deposed that on the following day at 7.45 a.m., PW1 came to the police station and gave Ext.P1

statement and he registered Crime No.89 of 2015 on the basis of the said statement. In cross-examination, it was stated by PW60 that the Assistant Sub Inspector of Police, Abdulla was in charge of the General

-: 46 :-

Diary of the Station and at about 10.30 p.m. on the previous day, an information was received in respect of the occurrence and the same was entered in the General Diary. It was also stated by PW60 in cross-examination that while he was proceeding to the scene of occurrence on receiving the information, PW66, the Circle Inspector of Police, Kuttyadi informed PW60 that he has already sent another Police Officer namely, Vijayan to the scene of occurrence and directed PW60 to patrol the road between Purameri and Vettummal. In re-examination, it was clarified by PW60 that the information received at 10.30 p.m. on the previous day in the police station was that there was some scuffle near Vellur. It was also clarified by PW60 that he was on patrol duty between Purameri and Vettummal till 6.00 a.m. on the following day.

28. PW66 was the Investigating Officer in the case.

PW66 deposed that while holding office as the Circle Inspector of Police, Kuttyadi, he was also in charge as Circle Inspector of Police, Nadapuram from 20.01.2015 and that while so, he received an information on 22.01.2015 at about 10.30 p.m. that there was a scuffle at the place called Vellur, and on -: 47 :-

receiving the said information, he reached that place by about 11.00 p.m. It was deposed by PW66 that even though he enquired with the Sub Inspector of Police namely, Vijayan who was present there at the relevant time about the occurrence, PW66 could not get any credible information. It was also deposed by PW66 that he then saw a few motor cycles lying on the road and he understood that some occurrence had taken place there. It was deposed by PW66 that he left the scene of occurrence after instructing Vijayan to remove the motor cycles and thereafter, to patrol there. It was also deposed by PW66 that after sometime, he came to know that violent incidents had taken place in and around Vellur and he, therefore, continued the patrolling duty in that area. It was deposed by PW66 that while so,

he got reliable information that three persons involved in the violent incidents were proceeding towards Thiruvallur in a car and he accordingly took them into custody with the help of PW34. It was also deposed by PW66 that on questioning the said three persons, it was understood that four other persons who were involved in the violent incidents were in the house of one Yoonus at

-: 48 :-

Kaniyankandipalam and he consequently went to that place and took them also into custody. It was deposed by him that by that time, he received information that a series of violent incidents were taking place in and around Vellur and he consequently proceeded to that area. It was deposed by PW66 that on the following day by about 7.45 a.m., he received information that one of the injured in the occurrence that took place at Vellur, died. It was deposed by him that he immediately proceeded to Nadapuram Police Station and took over the investigation in the case. It was also deposed by PW66 that thereafter, he conducted inquest of the body of the deceased and the opinion of the people who assembled there at the time of inquest was that the death of Shibin was on account of communal and political violence. It was also deposed by PW66 that he thereupon seized MO5 and MO6 two wheelers and arrested the seven persons who were earlier taken into custody including accused 4 to 8 and 10, after identifying them as accused in the case with the help of PW1. PW66 identified MOs 34 and 35 as the clothes of the fourth accused, MOs 36 and 37 as the clothes of the fifth accused,

-: 49 :- MOs 41 and 42 as the clothes of the sixth accused, MOs 43 and 44 as the clothes of the seventh accused, and MOs 49 and 50 as the clothes of the eighth accused, recovered at the time of their arrest.

29. It was also deposed by PW66 that when the

first accused was interrogated on 11.02.2015 after obtaining his custody from the court, the first accused informed PW66 that he kept an axe, a sword and also a torch at a particular place covered in a shawl. Ext.P104 is the disclosure made by the first accused. It was deposed by PW66 that when the first accused was taken

to the place called Mundolathil Mukku as guided by him, he took out from a drain MO1 axe, MO2 sword and MO10 torch covered in a shawl, and handed over the same to PW66 who seized the same in terms of Ext.P23 seizure mahazar. Similarly, it was also deposed by PW66 that when the third accused was interrogated on 11.02.2015 after obtaining his custody from the court, the third accused also informed him that he kept an axe and a sword at a place. Ext.P105 is the disclosure made by the third accused. It was deposed by PW66 that when the third accused was taken to the place mentioned

-: 50 :- as guided by him, he took out and handed over to PW66, MO7 axe and MO8 sword, and the same were seized by him as per Ext.P24 seizure mahazar. It was also deposed by PW66 that on 08.05.2015, the fifteenth accused surrendered before the

Jurisdictional Magistrate, and during interrogation after obtaining custody, the fifteenth accused informed PW66 that he kept a knife and an iron rod at a place and when the fifteenth accused was taken to that place as guided by him, he took out and handed over to PW66, MO3 knife and MO9 iron rod from a thicket on the western side of the residential property of Anilkumar and the same were seized by him as per Ext.P16 seizure mahazar. Ext.P142 is the disclosure made by the fifteenth accused.

30. It was also deposed by PW66 that as a

consequence of the occurrence, a series of violent incidents took place in and around Nadapuram including hurling of bombs and arson and that about 150 cases were registered in connection with such violent incidents. It was also deposed by PW66 that the investigation revealed that the cause of the occurrence was not only political, but also communal. In cross-

-: 51 :- examination, PW66 clarified that case was not registered

immediately on receiving information concerning the occurrence since credible information was not obtained in respect of the same. It was deposed by PW66 in cross- examination that blood was found within one meter from the southern

boundary of the road in front of the house of Anilkumar. PW66 conceded in his evidence that he did not conduct any investigation to ascertain how MOs 4 to 6 two wheelers were damaged. During cross-examination, PW66

denied the suggestion that Shibin and others caused obstruction to the bikes ridden by accused 5 and 6 at a place near Pillandi School located on the eastern side of the house of Anilkumar and that the place of occurrence was shifted to the place near the house of Anilkumar for want of light. PW66 also denied the suggestion made to him that police personnel were not assigned to guard the scene. Another suggestion made to PW66 as regards the cause of death of Shibin was that the death occurred in the clash that took place when the local people intervened in the attack made on accused 5 and 6 and in the destruction of the two wheelers in which they came to

-: 52 :- the scene. PW66 denied the said suggestion also.

31. The evidence tendered by PW66 as regards

the recovery of MOs 1, 2 and 10 was corroborated by PW18, PW22 and PW25 who stated that they witnessed the first accused handing over the said MOs and the third accused handing over MOs 7 and 8 to the police. PW25 is the witness to Exts.P24 and P25 seizure mahazars. Similarly, the evidence tendered by PW66 as regards the recovery of MOs 3 and 9 was corroborated by PW26 who stated that he witnessed the fifteenth accused handing over the said MOs to the police. PW26 is the witness to Ext.P26 mahazar.

32. PW61 was the Assistant Director attached to

the Forensic Science Laboratory, Kannur on 24.03.2015. It was PW61 who issued Ext.P78 report in respect of some of the objects sent for forensic examination in connection with the subject case. Item 1 in Ext.P78 is MO1 axe, item 2 therein is MO2 sword, item 5 therein is MO7 axe and item 6 therein is MO8 sword. It was deposed by PW61 that items 1, 2, 5 and 6 contained blood of human origin. It was also deposed by PW61 that it was she who issued Ext.P79 report in respect of some

-: 53 :- other objects sent for forensic examination in connection with the subject case. Items 1 and 2 therein are MO3 knife and MO9 iron rod respectively, and blood was not found on those objects. In chief-examination itself, she clarified that if the objects are exposed to the vagaries of weather, the bloodstains may disappear.

33. PW63 was the Joint Chemical Examiner

attached to the Regional Chemical Examination Laboratory, Kozhikode. It was PW63 who issued Ext.P81 report in respect of the clothes of Shibin, injured as also the accused. Ext.P81 also contains the report of the various objects collected from the scene of occurrence. Items 1 and 2 in Ext.P81 are MO34 and MO35 clothes recovered from the fourth accused, items 56 and 6 therein are MO39 and MO40 clothes recovered from the Juvenile, items 3 and 4 therein are MO36 and MO37 clothes recovered from the fifth accused, items 10 and 11 therein are MO43 and MO44 clothes recovered from the seventh accused, items 8 and 9 therein are MO41 and MO42 clothes recovered from the sixth accused and items 16 and 17 therein are MO50 and MO49 clothes recovered from the eighth accused. It was

-: 54 :- deposed by PW63 that human blood was detected in items 2, 3, 11, 16 and 17, the clothes of accused 4, 5, 7 and 8.

34. Inasmuch as the learned Public Prosecutor and

the learned counsel for the victims did not pursue the appeals against the decision of the Court of Session acquitting accused other than 1 to 8, 15 and 16, we are examining only the correctness of the order of acquittal insofar as it relates to accused 1 to 8, 15 and 16.

35. There cannot be any doubt to the proposition

that the appellate court has the power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded, and reverse the order of acquittal in appropriate cases. But, while doing so, it has to be kept in mind that the trial court would have been in a better position to evaluate the credibility of the witnesses for, it had the distinct advantage of watching the demeanour of the

witnesses. Once the trial court acquits the accused, the presumption of innocence in his favour is strengthened and reinforced. As such, it is settled that the appellate court may overrule or otherwise disturb the

order of acquittal only if the appellate court has substantial

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and compelling reasons in doing so. If two reasonable or at least plausible views can be reached on the facts and evidence, one that leads to acquittal and the other to conviction, the appellate court shall rule in favour of the accused [See *Dhanapal v. State*, (2009) 10 SCC 401]. It is settled that the appellate court ought not interfere in the orders of acquittal, unless there is gross perversity in the appreciation of evidence, or patent illegalities. At the same time, it has to be kept in mind that miscarriage of justice may arise from the acquittal of guilty persons and therefore, it is obligatory for the appellate court to ensure that such

miscarriage does not occur. Non-consideration of material facts

and consideration of irrelevant facts is one of the factors which would invite an interference with the order of acquittal. While re-appreciating the evidence, it is also to be kept in mind that a reasonable doubt is not an imaginary, trivial or possible doubt, but a fair doubt based upon reason and common sense. It shall not be a fanciful one or a lingering suspicion [See *Ramesh Harijan v. State of U.P.*, (2012) 5 SCC 777]. Let us now consider the points formulated for decision, keeping in mind

-: 56 :- the said principles.

