

Chiramel Varied Devassikutty Vs. State

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Court : Kerala

Decided On : Aug-29-1952

Reported in : 1953CriLJ1301

Judge : Koshi, C.J. and; Govinda Pillai, J.

Appellant : Chiramel Varied Devassikutty

Respondent : State

Judgement :

Koshi, C.J.

1. Accused 1 to 3 are the appellants in Criminal Appeals 3, 8 and 4. Accused 4 had been acquitted by the lower Court and the State had filed Criminal Appeal 34 of 1952 against that decision. The four accused were the four persons mentioned in the police charge in crime No. 152 of 1123 Of the Chalakudy Police Station. In that charge-sheet, they are described as accused 4, 16, 17 and 22, and the lower Court has followed this order in discussing the evidence in the case. These accused along with 53 others were charged by the Police. But the enquiry and the trial of these accused persons could not be had then, as they were not apprehended. The trial therefore proceeded only as regards the persons apprehended then, ending with the conviction of some. There were criminal appeals against the conviction entered by the Sessions Judge in that case and they were disposed of by this Court on 20.12.1951. It was only after this that the

enquiry and trial relating to the accused in the present case were conducted in the Courts below. The case arose because of the brutal assault on one Shri Sankunni, the Sub-Inspector of Police, Chalakudy and of his death consequent on the injuries sustained by him. In the village called Kodasseri within the jurisdiction of Chalakudy Police Station, an association called the 'Alwaye Settlement Colony' had been started after getting a lease of a block of 199 acres and 44 cents out of S. No. 422 of the Cochin Forest Department in Nettipadan. The object was to start a colony to ameliorate the condition of the depressed classes. The plot had been divided into several blocks and distributed among various persons for improvement and cultivation. The occupants had put up boundary walls round the colony. On the northern side of this boundary wall, there were poramboke lands, where some persons without any right to those properties were squatting. They had been there even before the colony was established. The colony people and these settlers were living amicably till about 1123. The prosecution case was, that the communist party had begun its activities within the State by that time with the object of creating unrest wherever possible. They found a fertile field for their activities in the settlers of the Poramboke lands to the north of the colony. They were induced to trespass upon the properties under cultivation of the colony members, and thereby create trouble. Several meetings under the auspices of the communist party were also held with the object of thwarting law and order. The first trespass by the squatters on the poramboke land was on 7.10.1123. Thereupon Jacob the Manager of the colony, who is P.W. 1, filed a complaint before the Chalakudy Police Station about this trespass. Shri Sankunni who was then the Sub-Inspector went to the spot, and asked the trespassers into the colony property, who were also the poramboke squatters, to appear in the police station and give bail. Since they did not comply with the direction given by the Sub-Inspector, he sent a report to the Division Inspector of police at Irinjalakuda. In that report he had pointed out that the locality where the trespass took place had become a hot bed of communist activities and that additional police force was necessary to keep peace. The Division Inspector, who visited the place, consequent on that report, arranged periodical patrols by the military and the police reserve force. This had the effect of infuriating the agitators there, who began to preach violence against the police force. It was the prosecution case that

these agitators held their last meeting on the evening of 27.10.1123 at the house of one Manikkan who was accused 41 in the main charge. It was decided then that the tapioca should be planted the next day in the area trespassed upon, and that if the police force interfered, they were to be done away with. P.W. 1 had been to Chalakudy on the morning of 28.10.1123. Sub-Inspector Shri Sankunni, Head Constable P.W. 7, the Revenue Inspector P.W. 52, and P.W. 1 came to the place with the object of measuring the boundary line of the colony. Their car arrived at Nettiadam at about 10 or 10-30 A.M. While the Revenue Inspector and his assistant were engaged in verifying the boundary marks, Shri sankunni made certain enquiries at the spot about the disturbances complained of. When he rejoined the survey party he learned that some persons were again engaged in digging operation in the trespassed plots. After making sure that the information was correct, Shri Sankunni, accompanied by P.W. 3 proceeded to the spot and asked the persons who were digging to stop work. Information had also reached the accused people of the arrival of the Police Inspector. At this interference of the Inspector, the present accused 1, who is accused 4 in the main charge, jumped out from the adjoining grass bush, armed with stick and stones, and challenged the Inspector of his authority. The challenge was accompanied by the throw of a granite stone he had in his hand, which hit Shri Sankunni near his eyes. There was also heard a clapping of hands which had the effect of bringing to the scene some 20 persons from their hiding places, all armed with sticks and stones. They began to attack the Sub-Inspector. pelting him with stones and beating with sticks. By that time P.W. 7 and P.W. 1 had come to the spot. The sound of a whistle blown by one of the assailants brought a still larger number of people on the scene, some armed with stones and others with sticks. The assembled persons numbered about 200 and they began to attack Shri Sankunni and P.W. 7. In the face of this assault, Shri Sankunni retreated and tried to protect himself as much as possible with his hat and hands. The rioters closed upon him, at the same time throwing stones and beating him with sticks. After retreating a few yards, he fell down in a furrow between tapioca beds. The rioters again beat him and disabled him. P.Ws. 2, 3 and 4 who had arrived at this place preceding the Inspector, to ascertain whether digging was being continued, were also near the place of occurrence, But they made good their escape from the spot, followed by P.Ws. 1

and 7. After cruelly assaulting Shri Sankunni, the rioters left the place.

2. On receiving information about the occurrence, the Chalakudy Police proceeded to the scene with the available police force. The Division Inspector also arrived. They went to the scene of occurrence and found Shri Sankunni lying in a helpless and disabled condition, drenched in rain, between the tapioca beds. It was then about 2-30 P.M. He was removed to the Chalakudy Hospital where his condition grew worse towards midnight. A dying declaration was taken by the Division Inspector of Police, but it was not possible to get the same signed by Shri Sankunni as the bones of his hand were fractured. Shri Sankunni passed away that night. As a result of the investigation, the police laid a charge against 57 persons. Most of them had been tried in the previous case. These four accused, who were then absconding were subsequently arrested and tried for offences under Sections 28, 104, 109, 427, 129, 133, 134, 135, 312, 313 and 281, Cochin Penal Code. Accused 4, 16 and 17, that is, the present accused 1, 2 and 3 were found guilty under Sections 104, 109, 134, 312, 313, 427 and 283 read with Sections 28 and 135, Penal Code. Accused 22 who is the present accused 4, was acquitted.

3. It is evident from the testimony of the witnesses and the evidence in the case, that Shri Sankunni, the Sub-Inspector of Chalakudy Police Station, died in the Chalakudy hospital on the night of 28.10.1123. That is not disputed by the appellants. Besides, this is evident from Ex. 1 inquest report, Ex. Q post mortem certificate issued by the medical officer P.W. 11, and from the evidence of P.W. 61, the Circle Inspector of Police, who was present then. There is therefore no doubt that Shri Sankunni is dead.

4. The next question relates to the cause of his death. Ex. O is the wound certificate for the injuries found on him when he was taken to the hospital. Ex. p is the post mortem certificate. This showed that he had ten injuries on his person of which five were fractures, four lacerated wounds, and one contusion. Almost all the bones of his right hand had been broken, and he had been badly and severely man-handled. The Medical Officer had certified that the cause of his death was shock and haemorrhage as a result of the injuries sustained. It is true that there

was not much of haemorrhage. The shock caused on account of the injuries sustained was sufficient to cause death. There was a suggestion by the appellant's learned advocate that he might have died of asphyxia also, because he was lying unattended in the tapioca bed from 11 or 11-30 A.M., till 2 P.M., during which interval there was a heavy rain. He was however alive when he was picked up by the Division Inspector, P.W. 61. He was also then able to talk. After removal to the hospital his condition grew serious. Since no grounds are made out for holding against the opinion expressed by the medical officer, it is held that Shri Sankunni died of shock as a result of the injuries sustained.

5. The most important question for consideration then is as to how he sustained the injuries and who were responsible for the same. There were disputes between the Always Settlement people and the squatters on Poramboke lands to the north of the colony. On 7th Edavam there was a report that the squatters had trespassed into the northern portion of the colony and P.W. 1 had complained about this to the Chalakudy Police. Ex. A is the petition filed then and Ex. A (1) the statement of P.W. 1 recorded on Ex. A. The police had gone to the spot the next day and prepared a Yadast, Ex. B, relating to the condition there. It was also admitted by P.W. 61 and others that after this date and on the recommendation of Shri Sankunni, the police and the military party were patrolling the area where there was the disturbance. It is also spoken to by P.W. 7 that the squatters involved in the case had not appeared before the police station when sent for. Shri Sankunni wanted to proceed further after making himself sure of the correct location of the northern boundary of the colony, and for this purpose he had arranged with the revenue authorities to visit the property and measure the plot. On the morning of 28.10.1123 the Revenue Inspector P.W. 52 had promised to visit the place. He had arranged with the Pakuthy accountant of the locality to be present at the spot. The accountant was present when Shri Sankunni and others reached the western gate of the colony. The revenue party proceeded along the lane to the north of the colony towards the east and began to verify the position of the survey stones. P.W. 1 sent the colony Maistry P.W. 2 to fetch more persons for helping the revenue party. When P.W. 2 returned with P.Ws. 3 to 5, he told P.W. 1 that news had reached him that the squatters were proceeding with the digging on the trespassed area. He was thereupon asked by Shri Sankunni to go to the place

and verify the same. When he expressed his fear to go alone, he was allowed to take P.Ws. 3 to 5 also with him. On reaching there, what they saw confirmed the earlier report, and P.W. 3 was sent back to inform the Sub-Inspector of the fact. On hearing this report, Shri Sankunni straightway proceeded to that place, followed by P.Ws. 1 and 7 at a short distance. This is also the version given by P.Ws. 1 to 7 and the Revenue Inspector P.W. 52. Shri Sankunni, on arrival at the trespassed area, directed the diggers to put down their spades. Hearing this, accused 4 (present accused 1) who was armed with a stick & stones rushed up, challenging the Sub-Inspector. He threw the stone at Shri Sankunni and this hit him near his eye.