36. Before proceeding to examine the question

whether the view taken by the trial court in acquitting the accused is reasonable or at least plausible, it is necessary to consider whether the evidence on record would establish beyond reasonable doubt, the complicity of accused 1 to 8, 15 and 16 in the crime for, if this court finds that the evidence on record does not establish the complicity of the said accused in the crime beyond reasonable doubt, it is

unnecessary to consider whether the view taken by the Court of Session is reasonable or plausible.

37. Accused 1 to 8, 15 and 16 do not dispute the

fact that Shibin and PWs 2 to 7 sustained injuries in an occurrence that took place on the night of 22.01.2015 and that Shibin succumbed to the injuries. The suggestions made to PW66 during cross-examination by the learned counsel for the accused would show that the case of the accused is that the occurrence was not as alleged by the prosecution and they are not the assailants. The suggestion made to PW66 by the learned counsel for some of the accused as regards the

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occurrence was that when Shibin and others destroyed the motor cycles in which accused 5 and 6 came to the scene, the people in the locality intervened and it is in the altercation that took place thereupon that Shibin and others sustained injuries. Similarly, the suggestion made by the learned counsel for the accused to PW66 as regards the cause of injuries sustained by PWs 2, 5, 6 and 7 was that they sustained injuries on account of a fall on the road in that commotion. The suggestions aforesaid were denied by PW66. The relevant deposition reads thus:

PW2, PW5, PW6, PW7 road . A5, A6 motor cycle) Q. (A)

It was also the case of the accused that the place of occurrence was not in front of the house of Anilkumar as alleged by the prosecution, but that the occurrence took place near Pillandi School and the place of occurrence was shifted maliciously to the place near the house of Anilkumar as there was no light near Pillandi School. The suggestion made to PW66 in this regard was also denied by him. The relevant

-: 58 :- portion of the deposition reads thus: "Bike P school T T place of occurrence shift) . Except the suggestion aforesaid, no material whatsoever was brought on record by the accused to show that the place of occurrence was not in front of the house of Anilkumar. On the other hand, there is overwhelming evidence which would show that the place of occurrence was in front of the house of

Anilkumar. As already noted, Anilkumar namely, PW9 categorically deposed that on the date of occurrence, at about 10 p.m., after he heard the sound of the commotion, Nanu came to his house for water and when Nanu returned with the water in MO25 jug, Anilkumar accompanied him to the road and when he reached the road, he saw two persons holding Shibin, and PWs 5 and 6 lying on the road with injuries on their bodies. It was categorically deposed by PW66 that MO25 jug was recovered as per Ext.P6 scene mahazar right in front of the house of Anilkumar. It was also deposed by PW66 that MO27 pearl chain that was usually worn by Shibin was also recovered from the same place. That apart, it was also

-: 59 :- deposed by PW66 that a few bloodstained boulders were recovered from the same place. In the light of the said materials, we do not think that the accused can be heard to contend that the place of occurrence was not the place of occurrence as alleged by the prosecution.

38. As noticed, the accused have not challenged

the presence of Shibin and PWs 2 to 4 at the scene. Similarly, the accused do not challenge the fact that the remaining injured persons namely, PWs 5 to 7 came to the scene of occurrence on hearing the noise from the quarrel. Likewise, the accused do not dispute the fact that after the initial verbal altercation between accused 5 and 6 on one side and PWs 2 to 4 and Shibin on the other side, accused 5 and 6 came back to the scene of occurrence after delivering food to the house of the first accused. The accused also do not dispute the presence of accused 1 to 4, 7, 8, 15 and 16 at the scene of occurrence. As noted, their contention is only that the occurrence was not as alleged by the prosecution. PWs 1 to 8 are the persons examined by the prosecution to prove the occurrence. In order to establish that the witnesses examined

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on the side of the prosecution could not have seen the occurrence, one of the arguments seriously pressed into service by the learned counsel for the accused was concerning the availability of light at the scene at the relevant time. According to us, the very suggestion made to PW66 by the counsel for the accused during

cross-examination as regards shifting of the scene of occurrence namely that "Bike

P school T T place of occurrence shift) " alone, is sufficient to repel the contention that there was no light at the scene of occurrence, for the same implies the availability of light at the scene at the relevant time. Be that as it may, PW9, Anilkumar deposed in his evidence about the availability of light. The relevant portion of the deposition reads thus:

"T T T light . T light . T T light . light . T road T XT T pipe light . The said part of the evidence tendered by PW9 is not seen challenged in cross-examination. That apart, PWs 1 to 8 also -: 61 :-

deposed that all the lights referred to by PW9 in his evidence were staying lit at the time of the occurrence. Even though suggestions were made to some of the witnesses that there was no light at the scene of occurrence at the relevant time, they denied the same. In other words, the accused cannot be heard to contend that there was no light at the scene of occurrence at the relevant time.

39. Now let us see the evidence of the ocular

witnesses. Among them, PW1 admitted that when he reached the scene of occurrence, PWs 5 and 6 were lying on the road and he saw the first accused hacking on the right side of the chest of Shibin with MO1 axe and the second accused hacking Shibin on his back with MO2 sword. PW1 admitted that even though he saw PWs 2 to 4 and 5 to 7 at the scene of occurrence, he is unable to say as to who caused injuries to them. At the same time, he deposed about the presence of accused 4 and 5 also, among the other accused, at the scene of occurrence. PW1 also identified MO1 axe as the weapon used by the first accused and MO2 sword as the weapon used by the second accused to inflict injuries on Shibin and MO3

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knife as the weapon carried by the fifth accused at the relevant time. Elaborate arguments were addressed by the learned counsel for the accused on the

acceptability of the evidence tendered by PW1. According to them, PW1 is a person who had not seen the occurrence. The argument was mainly based on the fact that the evidence given by PW1 is not consistent with Ext.P1 First Information Statement. What was stated by PW1 in the First Information Statement was that the first accused was carrying an axe, the fifth accused was carrying a knife and others were carrying sword-sticks and they hacked Shibin, PWs 2, 3 and 4 with the said weapons repeatedly. The relevant portion of the First Information Statement reads thus:

T T) , P.T.K. , , . . As noted, PW1 did not testify in his evidence that he saw the accused persons other than accused 1 and 2 inflicting injuries on the other injured witnesses. True, there is a minor contradiction in the evidence tendered by PW1 as regards the weapon used by the second accused. According to us, having - : 63 :-

regard to the background of the facts involved in this case, the said contradiction is not sufficient enough to hold that PW1 had not seen the occurrence. Another argument advanced by the learned counsel for the accused was that PW1 did not recite in Ext.P1 that the first accused hacked Shibin on the right side of his chest and that the second accused hacked Shibin on his back. It is trite that the First Information Statement need not contain every minute detail as regards the occurrence [See Moti Lal v. State of U.P., (2010) 1 SCC 581]. Merely for the reason that the finer details of the occurrence, especially as to the particulars of the weapons used, the manner in which the weapons used etc. were not disclosed in the First Information Statement, it cannot be contended that the evidence of the first informant is not consistent with the First Information Statement given by him or that the First Information Statement would not be available to corroborate the evidence tendered by the first informant in court. Needless to say, we do not find any reason to doubt the veracity of the evidence tendered by PW1 as referred to above.

40. Coming to the evidence tendered by PW2, as - : 64 :-

noted, what was testified by him was that the third accused started the attack by hitting on the face of PW6 and also on his left hand with MO10 torch; that when

PW6 fell down, the sixteenth accused beat PW5 on his head with MO9 iron rod; that when PW5 fell down on account of the attack, the first accused hacked on the chest of Shibin with MO1 axe and that when he fell down, the second accused knelt down and hacked on the back of Shibin with MO2 sword. It was also deposed by PW2 that when he and PW4 attempted to prevent further attack on Shibin, the third accused hacked PW2 with MO7 axe on his neck which when prevented, the blow fell on the left side of his face. Even though PW2 did not give any evidence as regards the overt acts committed by the accused other than the accused referred to above, he gave evidence as to the presence of the remaining accused among accused 1 to 8, 15 and 16 at the scene. Coming to the evidence of PW3, as noticed, PW3 testified that he saw the first accused hacking on the chest of Shibin with MO1 axe and that the second accused hacking on his back with MO2 sword. According to PW3, the second accused then caught hold of the back of the neck of

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PW3 and made him bend down and the third accused then hacked him with MO7 axe and also on the back of his hands. As in the case of PW2, even though PW3 did not depose as regards the manner in which the other injured persons sustained injuries, he identified accused 1 to 8, 15 and 16 as the assailants. The evidence tendered by PW4 as regards the occurrence was consistent with the evidence tendered by PWs 2 and 3. In addition, PW4 deposed that while he along with PW2 attempted to carry Shibin, the third accused hacked on the face of PW2 with MO7 axe and the fourth accused hacked on his right hand with MO8 sword and the first accused hacked on his back with MO1 axe. PW4 also identified accused 1 to 8, 15 and 16 as the assailants. Coming to the evidence tendered by PW5, he also gave evidence consistent with the evidence tendered by PWs 2 to 4. In addition, PW5 deposed that when he along with PWs 6 and 7 attempted to separate and pacify the fighting groups after accused 1, 3 and 15 gave weapons to the group of the accused, the sixteenth accused gave a blow on the head of PW5 with MO9 iron rod. PW5 also identified accused 1 to 8, 15 and 16 as the accused. Coming to the

evidence of PW6, as in the case of the aforesaid witnesses, PW6 also gave evidence consistent with the evidence tendered by PWs 2 to 5. In addition, PW6 deposed that the third accused started the attack by hitting on his face with MO10 torch and he fell down on account of the impact of the said hit. Coming to the evidence of PW7, as in the case of other witnesses, he also gave evidence consistent with the evidence tendered by PWs 2 to 6. In addition, PW7 deposed that after being hacked by the first accused, the latter gave a blow on the back of PW7 with the blunt side of MO1 axe and when PW7 questioned the first accused as to the reason for hitting him, the fifteenth accused snatched MO3 knife from the fifth accused and hacked on the back of PW7. Unlike PWs 2 to 7, PW8 is not an injured witness. It has come out that he reached the scene of occurrence immediately after PW1 reached there and PW8 gave evidence consistent with the evidence tendered by PWs 1 to 7 as regards the occurrence that took place thereafter.