6. About what transpired thereafter is spoken to by P.Ws. 1 to 5 and 7. All of them said that after the pelting of stones by the present accused 1, there was clapping of hands, when about 20 persons came up from among the lemon grass bush, armed with stones and sticks. They rushed to where the Inspector was standing and pelted him with stones. They also beat him with sticks. Shri Sankunni attempted to ward off the assault, with his hat and hands, meanwhile making a slow retreat. It was then that a whistle sound was heard close to the place from where the clapping of hands first proceeded. At this, more persons rushed to the scene, numbering about 200, strengthening the attacking party. The Inspector then turned back and ran. When he proceeded a few steps, the assailants closed upon him pelting him and P.Ws. 1 and 7 with stones. P.Ws. 1 and 7 bolted towards the south. But Shri Sankunni fell down, and was mercilessly thrashed by the persons assembled. P.Ws. 1 to 7 had witnessed the incident till Shri Sankunni fell down. But P.Ws. 2 to 5 who were standing a little away from the place had seen the whole occurrence. They swore that the persons assembled there assaulted Shri Sankunni with stones and sticks in spite of the supplication by Shri Sankunni for mercy. P.W. 6 was one of the 'Massapadi' who had come to the spot with P.W. 24, the Village Parvathiam, at the instance of the Revenue Inspector, P.W. 52.

7. At the time the Inspector was leaving the revenue party, the latter group was attempting to trace out a missing survey stone. After making the discovery, they sent P.W. 6 to report the matter to the Inspector. When he approached the scene

of occurrence he saw the Inspector falling down and several persons beating him. This is also the evidence of P.W. 9, who is the son of accused 11 in the police charge. The evidence of P.W. 9 was objected to, for according to the defence, he was a person deputed to keep watch in the locality and pass information to the assailants regarding the approach of the police. He was doing this at the instance of accused 4 and it was admitted, that when he saw Shri Sankunni and others alighting, he went and reported the matter to accused 4. The appellants' learned advocate therefore characterised him as an accomplice whose evidence could be accepted only with corroboration. No doubt if the version of P.W. 9 was true, he was helping the accused to some extent, and so, his evidence could be accepted only to the extent it was corroborated by reliable witnesses. But there is the evidence of P.Ws. 2 to 5 for the entire occurrence mentioned so far, and of P.Ws. 1, 6 and 7 regarding certain important acts of the persons assembled. From the evidence mentioned above, it was clear that Shri Sankunni had been attacked by several persons when he was exercising his duty as the Inspector of Police, and that he sustained the injuries found on his person by the assault on him by the persons who assembled there.

8. It has now to be considered whether the persons who assembled to assault Shri Sankunni were the members of an unlawful assembly with any one of the common objects mentioned in Section 127, Cochin Penal Code. The prosecution had attempted to prove the common object with reference to certain meetings said to have been conducted by those accused and others on 15.10.1123 and 27.10.1123. It was alleged, that on 15.10.1123 there was a meeting at Nettipadam Velu's house, when violence against the police was advocated, even inciting the women folk to attack the police and the colony people with boiling water, brooms and sickles if they came to the trespassed area. P.Ws. 12, 19 & 33 were cited to prove this. There was also another meeting on 27.10.1123 said to have been held in the house of one Manikkan who was accused 41 in the police charge. There, the resolution was said to be to do away with the police and Forest Officers and the colony people, if they persisted in their attitude against the accused and the collaborators. P.Ws. 9 and 21 are the witnesses who speak to this. The evidence relating to these meetings is shaky. It is not necessary for our present purpose to enter into a minute discussion of the evidence relating to these meetings, for, from