41. The main ground of attack as regards the evidence tendered by PWs 2 to 8 is not that they are inconsistent. The ground of attack is that the evidence -: 67 :-

tendered is consistent beyond human capabilities and therefore, such evidence cannot be believed. It was also argued vehemently by the learned counsel for the accused that PWs 1 to 8 are partisan witnesses, for they belong to the political party, CPM and the organisation, DYFI. True, PWs 2 to 4 are activists of the political party, CPM and the organisation, DYFI and the accused are their political opponents belonging to the political party, Muslim League and the organisation, Youth League. But, PWs 2 to 7 are persons who sustained serious injuries in the occurrence. We do not think that merely on account of political reasons, persons who sustained serious injuries in an occurrence, would falsely implicate political opponents in a case rather than the real assailant/s. Be that as it may, there is nothing on record to indicate that PW1 is an activist of CPM or that he has any connection with DYFI. Similarly, it has come out in evidence that PWs 5 and 7 belong to the political party, Congress and PW6 does not have any political affiliation. Of course, PW8 is an activist of the political party, CPM. Even if the

evidence of PW8 is eschewed, the remaining evidence is sufficient to establish the overt acts as

-: 68 :- alleged by the prosecution.

42. Be that as it may, the evidence tendered by

PWs 1 to 7 as regards the overt acts committed by accused 1 to 4 is corroborated by the evidence of PW9 that he saw Shibin and PWs 5 and 6 at the scene with injuries immediately after the occurrence, the evidence of PW10 that he saw his brother, PW7 with injuries in a pool of blood at the scene immediately after the occurrence, the evidence tendered by PW11 that he saw a scooter similar to MO6 at the scene immediately after the occurrence and the evidence of PW11 that he saw police recovering bloodstained boulders and the pearl chain of Shibin from the scene of occurrence. The evidence tendered by PWs 1 to 7 as regards the overt acts committed by accused 1 to 4, 15 and 16 is also corroborated by the evidence of PW51, the doctor who conducted postmortem examination on the body of the deceased that the cause of death is due to the cut injuries sustained by him on his chest and that the injuries found on his body could be inflicted with MO1 axe and MO2 sword, the evidence of PW48 who examined PW2 at the Government Dental College, Kozhikode that the injuries suffered by him

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could be caused by MO7 axe, the evidence of PW49 who examined PW7 at Co-operative Hospital, Thalassery that the injuries suffered by him are possible with MO3 knife and the evidence of PW50 who examined PW3 to PW6 at the Medical College Hospital, Kozhikode that the injuries suffered by PW3 are possible with MO7 axe; that the injuries suffered by PW4 are possible with MO1 axe and MO8 sword; that the injuries suffered by PW5 are possible with MO9 iron rod and the injuries suffered by PW6 are possible with MO10 torch. The evidence tendered by PWs 1 to 7 as regards the overt acts committed by accused 1 to 4, 15 and 16 is further corroborated by the evidence tendered by PW66, the investigating officer that MO1 axe, MO2 sword and MO10 torch were recovered based on the information furnished by the first accused; that MO7 axe and MO8 sword were

recovered based on the information furnished by the third accused and that MO3 knife and MO9 iron rod were recovered based on the information furnished by the fifteenth accused. The evidence tendered by PWs 1 to 7 as regards the overt acts committed by accused 1 to 4, 15 and 16 is further corroborated by Ext.P78 report of the Forensic Science

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Laboratory that MO1 axe, MO2 sword, MO7 axe and MO8 sword contained human blood. The evidence tendered by PWs 1 to 7 as regards the overt acts committed by accused 1 to 4, 15 and 16 is further corroborated by Ext.P81 report of the Regional Chemical Examination Laboratory, Kozhikode that the clothes recovered from accused 4, 5, 7 and 8 who were taken into custody immediately after the occurrence contained human blood and they have not offered any explanation for the presence of blood in their clothes. True, blood was not found in MO3 and MO9 weapons. According to us, the said fact may not affect the case of the prosecution for, the said two MOs were recovered only about four months after the occurrence and PW61, the Assistant Director attached to the Forensic Science Laboratory, Kannur clarified that if the objects are exposed to the vagaries of weather, the bloodstains, if any, contained therein may disappear.

43. Inasmuch as no overt acts have been

attributed to accused 5 to 8, their complicity in the case needs to be dealt with separately. The prosecution has no case that accused 5 to 8 inflicted any injury to Shibin or to any of the -: 71 :-

injured persons. The case of the prosecution as regards the said accused is that they were members of the unlawful assembly formed with the object of committing the murder of Shibin and the injured persons. Serious arguments were addressed by the learned counsel for the accused challenging the very case of the prosecution that accused 1 to 8, 15 and 16 formed themselves into an unlawful assembly with the common object referred to above. The argument advanced in this regard is that inasmuch as the specific case of the prosecution is that the conduct of accused 5 and 6 in causing dust to scatter by riding their motor cycle

on the road on the side of which Shibin and the injured persons were standing, is the cause of the quarrel and the fight that ensued thereupon between the accused on one side and Shibin and others on the other side, which ultimately led to the death of Shibin, there is absolutely no scope to infer a case of unlawful assembly that too, formed with the common object of committing the murder of Shibin and the injured persons. There cannot be any doubt to the fact that the cause of quarrel and also the fight that ensued thereupon between the accused on one side and Shibin

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and others on the other side, which ultimately led to the death of Shibin, is the conduct of accused 5 and 6 in causing dust to scatter on the road while riding MO4 motor cycle on the side of which Shibin and others were standing. But, the specific case of the prosecution is that after the initial verbal altercation, accused 5 and 6 returned to the scene in two separate motor cycles after informing the Juvenile and others and picked up quarrel with Shibin and others for having cautioned accused 5 and 6 against the said conduct. According to the prosecution, it was at that point of time, accused 2, 4, 7, 8, 16 and the Juvenile arrived at the scene of occurrence and supported accused 5 and 6. It was also the specific case of the prosecution that it was while the verbal altercation between the two groups was going on, accused 1, 3 and 15 came there in MO6 scooter with weapons, called the accused who were present there towards them and gave instructions, after handing over the weapons to them. On a specific question put to the learned Public Prosecutor, it was clarified by him that the unlawful assembly with the common object of committing murder of Shibin and the injured persons was formed at the

-: 73 :- time when accused 1, 3 and 15 distributed weapons after giving instructions and that therefore, accused 1 to 8, 15 and 16 who were members of the unlawful assembly, are liable to be punished for the offences committed.

44. It is trite that an unlawful assembly can be

formed at any point of time with a common object. Even after the commencement of a transaction which led to the commission of a crime, such an assembly can be formed [See State of Karnataka v. Chikkahottappa, (2008) 15 SCC 299]. The question whether an unlawful assembly has been formed with a common object in a given case is one to be determined on the facts proved in that case. Coming to the case on hand, as noticed, the specific case of the prosecution is that accused 5 and 6 informed the Juvenile about the altercation they had with Shibin and others on the way to the house of the first accused and thereupon returned to the scene in two separate motorcycles namely, MOs 4 and 5 and picked up quarrel with Shibin and others. It is also the specific case of the prosecution that it was while the quarrel was going on, accused 2, 4, 7, 8, 16 and the Juvenile arrived there and supported accused 5 and

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6. It is also the specific case of the prosecution that it was

while the verbal altercation between the two groups was going on, accused 1, 3 and 15 came there in MO6 scooter with weapons, called the accused who were present there towards them and gave instructions, after handing over the weapons to them. Inasmuch as it is established that apart from accused 5 and 6 who were already present at the scene, accused 2, 4, 7, 8, 16 and the Juvenile arrived there first, followed by accused 1, 3 and 15 who arrived with weapons, it can certainly be inferred that accused 1, 3 and 15 came to the scene based on the information furnished by the Juvenile or accused 5 and 6. Inasmuch as accused 1, 3 and 15 brought weapons and inasmuch as the accused who were already present at the scene then, other than accused 5 to 8, inflicted injuries on Shibin and others with weapons brought by accused 1, 3 and 15, having regard to the nature of weapons carried by them as also the injuries inflicted on Shibin and others, it can certainly be inferred that the accused, other than accused 5 to 8, had a common object to commit murder of Shibin and the injured persons, or at least the common object to commit grievous

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hurt to them with dangerous weapons. It is necessary to mention at this stage that inasmuch as various offences have been committed by the members of the unlawful assembly in prosecution of the common object thereof, the members of the assembly are not only liable to be punished for the offences committed by any member of such an unlawful assembly, but is also liable to be punished for offences any such member knew to be likely to be committed in prosecution of that object. Even if it is assumed that the common object of the assembly was to cause grievous hurt to Shibin and others and not murder using dangerous weapons, having regard to the nature of weapons used by the members of the unlawful assembly, it can certainly be inferred that the members of the unlawful assembly knew that they are likely to commit the offence of grievous hurt as well, in prosecution of the common object.

45. It was persuasively argued by the learned

counsel for accused 5 to 8 that there are no materials to infer that accused 5 to 8 were members of the unlawful assembly, if at all, there was an unlawful assembly formed with the common object of committing the murder of Shibin and others. -: 76 :-

The highlight of the arguments in this regard is that no overt acts have been attributed by the prosecution against the said accused. According to the learned counsel, even if it is assumed that an unlawful assembly was formed with the common object of committing the murder of Shibin and others on the arrival of accused 1, 3 and 15 in MO6 scooter with weapons and on them distributing the said weapons to the other accused who were present there with instructions, in the absence of any evidence indicating that accused 5 to 8 collected any weapons from accused 1, 3 and 15 and having committed any overt acts, it cannot be inferred that they were members of the unlawful assembly, and if that be so, accused 5 to 8 cannot be convicted for the offences committed by the other accused, with the aid of Section 149 IPC. The argument aforesaid was met by the learned Public Prosecutor and the learned counsel for the victims, pointing out that there is sufficient material to infer that even though accused 5 to 8 had not committed any overt acts, they played distinct and vital roles to enable the other

accused to commit the respective overt acts. In order to substantiate the said arguments, the

-: 77 :- learned Public Prosecutor and the learned counsel for the victims brought to our notice a passage from the evidence of PW2 which reads thus:

"scooter (identified A2) (identified A7) (identified A5) (identified A4) (identified A6) " (identified A15) (identified A8) (identified A1) (identified A16) (identified A3). .

According to the learned Public Prosecutor and the learned counsel for the victims, the said evidence of PW2, especially the evidence that all of them approached Shibin and others together exhorting " ", alone, is sufficient to hold that accused 5 to 8 shared the common object with the remaining accused to commit the murder of Shibin and others.

46. On a close scrutiny of the evidence of the ocular witnesses, it is seen that it was deposed categorically by PW7 that after inflicting injury on Shibin, the first accused hit -: 78 :-

on his back with the blunt side of MO1 axe and when he questioned the first accused as to the reason for hitting him, the fifteenth accused snatched MO3 knife from the fifth accused and hacked on the back of PW7. The said evidence reads thus: " A1 T T .) . h " T T . . MO3 .

The said evidence would indicate that the fifth accused carried MO3 knife and he was in the midst of the other accused who inflicted injuries on Shibin and others. In the circumstances, we are unable to hold that the fifth accused was not a member of the unlawful assembly for, otherwise, there was no reason for the fifth accused to be present in the midst of the other accused who committed overt acts with a weapon. The argument advanced by the fifth accused that there are no materials on record to infer that the fifth accused was not a member of the unlawful assembly, in the circumstances, is liable to be rejected and we do so.

47. Coming to the role of the sixth accused, true, he neither committed any overt act nor carried any weapon. -: 79 :-

But it was the sixth accused who along with the fifth accused picked up a verbal altercation with Shibin and others when they passed through the road on the side of which Shibin and others were standing and later returned to the scene in two separate motor cycles. Even though the prosecution could not prove that the sixth accused came back to the scene after informing the Juvenile about the verbal altercation he had with Shibin and others as alleged in the charge, inasmuch as the sixth accused had been to the house of the first accused and inasmuch as the first accused came to the scene along with accused 3 and 15 immediately thereafter with weapons following them, it can certainly be inferred that the sixth accused had knowledge that the first accused would be coming with weapons to the scene of occurrence and that it was with the said knowledge that the sixth accused returned to the scene again and picked a verbal altercation with Shibin and others. In the said circumstances, according to us, the sixth accused cannot be heard to contend that he was not a member of the unlawful assembly. We take this view also for the reason that the injuries claimed to have been suffered by

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the sixth accused as recorded in Ext.P60 wound certificate, going by the evidence tendered by PW47 are possible in a scuffle. In other words, the simple injuries on the body of the sixth accused establishes the fact that he was involved in the scuffle which ultimately led to the death of Shibin. The argument advanced by the sixth accused in this regard is also, in the circumstances, liable to be rejected and we do so.

48. Coming to the roles played by accused 7 and 8,

the only evidence before the court is the evidence of PW2 that accused 7 and 8 rushed towards Shibin and others along with the remaining accused after collecting weapons brought by

accused 1, 3 and 15 exhorting " ". Apart from the said general statement, none of the witnesses specifically deposed that accused 7 and 8 collected any weapons from accused 1, 3 and 15. As noted, the case of the prosecution is that an unlawful assembly was formed only when accused 1, 3 and 15 arrived at the scene and distributed weapons to those accused who were present there with instructions. When the case of the prosecution as regards the formation of the unlawful assembly with the common object is

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as narrated above, merely for the reason that accused 7 and 8 were among the accused who were present at the scene at the relevant time, it cannot be held straight away that accused 7 and 8 might have also joined the unlawful assembly formed with the common object. According to us, the prosecution is obliged under such circumstances to point out something more to contend that accused 7 and 8 were also members of the unlawful assembly. It is in this context, the learned Public Prosecutor and the learned counsel for the victims placed reliance on the evidence tendered by PW2 which is extracted above. According to us, the said evidence is only a general statement and it may not be possible for any person under that circumstances to pay attention distinctively to each and every person who was present among those who rushed towards Shibin and others with weapons. Had accused 7 and 8 collected any weapon from accused 1, 3 and 15 like the other accused or had they carried any weapon themselves, the situation would have been different, for then, an explanation is required from accused 7 and 8 as to the reason for collecting a weapon from accused 1, 3 and 15 or carrying a weapon

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themselves at that point of time. It is relevant in this context to note that accused 7 and 8 arrived at the scene of occurrence subsequent to the arrival of accused 5 and 6. There is nothing on record to indicate that accused 5 and 6 were in contact with accused 7 and 8 before they returned to the scene. The case of the prosecution is only that accused 5 and 6 contacted the

Juvenile before they returned to the scene. In the circumstances, we have a doubt in our minds whether accused 7 and 8 had participated in the occurrence with the common object of committing the murder of Shibin and others. Of course, it has come out in evidence that accused 7 and 8 fled from the area in an Ertiga Car after the occurrence. According to us, merely on account of that reason, it cannot be concluded that they were members of the unlawful assembly. Similarly, it has come out in evidence that the seventh accused took the sixth accused to the Taluk Headquarters Hospital, Nadapuram, after the occurrence and human blood was found in the clothes of accused 7 and 8 when they were taken into custody. We have given our thoughtful consideration to the said facts as well and are of the opinion that it is not safe to hold that

-: 83 :- accused 7 and 8 were members of the unlawful assembly for the said reason as well.

49. Now, let us consider the arguments advanced

by the learned counsel for the accused before the Court of Session as also before this court which have not hitherto been dealt with by us. One of the contentions seriously pressed into service by the learned counsel for all the accused relates to the delay in lodging the First Information Report. As noted, the occurrence took place at about 10.15 p.m. on 22.01.2015 and the First Information Report was lodged only after about eight and half hours, at 7.45 a.m. on 23.01.2015. It has come out that the said report reached the Jurisdictional Magistrate within a few hours. According to the learned counsel for the accused, the delay in lodging the First Information Report is of serious consequence in the peculiar facts of this case since it has come out in evidence that the police received information about the occurrence immediately after the same. According to the learned counsel, the delay in lodging the First Information Report assumes importance also for the reason that the police reached the scene of occurrence immediately after the

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occurrence and moved the damaged motor cycles found therein to the police station. It was argued that yet another reason which is important in the context of

the delay in lodging the First Information Report is that some of the accused were arrested on the date of the occurrence itself and it was long thereafter that the case was registered. According to the learned counsel, it was obligatory for the prosecution, in the circumstances, to satisfactorily explain the reason for delay in registering the First Information Report and inasmuch as the delay has not been explained at all by the prosecution, the accused are entitled to be acquitted on that sole ground. The learned counsel has relied on the decision of the Apex Court in *Thulia Kali v. State of T.N.*, (1972) 3 SCC 393 and the decision of the Division Bench of this Court in *Rajesh and Others v. State of Kerala*, 2014 KHC 139, in support of the arguments.

50. The object of insisting upon prompt lodging of the First Information Report in respect of commission of an

offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as :- 85 :- the names of eye witnesses who were present at the scene of occurrence. Delay in lodging the First Information Report quite often results in embellishments which is a product of afterthought. On account of the delay, the report not only loses

its advantages of spontaneity, but the chances of an exaggerated or concocted story as a result of deliberation and consultation also cannot be ruled out. As noted, the First Information Report in the case was registered only about eight and half hours after the occurrence. True, the said period cannot be regarded as a reasonable period. The question is whether the said delay has been satisfactorily explained by the prosecution. As pointed out by the learned counsel for the accused, PW60, the Sub Inspector of Police who was in charge at the Nadapuram Police Station on 22.01.2015, admitted in cross-examination that at about 10.30 p.m. on that day, information was received as regards the occurrence and the same was entered in the General Diary of the police station by Abdulla, the Assistant Sub Inspector of Police. But, it is seen that PW60 clarified in his re-examination that the information was only that there was some scuffle near Vellur and while he

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was proceeding to the scene of occurrence, he was informed by PW66 that another police officer has been sent to that place and directed PW60 to patrol between Purameri and Vettummal. In other words, the explanation of PW66 in not registering the First Information Report on receiving information about the occurrence is that the information was cryptic and insufficient to register the crime, without ascertaining further facts. As noted, PW66 stated in his evidence that he received an information at 10.30 p.m. on 22.01.2015 that there was a scuffle at the place called Vellur and when he went to that place accordingly, Sub Inspector Vijayan had already reached there and even though PW66 enquired with the said police officer about the occurrence, as noted, it was found that no credible information regarding the occurrence to register the crime was obtained. It was the version of PW66 that as he found three motor cycles lying damaged at that place then, he instructed the Sub Inspector to move the same to the police station. According to PW66, by that time, a large number of violent incidents took place in and around Vellur and the police force in the circumstances, had to continue to patrol in the

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area. It was also his version that since he received information that some of the persons involved in the said violent incidents were proceeding towards Thiruvallur in a car, he chased them and took them into custody. According to PW66, about 150 violent incidents took place following the occurrence, resulting in damage to properties worth about 100 crores and it was only on the following day viz., 23.01.2015 by about 7.45 a.m. that he came to know that one of the persons who sustained injuries in the occurrence that took place at Vellur on the previous day, died. The explanation of the prosecution for the delay in registering the First Information Report, therefore, is that even though the police came to know that an occurrence took place at Vellur at about 10.30 p.m. on 22.01.2015, they did not get any credible information as to the commission of

any cognizable offence, to register the same. The facts

highlighted by the learned counsel for the accused namely that some information was received by the police concerning the occurrence at about 10.30 p.m. in the police station; that the police inspected the scene and moved the damaged vehicles found there to the police station; that some of the accused -: 88 :-

involved were apprehended on the night of the date of occurrence itself, are all facts not disputed by the prosecution. The learned counsel for the accused do not dispute the fact that a series of violent incidents took place following the occurrence in and around the area and that the police force was busy in tackling the same. There is nothing on record to indicate that the police received the particulars of the occurrence at any point of time before PW1 furnished the same

to PW60. In this context, it is apposite to refer to the judgment

of the Apex Court in *Sidhartha Vashisht v. State (NCT of Delhi)*,

(2010) 6 SCC 1. That was a case where three cryptic telephone

messages were received by the police at 2.20 a.m. on the date of occurrence and the same were not treated as the First Information Report and only a statement received later at 3.40 p.m. from the person who was examined as PW2 in that case was treated as the First Information Report. The argument was that the telephonic messages should have been treated as the First Information Report and the subsequent statement was hit by Section 162 of the Code of Criminal Procedure (the Code). Paragraphs 102, 103, 104, 105, 106, 113 and 114 of the

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judgment read thus:

102. It was further contended by the learned Senior Counsel for

the appellant-accused that PW 2 Shyan Munshi's statement could not be looked into as the same is hit by Section 162 Cr PC and on the other hand the defence seeks to rely on his testimony. In support of the above

claim, the learned Senior Counsel for the appellant relying upon the judgments of this Court in *State of U.P. v. Bhagwant Kishore Joshi* [AIR 1964 SC 221 : (1964) 1 Cri LJ 140] and *King Emperor v. Khwaja Nazir Ahmad* [(1943-44) 71 IA 203 : AIR 1945 PC 18] contended that investigation of an offence can start either on information or otherwise and that the receipt and recording of FIR is not a condition precedent to the setting in motion of criminal investigation.

103. Placing reliance upon the said judgments, it has been

further argued by the learned Senior Counsel for the appellant that in the present case the three cryptic telephonic messages received by the police at around 2.20 a.m. on 30-4-1999 should be treated as FIR upon which the investigation started and, therefore, the statement of PW 2 recorded by the police later on around 3.40 a.m. could not be treated as FIR but a statement under Section 162 Cr PC.

104. Insofar as the decision in *Bhagwant Kishore* [AIR 1964 SC

221 : (1964) 1 Cri LJ 140] is concerned, it was noted in para 8 at p. 224 that the information received by the officer was not vague, but contained precise particulars of the acts of misappropriation committed by the accused and, therefore, the said information could be treated as FIR. On the contrary, it is evident from the facts established on record in the present case that none of the three telephonic messages received by the police furnished any detail about the offence or the accused.

105. The judgment in *Khwaja Nazir Ahmad* [(1943-44) 71 IA 203 :

AIR 1945 PC 18] is also distinguishable as the law laid down in the said case does not concern the issue involved in the present case. Cryptic telephonic messages could not be treated as FIR as their object only is to get the police to the scene of offence and not to register the FIR. The said intention can also be clearly culled out from a bare reading of

Section 154 of the Criminal Procedure Code which states that the information, if given orally, should be reduced in writing, read over to the informant, signed by the informant and a copy of the same be given free of cost to the informant. In the case on hand, the object of persons sending the telephonic messages including PW 70 Rohit Bal was only to bring the police to the scene of offence and not to register the FIR.

106. Learned Senior Counsel for the accused Manu Sharma has :- 90 :-

also relied upon a judgment of this Court in H.N. Rishbud v. State of Delhi [AIR 1955 SC 196 : 1955 Cri LJ 526 : (1955) 1 SCR 1150] wherein this Court has held that : (AIR p. 201, para 5) 5. Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under Section 154 of the Code. A reading of the said judgment clearly shows that investigation starts on information relating to commission of an offence given to an officer in charge of a police station and recorded under Section 154 of the Code. By applying the ratio of the said

judgment to the case on hand, it can be clearly said that the

investigation started after the recording of the statement of PW 2 as FIR around 3.40 a.m. On 30-4-1999. xxxxxx xxxxxx

113. The information about the commission of a cognizable

offence given in person at the police station and the information about a cognizable offence given on telephone have forever been treated by this Court on different pedestals. The rationale for the said differential treatment to the two situations is, that the information given by any individual on telephone to the police is not for the purpose of lodging a first information report, but rather to request the police to reach the place of occurrence; whereas the information about the commission of an offence given in person by a witness or anybody else to the police is for

the purpose of lodging a first information report. Identifying the said objective difference between the two situations, this Court has categorically held in a plethora of judgments that a cryptic telephonic message of a cognizable offence cannot be treated as a first information report under the Code.

114. It has also been held in a number of judgments by this

Court that merely because the information given on phone was prior in time would not mean that the same would be treated as the first information report, as understood under the Code. This view has been reiterated in *Ramesh Baburao Devaskar v. State of Maharashtra* [(2007) 13 SCC 501 : (2009) 1 SCC (Cri) 212] , that a cryptic message given on telephone by somebody who does not disclose his identity may not satisfy the requirement of Section 154 of the Code of Criminal Procedure.

As evident from the paragraphs of the judgment extracted above, cryptic information received through telephone cannot :- 91 :-

be treated as the First Information Report under the Code. True, when information is received in a police station in the nature of one received by PW60, it was obligatory for him to proceed to the scene of occurrence to ascertain the nature of the offence and satisfy himself whether the occurrence discloses the commission of a cognizable offence. In the light of the evidence tendered by PW60 and PW66 and in the light of the fact that a series of violent incidents took place on the relevant night following the occurrence, PW60 and PW66 cannot be found at fault with for not having ascertained the nature of the occurrence that took place. The decision in *Rajesh* (supra) cited by the learned Senior Counsel for accused 4 and 16 is a case where all the police officers including the concerned Station House Officer and the investigating officer had direct knowledge regarding the incident that had taken place. It is in the said background, it was held therein that

when the police officers had direct knowledge of the commission of various cognizable offences, they ought to have registered a crime then and there and started investigation and shall not wait for the statement of a person to commence :- 92 :- investigation. The said judgment may not have any application to the facts of the present case. Needless to say, there is satisfactory explanation by the prosecution in the case for delay in lodging the First Information Report.

51. One of the arguments raised by the learned

counsel for the accused which needs to be considered at this stage is the argument that the First Information Report has been delayed to implicate falsely, the political opponents of CPM, and no credence can, therefore, be given to the First Information Statement. PW1 is neither a party worker nor a literate person. PW1 is only a person who reached the place of occurrence immediately after the quarrel began, on hearing the noise. As noticed, PW1 did not name all the accused in the First Information Statement. PW1 only named four among the accused therein namely accused 1, 2, 4 and 5, as they were known to him. Inasmuch as PW1 is a person residing in the vicinity of the place of occurrence and inasmuch as it has come out in evidence that he accompanied Shibin and the injured to Vatakara Co-operative Hospital first and then to the Medical College Hospital, Kozhikode, and returned home only at about

:- 93 :- 4 a.m. on the following day, we do not find any merit in the argument that the lodging of the First Information Report was delayed maliciously by the police to falsely implicate the political opponents of CPM in the crime.

52. Another argument advanced by the learned

counsel for the accused is that there is suppression of material evidence. The argument advanced in this regard is that even though Shibin and the injured persons other than PW7 were taken to the Vatakara Co-operative Hospital and treated there before they were taken to the Government Dental College and the Government Medical College, Kozhikode, the treatment records of the said persons in the Vatakara Co-operative Hospital were not placed before the court. According to the learned counsel, only those records would give a correct picture

as to the injuries suffered by Shibin and the injured persons, and in the absence of the said evidence, it is unsafe to enter any finding as to the injuries suffered by them. PW66 deposed in the chief-examination itself that in the course of the investigation, he questioned the CMO of the Vatakara Co- operative Hospital and it was found that no records were

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available at the said hospital relating to the treatment given to Shibin and the other injured persons. As noticed, it has come out in evidence that Shibin who was taken first to the Vatakara Co-operative Hospital, was later brought to the Medical College Hospital on reference at 12.28 a.m. on 23.01.2015. Similarly, PWs 2 to 6 who were taken first to the Vatakara Co-operative Hospital were taken to the Government Dental College and the Medical College Hospital, Kozhikode between 11.55 p.m. on 22.01.2015 and 12.30 a.m. on 23.01.2015. It is not disputed that the place of occurrence is situated approximately 20 kilometres away from Vatakara and the Government Dental College and Medical College Hospital, Kozhikode are situated approximately 50 kilometres away from Vatakara. Having regard to the distance from the place of occurrence to the Government Dental College and Government Medical College, Kozhikode, it can certainly be inferred that the evidence given by the ocular witnesses that Shibin and injured persons were not treated at the Vatakara Co-operative Hospital and that they were referred immediately to the Government Dental College Hospital and Government Medical College, Kozhikode is only to

-: 95 :- be accepted. In other words, the contention aforesaid that there is suppression of material evidence, is without any basis.

53. Another argument advanced by the learned

counsel for the accused is that there is non-examination of material witnesses. It was persuasively argued by the learned counsel that the evidence of Sub Inspector Vijayan who came to the scene immediately after the occurrence and E.K.Rajan, the leader of the political party, CPM who came to the scene when the fight between groups began would have given a clear picture for the court to come

to the correct conclusion on the facts in issue in the case and their non-examination as witnesses is fatal to the prosecution. We do not find any merit in this argument as well. No doubt, it has come out in evidence

that someone informed PW66, immediately after the occurrence that a scuffle took place between two groups at Vellur and on receiving the said information, he sent Sub Inspector Vijayan to the scene of occurrence and later, PW66 himself followed Vijayan to the scene of occurrence. As already noticed, the evidence tendered by PW66 shows that when he reached the scene, he found Sub Inspector Vijayan there and

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PW66 was informed by Sub Inspector Vijayan that he could not collect any credible information as to the occurrence. The evidence tendered by PW66 also shows that he saw then a few damaged motor cycles lying on the road and he instructed Sub Inspector Vijayan to shift the motor cycles to the police station. The accused have no case that Sub Inspector Vijayan had any other role in relation to the occurrence. In the circumstances, we do not find that it was obligatory for the prosecution to examine Sub Inspector Vijayan as a witness in the case. Coming to the argument relating to the non-examination of E.K.Rajan, it has come out that E.K.Rajan is a prominent leader of the political party, CPM in the locality where the occurrence took place and he came to the scene on hearing the noise of the quarrel immediately following PW1. No doubt, going by the prosecution case, E.K.Rajan witnessed the occurrence that took place after his arrival at the scene. Inasmuch as E.K.Rajan had seen the occurrence, the prosecution could have certainly examined him as a witness in the case to prove the occurrence. But the question here is whether his non-examination would affect the case of the prosecution in any

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manner whatsoever. In a given case where the occurrence is witnessed by several persons, in the light of Section 134 of the Indian Evidence Act, it is not necessary that all such persons should be examined. The prosecution can certainly choose

the witnesses to be examined having regard to their background, their connection with the deceased/injured, their connection with the accused etc. for, credibility is attached always to independent witnesses over witnesses who are connected directly or indirectly to the deceased/injured or accused.

54. The next argument was that the investigation

was tainted since PW66 made arrangements to shift the damaged motor cycles found at the scene to the police station even before registering the crime and arresting the accused. In the absence of any evidence to show that PW66 had any credible information about the commission of the crime which is the subject-matter of the case, according to us, the accused cannot be heard to contend that the conduct aforesaid of PW66 affected the investigation in the case in any manner, whatsoever.

55. Another argument seriously pressed into :- 98 :-

service by the learned Senior Counsel for accused 4 and 16 is that having regard to the peculiar facts of this case, it was obligatory on the part of the prosecution to explain how the vehicles found at the scene immediately after the occurrence were damaged. According to the learned Senior Counsel, in the absence of any explanation from the prosecution as to how the said vehicles were damaged, it will have to be presumed that the occurrence was not as alleged by the prosecution, and if the occurrence was not as alleged by the prosecution, the accused are certainly entitled to the benefit of doubt. No doubt, it has come out in evidence that all the three vehicles in which the accused arrived at the scene were found damaged after the occurrence and the damage was not one caused on account of a mere fall. As such, it was obligatory for PW66 to conduct necessary investigation to find out as to how the vehicles were damaged. PW66 conceded that he did not conduct any investigation as regards the same. It is now trite that even if the investigation in a given case is found to be suspicious, the rest of the evidence must be scrutinised independently of the impact of it or otherwise the criminal trial

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will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by the investigating officers. Criminal justice should not be made a casualty for wrong committed by the investigating officers. In other words, if the court is convinced that the testimony of a witness to the occurrence is true, the court is free to act on it albeit the investigating officers suspicious role in the case [See State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715]. The question to be seen, in the circumstances, is whether it could be said that the occurrence is not as alleged by the prosecution on account of the fact that no investigation was conducted to find out as to how the vehicles were damaged. Having regard to the peculiar facts of this case, we do not think that merely for the reason that the vehicles in which the accused came to the scene were found damaged, it can be said that the occurrence was not as alleged by the prosecution, especially in the light of the overwhelming evidence tendered by the ocular witnesses.

56. Another argument raised by the learned :- 100 :-

counsel for the accused pertains to the injuries suffered by accused 4 and 6. According to the learned counsel, there is no satisfactory explanation from the prosecution as to how accused 4 and 6 sustained injuries in the course of the occurrence, and want of explanation from the prosecution in that regard would create a serious doubt as to the manner in which the occurrence took place. No doubt, accused 4 and 6 and the Juvenile involved in the crime had been to the Taluk Headquarters Hospital, Nadapuram immediately after the occurrence. In this context, it is necessary to note that the prosecution has not suppressed the injuries suffered by the Juvenile and accused 4 and 6 in the occurrence. Instead, the prosecution examined PW47, the Assistant Surgeon who examined the Juvenile and accused 4 and 6 at the said hospital and proved through her, Exts.P59 to P61 wound certificates issued to them. As noticed, PW47 has deposed categorically in her evidence that the injury suffered by the Juvenile and accused 4 and 6 were simple in nature and could be caused in a scuffle. It is not an invariable rule that the prosecution has to explain in every case the injuries sustained by the accused in

the same occurrence, especially when they are trivial and simple and the same depends on the facts and circumstances of each case. Such an obligation arises only when the prosecution case becomes reasonably doubtful for its failure to explain the injuries on the accused. In this context, it is apposite to refer to a passage from the decision of the Apex Court in *Surendra Paswan v. State of Jharkhand*, (2003) 12 SCC 360, which reads thus:

Non-explanation of injuries by the prosecution will not affect prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it outweighs the effect of the omission on the part of prosecution to explain the injuries. As observed by this Court in *Ramlagan Singh v. State of Bihar* [(1973) 3 SCC 881 : 1973 SCC (Cri) 563 : AIR 1972 SC 2593] prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. In *Hare Krishna Singh v. State of Bihar* [(1988) 2 SCC 95 : 1988 SCC (Cri) 279 : AIR 1988 SC 863] it was observed that the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. If the witnesses examined on behalf of the prosecution are believed by the court in proof of guilt of the accused beyond reasonable doubt, question of obligation of prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and -: 102 :-

under what circumstances injuries have been inflicted on the person of the accused. It is more so when the injuries are simple or superficial in nature. In the case at hand, trifling and superficial injuries on accused are of little assistance to them to throw doubt on veracity of the prosecution case. In the case on hand, in the manner in which the occurrence as alleged by the prosecution took place, injuries in the nature of those noted on the body of accused 4 and 6 were possible as deposed by PW47 and therefore, the genuineness of the case put forward by the prosecution cannot be doubted on that ground.

57. Let us now discuss about the various findings

rendered by the Court of Session as regards the reliability of evidence tendered by the ocular witnesses. A perusal of the impugned judgment would indicate that the following are the reasons stated by the Court of Session to arrive at the

conclusion that the evidence tendered by PW1 is not reliable:

(1) that PW1 did not state specifically in Ext.P1 the particulars of all accused as also the overt acts committed by each of them.

(2) that PW1 also mentioned in Ext.P1, the names of some of the accused who were not known to him. -: 103 :-

(3) that even though PW1 recited in Ext.P1 that the

names of persons not known to him were mentioned to him by PW8 and Balakrishnan, PW1 conceded in cross-examination that he and PW8 did not converse with each other prior to the lodging of Ext.P1.

(4) that if PW1 had seen the occurrence, he would have certainly disclosed in his evidence the manner in which Shibin as also the injured persons sustained injuries.

(5) that if PW1 had taken Shibin and the injured persons to the Vatakara Co-operative Hospital as claimed by him, his name would have been mentioned in the wound certificates of the injured persons.

(6) that since PW1 has admitted in his evidence that he is an active worker of CPM and that he is involved in a number of cases, he was acting according to the dictates of the political party, CPM.

(7) that his version in the evidence that he along with PW8 took Shibin and four others to the hospital in an auto- rickshaw, cannot be believed. No doubt, PW1 did not specifically state the particulars of all -: 104 :-

the accused as also the overt acts committed by each of them in Ext.P1 First Information Statement. As already stated, a First Information Statement cannot be expected to be a chronicle of every detail of what happened, nor to contain an exhaustive catalogue of the events which took place. The person who furnishes the First Information Statement to authorities may be fresh with the facts, but he need not necessarily have the skill or ability to reproduce details of the entire sequence of events without anything missing therefrom. At times even important details may be missed out to be narrated. Quite often the police officer, who takes down the First Information Statement, would record what the informant conveys to him without resorting to any eliciting exercise. It is a voluntary narration of the informant. So any omission therein has to be considered along with other evidence to determine whether the fact so omitted occurred or not. Reverting to the facts, one has to understand the background in which PW1 came to the scene of occurrence. As stated by PW1 in Ext.P1 and as deposed by him in his evidence, he came to the scene on hearing the noise from the quarrel, and by the time PW1 arrived at the scene,

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the fight had already begun and PWs 5 and 6 were lying on the road in front of the house of Anilkumar. What was stated by PW1 in Ext.P1 as regards the accused was that there were about 12 persons including accused 1, 2, 4, 5 and the Juvenile. It was also stated by him in Ext.P1 that the accused were attacking Shibin and the injured persons with the weapons carried by them. We do not think that a person who arrives at a scene where a group of persons were attacking each other with the weapons carried by them, that too, at about 10 p.m., would be able to recollect the overt acts committed by each of the accused, especially when

the occurrence lasts only for a few minutes. The maximum that could be expected to be stated by such a person in such a situation is the names of persons among the accused with whom he had previous acquaintance

with and a general narration of the manner in which the occurrence had taken place. We do not think, therefore, that from the mere fact that PW1 did not specifically state in Ext.P1, the particulars of all the accused as also the overt acts committed by each of them, it can be said that he has not witnessed the occurrence at all. Of course, while giving

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evidence, PW1 had slightly improved his version from what he stated in Ext.P1 and deposed that PWs 5 and 6 were the persons who were found lying on the road when he arrived at the scene and he saw then the first accused hacking on the chest of Shibin and when Shibin fell down, the second accused hacking on his back. The accused have no case that the said improvement made by PW1 in his evidence was not in

accordance with the previous statements given by him. Inasmuch as the evidence tendered by PW1 was consistent with the said previous statements given by him, we do not think that there is any reason to suspect the veracity of the evidence tendered by PW1. True, PW1 has mentioned in Ext.P1 the names of few others other than accused 1, 2, 4 and 5 also, as the accused. But the same was done with the caveat that those names were mentioned to him by PW8 and Balakrishnan. The relevant portion of Ext.P1 statement reads thus :

" h . . Merely for the reason that PW1 mentioned the names of a few -: 107 :-

others with whom he had no previous acquaintance, in the First Information Statement, that too, with the explanation that those names were mentioned to him by PW8 and Balakrishnan, we fail to understand as to how one can doubt the veracity of the evidence tendered by PW1 on that ground. True, PW1 conceded in cross-examination that he did not speak with PW8 or Balakrishnan before he gave Ext.P1 statement and the said fact was highlighted by the Court of Session to hold

that the evidence tendered by PW1 is not reliable. Since PW1 had not spoken to PW8 and Balakrishnan before he gave Ext.P1 statement, it can certainly be inferred that PW1 must have received information concerning the involvement of accused other than accused 1, 2, 4 and 5 as mentioned by him in Ext.P1 from some source other than PW8 and Balakrishnan. Here again, we fail to understand as to how the conduct of PW1 in disclosing names of the said persons in the First Information Statement would affect the reliability of the evidence tendered by him for, it has nothing to do with the fact in issue in the case. The findings rendered by the Court of session in this regard, according to us, is erroneous. Equally

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erroneous is the view expressed by the Court of Session that had PW1 been the person who took Shibin and others to the hospital, his name would have been reflected in the wound certificates of the injured persons. As noticed, PW1 was not the only person who arrived at the scene on hearing the noise from the quarrel. Similarly, he was not the only person who accompanied Shibin and the injured persons to the hospital. In the said circumstances, merely for the reason that the name of PW1 was not mentioned in any of the wound certificates, one cannot jump into the conclusion that PW1 did not accompany the injured persons to the hospital at all. The recital in the impugned judgment that PW1 has admitted that he is an active worker of CPM and that he is involved in several cases, is incorrect. There is absolutely no material to indicate that PW1 is an active worker of CPM or that he is involved in any criminal case. Needless to say, the findings rendered by the Court of session as regards the reliability of the evidence tendered by PW1 are all erroneous.

58. Let us now deal with the findings rendered by the Court of Session as regards the evidence tendered by PW2. -: 109 :-

As noted, PW2 is a person who was standing on the side of the road along with Shibin and others. PW2 sustained injuries in the occurrence. One of the reasons stated by the Court of Session to disbelieve PW2 is that he is an active worker of the political party, CPM and the organisation, DYFI. Another reason stated by the Court of Session to disbelieve PW2 was that he did not mention in his previous

statement the exact words that accused 5 and 6 had said to him and others, viz, road " as deposed by him in his evidence. Yet another reason stated to disbelieve PW2 is that PW2 did not state in his previous statement that there was a scuffle between him and others on one side and accused 5 and 6 on the other side. Yet another reason stated to disbelieve PW2 is that PW2 has not offered any explanation for waiting at the scene of occurrence until accused 5 and 6 came back through the same road. All the reasons stated to disbelieve PW2 are also, according to us, erroneous. We fail to understand how the omission on the part of PW2 to state in his previous statement what accused 5 and 6 told him and others when they returned from the house of the first accused and the

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omission on his part to state in his previous statement that there was a scuffle between the groups, would amount to significant omissions in the context of the facts of the present case. Similarly, the view taken by the Court of Session that PW2 should have explained as to the reason why PWs 2, 3, 4 and Shibin remained in the same place until accused 5 and 6 returned, to say the least, is absurd as there is no reason for them then to know that accused 5 and 6 would return through the same route or would return at all. True, it has come out in evidence that PW2 is an active worker of CPM. But, merely on account of that reason, his evidence cannot be brushed aside, especially since he suffered injuries in the occurrence. At the most what could have been said was only that his evidence shall be carefully scrutinised. Needless to say, the findings rendered by the Court of session as regards the reliability of the evidence tendered by PW2 are all erroneous.

59. Let us now deal with the reasons stated by the

Court of Session to disbelieve the evidence tendered by PW3. One of the reasons stated by the Court of Session to disbelieve PW3 is that his evidence as regards the occurrence is not -: 111 :-

consistent with the entries in Ext.P66 wound certificate. Another reason stated to disbelieve PW3 is that the injuries suffered by him were not injuries possible, if the

occurrence had taken place as alleged. Yet another reason stated to disbelieve PW3 is that he did not explain as to how accused 4, 6 and the Juvenile had sustained injuries in the occurrence. As noticed, accused 4, 6 and the Juvenile who were involved in the scuffle, suffered a few simple injuries, which could be possible in the said scuffle. We fail to understand the rationale behind the reasoning of the Court of Session that one of the injured in a group clash, namely PW3 involving several persons is expected to explain as to how all others involved in the scuffle sustained injuries in the clash. The reasoning is erroneous. Equally erroneous is the reason that the evidence tendered by PW3 as regards the injuries is not consistent with the entries in Ext.P66 wound certificate. Injuries 1 and 2 noted in Ext.P66 are two stab injuries. According to the Court of Session, the said injuries cannot be caused with MO7 axe and that such injuries could be caused only with a sharp edged knife or dagger. The Court of Session failed to note that PW50,

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the doctor who recorded the injuries in Ext.P66 categorically deposed that the same are injuries that could be caused with MO7 axe. The learned Judge also failed to note that when PW50 was questioned in cross-examination on that aspect, he clarified again that injuries 1 and 2 in Ext.P66 can be caused by any sharp edged weapon. As in the case of PW2, PW3 is also an active worker of CPM and the same cannot be a reason to disbelieve him as regards the occurrence, especially since he suffered injuries in the occurrence. Needless to say, the findings rendered by the Court of session as regards the reliability of the evidence tendered by PW3 are all erroneous.

60. PW4 is another activist of CPM, who was in the

company of PWs 2, 3 and Shibin when the occurrence began. PW4 is also a person who suffered injuries in the occurrence. The main reason stated by the Court of Session to disbelieve the evidence of PW4 is that the person who brought PW4 to the hospital did not inform the doctor the names of the assailants. Another reason stated is that PW4 did not depose in his evidence as deposed by other witnesses that there was a

scuffle between two groups. Another reason stated to -: 113 :-

disbelieve PW4 is that he identified correctly, MO1 and MO8 as the weapons used by accused 1 and 4 from among the similar weapons kept, which is not an easy task. Another reason stated is that he is an accused in several cases and actively works for CPM. There is no rule that evidence tendered by a person who is an accused in another case, cannot be believed. It all depends on the facts and circumstances of each case. True, when an occurrence takes place during night hours, it may not be possible for witnesses to identify weapons used by each of the accused, especially from a bunch of similar looking weapons. But, that does not mean that an adverse inference can be taken against a witness who identified correctly, the weapons used by the assailants. Similarly, the view taken by the Court of Session that the person who brought PW4 to the hospital would have informed the doctor the names of the assailants who had inflicted injuries on him, to say the least, is also absurd for, the primary duty of the doctor is to treat the patient and not to find out by whom the injuries were caused. Similarly, the reason that PW4 did not state in his evidence that there was a scuffle between Shibin and PWs 2, 3 and 4 on

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one side and the accused on the other side, cannot be a reason at all, to disbelieve the evidence of PW4. It is trite that when several persons witness an occurrence, the evidence tendered by them may not be consistent, especially when evidence is recorded several years after the occurrence. What is to be seen by the court in such circumstances is whether there is consistency in the core of the prosecution case. Needless to say, the findings rendered by the Court of session as regards the reliability of the evidence tendered by PW4 are all erroneous.

61. Let us now deal with the reasons stated by the

Court of Session to disbelieve the evidence tendered by PWs 5 to 7. As already indicated, they are among the persons who arrived at the scene on hearing the noise from the quarrel and attempted to separate and pacify the fighting groups. It

has come out in evidence that among PWs 5 to 7, PWs. 5 and 7 belong to Congress party and PW6 has no political affiliation. One of the reasons stated by the Court of Session to disbelieve PW5 is that he had not seen the occurrence. Another reason stated by the Court of Session to disbelieve PW5 is that since

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he had previous acquaintance with the accused, he should have certainly mentioned the names of the accused who inflicted injuries, to the doctor. The reason stated by the Court of Session to disbelieve PW6 is that there is no reason for the accused to inflict injury on him. Coming to the evidence tendered by PW7, the reason stated by the Court of Session to disbelieve him is that there is no explanation from the prosecution as to the reason why PW7 was taken to Thalassery Co-operative Hospital while others were taken to the Vatakara Co-operative Hospital. Yet another reason stated by the Court of Session to disbelieve PW7 is that the lacerated wound sustained by him is not one that could be caused by MO3 knife and that MO3 knife would produce only a stab injury. According to us, the mere fact that PW7 was taken to a different hospital cannot be a reason to doubt the veracity of his evidence. Likewise, the Court of Session omitted to take note of the categorical evidence given by PW49 that the lacerated wound sustained by PW7 is one that could be produced by MO3. We are unable to agree with any of the reasoning stated by the Court of Session to disbelieve the evidence of PWs 5 and 6.

-: 116 :- Inasmuch as all the said witnesses are persons who suffered injuries in the occurrence, there should be cogent reasons to disbelieve them. None of the reasons stated above by the Court of Session can be considered as cogent, in the peculiar

facts and circumstances of this case. According to us, they are

only reasons stated for the sake of reasons to disbelieve the said witnesses. As already noticed, the learned Judge failed to note that in a case of this nature, where several persons are involved as accused and witnesses, there would be omissions, mistakes and inconsistencies in narrations and the attempt of the court

in such cases should not be to find flaws in the evidence, but shall be to ascertain the truth, for otherwise, the dispensation of criminal justice would be a casualty.

62. Coming to the evidence tendered by PW8, as

already noticed, he is not an injured witness. That apart, he is an activist of the political party, CPM. It is seen that the Court of Session chose to disbelieve PW8, mainly for three reasons, namely that even though PW8 claimed in his evidence that it was he along with PW1 took Shibin and injured persons to the hospital, the name of PW8 is not shown in any of the wound

-: 117 :- certificates; that he was a person who was present when the inquest of the body of Shibin was held and that PW8 did not disclose then to PW66 as to who held the inquest and that he falsified the case of the prosecution as regards the motive of

the occurrence by giving evidence that there was no communal disharmony in the locality. We have already held in paragraph 57 that merely for the reason that the name of PW1 was not mentioned in any of the wound certificates, one cannot jump into the conclusion that PW1 did not accompany the injured persons to the hospital at all, and similarly, it cannot be said that PW8 did not accompany Shibin and the injured to the hospital. True, PW8 was present when the inquest of the body of Shibin was held by PW66. It is seen that a large number of persons in the locality were present at the time when the inquest was held. As against Entry 16 in the inquest report dealing with opinion of the Panchayatdars as to the cause and manner of death, it is recorded thus :

" 22.01.15 10.15 h , , , , " , x , , -: 118 :-) , , , , P h.

Entry 1 in Ext.P2 report deals with name, calling and residence of persons composing the Panchayat, if any. Entry 17 in Ext.P2 report deals with signature of such Panchayatdars as concur with the above opinion. It is in Entries 1 and 17, the name of PW8 was stated. We wonder as to how it could be inferred from the above circumstances that PW8 did not state before the officer who held the inquest about the cause and manner of death. The specific case of the

prosecution as regards the motive is that it is on account of political and communal reasons that the accused committed the crime. In the course of the evidence, PW8 deposed that leaders of the political party, Muslim League also helped PW8 in mobilising funds to help one Hindu lady. We also fail to understand as to how from the said statement alone, the Court of Session could come to the definite conclusion that PW8 falsified the motive projected by the prosecution for the crime, especially since the

-: 119 :- motive of the crime may not be of any significance in the case on account of the availability of overwhelming ocular evidence. Needless to say, the reasonings stated by the Court of Session to reject the evidence tendered by PW8 are also erroneous in law.

63. The Court of Session reinforced the various

reasons stated by it to disbelieve the evidence tendered by PWs 1 to 8 pointing out that the prosecution has not established that there was sufficient light at the scene of occurrence. We have already dealt with the aspects relating to the availability of light at the scene of occurrence and held that there was sufficient light at the scene to enable the ocular witnesses to witness the occurrence. Likewise, it was also pointed out by the Court of Session that PW9, Anilkumar has not deposed that he saw PWs 2 to 7 lying on the ground and that therefore, it has to be presumed that only Shibin sustained injuries at that place and others sustained injuries elsewhere. The learned Judge omitted to take note of the fact that when PW9 came to the scene after the occurrence, two persons were lying on the ground and two other persons were holding Shibin.

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PW9 does not know all the injured persons. PW9 does not say that he had not seen anybody else at the scene of occurrence other than the two persons lying down and the two persons holding Shibin. The view expressed by the Court of Session as aforesaid is also therefore, erroneous. Yet another reason stated by the Court of Session to disbelieve the prosecution case is that in none of the wound certificates, has it been mentioned that the occurrence took place in front of

the house of Anilkumar. We fail to understand as to how the non-mentioning of the place of occurrence in the wound certificates can be regarded as a reason to suspect the credibility of the oral evidence given in a case to prove the occurrence, especially as regards the complicity of the accused in the crime. The Court of Session has also observed that the evidence tendered by the ocular witnesses are so consistent that it creates a doubt as to the genuineness of the same. Although in a case of this nature, the ocular witnesses are not expected to be consistent, we fail to understand the rationale behind the view that their evidence is liable to be rejected on account of the consistency. It is necessary in this context to

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note that all the ocular witnesses have not deposed about every overt act committed by the accused. Instead, the ocular witness gave evidence consistently only as regards the manner in which Shibin sustained injuries and their remaining evidence relates only as to the manner in which they themselves sustained injuries. We, therefore, do not find anything strange in the evidence tendered by the ocular witnesses. Their evidence appeared to us to be in tune with the evidence of

persons of average intelligence placed under similar circumstances.

64. In the light of the discussion aforesaid, we are

of the firm opinion that the impugned judgment acquitting all the accused of the charges levelled against them, is vitiated by non-consideration of material facts and consideration of irrelevant facts. In this context, it is necessary to state that acquittal of guilty persons in serious crimes on technical or flimsy grounds would erode the very foundation of the criminal justice delivery system, which strives to balance individual rights with the preservation of social order. Such outcomes not only shake the faith of the public in the courts as guardians of

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justice but also deprive society of the protection it seeks from the courts. Such acquittals would also send a dangerous misleading message, suggesting that

those responsible for grave offences can evade justice, thereby encouraging an environment of lawlessness. Needless to say, the acquittal of accused 1 to 6, 15 and 16 is liable to be interfered with. Inasmuch as it is found that the prosecution has established beyond reasonable doubt the complicity of accused 1 to 6, 15 and 16 in the crime, the question that remains to be considered is as to the offences committed by the said accused.

65. Inasmuch as it was found that the prosecution

has established its case that accused 1 to 6, 15 and 16 formed themselves into an unlawful assembly with the common object of committing the murder of Shibin and others, they are liable to be punished under Section 143 IPC. Similarly, as the prosecution has established its case that accused 1 to 6, 15 and 16 committed riot armed with deadly weapons like axe, iron rod, sword, knife etc., they are liable to be punished under Section 148 read with Section 149 IPC. Similarly, as it is

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established that PW2 suffered fracture of mandible and PW6 suffered fracture of left hand and facial bones in the attack involving dangerous weapons, accused 1 to 6, 15 and 16 are liable to be punished under Section 326 read with Section 149 IPC. Likewise, as it is established that the third accused caused hurt to PW3 by means of a weapon used for stabbing, accused 1 to 6, 15 and 16 are liable to be punished for the offence under Section 324 read with Section 149 IPC. Likewise, as it is established that the accused caused hurt to PWs 4, 5 and 7 using dangerous weapons, accused 1 to 6, 15 and 16 are liable to be punished under Section 324 IPC read with Section 149 IPC. Similarly, the evidence on record would establish beyond reasonable doubt that the first accused hacked on the right chest of Shibin with MO1 axe and the second accused hacked on the back of Shibin with MO2 sword with the intention of causing his death or at any rate with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death, accused 1 to 6, 15 and 16 are liable to

be punished under Section 302 read with Section 149 IPC. Accused 1 to 6, 15 and 16 are thus found guilty of the offences -: 124 :- punishable under Sections 143,

148, 326, 324 and 302 read with Section 149 IPC. The points are answered accordingly. In the circumstances, the acquittal of accused 1 to

6, 15 and 16 is set aside and they are found guilty of offences punishable under Sections 143, 148, 326, 324 and 302 read with Section 149 IPC. Registry is directed to issue non-bailable warrants for the immediate arrest and production of accused 1, 2, 4 to 6, 15 and 16 before the Court of Session. On such production, the court shall commit them to prison with a direction to the Superintendent of the prison to produce them before this Court at 10.15 a.m. on 15.10.2024 for hearing on sentence.

List on 15.10.2024. Sd/- P.B.SURESH KUMAR, JUDGE. Sd/- C.PRATHEEP KUMAR, JUDGE. Ds/YKB/Mn -: 125 :- Sentencing Pursuant to our judgment dated 04.10.2024, the

accused, except the first accused, who were found guilty of the offences punishable under Sections 143, 148, 326, 324 and 302 of the Indian Penal Code have been produced before this court today and we have heard them as also their respective counsel, who were present, on the sentence to be passed against them. The convicted

accused submitted, among others, that they have families depending on them. The fourth accused submitted that he is on a continuous medication for depression and his medical condition is such that he cannot stop the medicine. They have prayed for leniency. The learned Senior Counsel for the fourth accused prayed, in addition, for appropriate direction to the Superintendent of the concerned Jail to make necessary arrangements to ensure that he is provided with the medicine he is consuming for the psychiatric ailment. The learned Senior Counsel has also made available the prescription of the medicines consumed by the fourth accused as issued to him from Kasturba Hospital, Manipal. Having regard to the totality of the facts and circumstances of the case, especially the fact that the incident -: 126 :- which led to the death of Shibin was one that occurred on a quarrel that ensued when the deceased, Shibin and others questioned accused 5 and 6, on their conduct in causing dust to scatter while riding the motorcycle on the road, we are of the view that a harsh punishment is not called for. As noted, the first accused

has not appeared. In the

light of Section 392 of the Bharatiya Nagarik Suraksha Sanhita, 2023 corresponding to Section 353 of the Code of Criminal Procedure, there is no impediment in pronouncing the judgment in this case, in the absence of the first accused. That apart, as we propose to pass only the minimum punishment for the offence punishable under Section 302 IPC, which is the gravest offence for which the accused mentioned above are found guilty and propose to direct that the sentences imposed on the accused for different offences shall run concurrently, no prejudice is caused to the first accused in not hearing him on the question of sentence.

In the result, the following sentence is passed :

(i) Accused 1, 2, 4 to 6, 15 and 16 are sentenced to

undergo rigorous imprisonment for a period of six months for the offence punishable under Section 143 IPC, rigorous imprisonment for a period of one year for the offence punishable under Section - : 127 :- 148 IPC and rigorous imprisonment for a period of two years for the offence punishable under Section 324 IPC.

(ii) Accused 1, 2, 4 to 6, 15 and 16 are sentenced to

undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- each and in default of payment of fine to undergo simple imprisonment for a period of three months for the offence punishable under Section 326 IPC.

(iii) Accused 1, 2, 4 to 6, 15 and 16 are sentenced to

undergo imprisonment for life and to pay a fine of Rs.1,00,000/- each, and in default of payment of fine to suffer rigorous imprisonment for a period of one year for the offence punishable under Section 302 IPC.

(iv) The substantive sentences imposed on accused 1, 2, 4 to 6, 15 and 16 shall run concurrently.

(v) Out of the fine amount realized, a sum of

Rs.5,00,000/- shall be paid to the appellant in Crl.Appeal (v) No.62 of 2017, the father of the deceased Shibin and the balance shall be paid equally to PWs 2 to 7, the persons who suffered injuries in the occurrence.

(vi) In addition, the District Legal Services Authority, Kozhikode is also directed to take necessary steps to determine and -: 128 :-

disburse compensation to PWs 2 to 7 as also to the legal representatives of the deceased Shibin, as provided under the Victim Compensation Scheme. The Registry shall forward a copy of this judgment to the Secretary, District Legal Services Authority, Kozhikode, forthwith, for necessary follow up action.

(vii) The superintendent of the concerned Jail is directed to take necessary steps to provide to the fourth accused, the medicines which he is presently consuming as prescribed to him from Kasturba Hospital, Manipal. Sd/- P.B.SURESH KUMAR, JUDGE. Sd/- C.PRATHEEP KUMAR, JUDGE. Ds/YKB/Mn

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