what transpired on 28.10.1123, it is possible to presume that the object of the persons who assaulted Shri Sankunni was to overawe the police and to deprive them away by the use of criminal force, if necessary. When P.Ws. 2 to 5 had gone earlier to verify whether there was digging going on in the trespassed area, they had not seen any one in the vicinity except those engaged in digging there. But when Shri Sankunni reached the spot and directed the diggers to put down their spades accused 4 appeared on the scene challenging his authority, and there was a rush of about 20 persons first, and of more persons thereafter; armed with stones and sticks to attack the police officer. They pelted stones at him and beat him with sticks and this resulted in his death. They had however no weapons, generally used for cutting or stabbing, and though a proper use of the stick would be sufficient to cause the death of the person assailed, there could not be any common object to intentionally cause the death of the Sub-Inspector Shri Sankunni. But a common object to overawe and expel the police officers, if they came to help the colony settlers, and to use criminal force for the purpose, could very well be inferred from what transpired in this case. The only ingredient necessary is that the object should be common to the persons who composed the assembly, that is to say, they should all be aware of it and concur in it. There must also be some present and immediate purpose of carrying into effect the common object. The accused in this case, and most of the other accused mentioned in the police charge, were armed with sticks and stones when they approached Shri Sankunni to assault him. They also made liberal use of the same in their attack. Shri Sankunni was there for a legitimate purpose to enquire about the trespass and to collect evidence, if there was a trespass. For this he had secured the service of the revenue authorities, and while the party was so engaged, it was reported to him that some persons were again trespassing on a portion of the colony property and digging the soil for planting tapioca roots. He had a duty to see that peace was maintained and that trespass was checked. He went for that purpose, and he was attacked by the accused and other persons numbering more than five persons. They were lying in wait for him. The clapping of hands and the whistle call were pre-arranged signals intended to time the attack, as the concerted assault made on Shri Sankunni by the assailants, following the signals, would clearly show. There is therefore no doubt that these accused also were

members of an unlawful assembly. They had, along with their accomplices, used deadly weapons like sticks and stones for the purpose, and so their acts would come under the offences mentioned in Section 134, Cochin Penal Code.

9. The object of the unlawful assembly was to use criminal force against the police officers. This object existed even from the very beginning. So, even if there is no direct evidence as to the person or persons responsible for the injuries found on Shri Sankunni, each one of the members of the assembly will be held liable for the offence committed by their comrades. For the offence of riot it is sufficient if it is proved against an individual that he remained in an unlawful assembly after he was aware that the assembly was unlawful. He would also be liable for an offence committed by any member of that unlawful assembly, provided, the said offence was committed in prosecution of the common object of that assembly, or was such, as the members of that assembly knew, was likely to be committed. It was already mentioned that the object of the unlawful assembly was not to commit the murder of Shri Sankunni. But the persons who had stones and sticks used the same on Shri Sankunni, and this caused his death. A conjoined attack by several persons on a single individual with sticks and stones, would attribute knowledge to the perpetrators of the crime, that their act was likely to cause death; but without any intention to cause death or to cause such bodily injury as was likely to cause death. Thus, though they could escape the offence under Section 281, they could not escape the implication under the second paragraph of Section 283, Cochin Penal Code. It would therefore be proper to convict the persons who took part in the assault on Shri Sankunni for the offences under the second paragraph of Section 283 read with Section 135, Cochin Penal Code. With this premise, the offence against each of the accused as to the acts done by them has to be examined.

10 The learned Sessions Judge had convicted accused 1 to 3 (accused 4, 16 and 17 of the police charge) with offences under Sections 104 (abatement), 109 (abettor present when offence is committed), 134 (rioting armed with deadly weapon), 312 (voluntarily causing hurt to deter public servant from his duty), 313 (voluntarily causing grievous hurt to deter public servant from his duty), 427 (criminal trespass) and 283 (culpable homicide not amounting to murder). All these

sections were read with Sections 28 and 135, Cochin Penal Code. The learned Sessions Judge passed the sentence of two years rigorous imprisonment for the offence under Section 134, five years' rigorous imprisonment for the offence under Section 427, and eight years' rigorous imprisonment for the offence under Section 283, Cochin Penal Code. He was of opinion that it was not necessary to award separate sentences for the offences under the remaining sections. The sentences were directed to run concurrently. The State had not preferred any appeal against the acquittal of the accused for the offence under Section 281, Cochin Penal Code. Their appeal relates only to the acquittal of accused 4 in the lower Court.

11. It had already been found that all the persons who were members of the unlawful assembly which attacked Shri Sankunni would be liable for culpable homicide not amounting to murder as the attack resulted in his death. They would also be liable for trespassing into the settlers' colony and causing grievous hurt to the public servant to deter him from his duty. They are also liable for rioting, armed with deadly weapons. All these constitute offences under Sections 134, 313, 427 and 283, Cochin Penal Code read with Section 135. It is under these sections that separate sentences had been passed by the learned Sessions Judge after entering conviction against them for the offences under these sections. These sections would cover all other sections under which the accused were committed. The offences under Sections 134, 313 and 427, Cochin Penal Code were committed by the assailants, and this resulted in the death of Shri Sankunni, for which they were convicted under Section 283. So it was proper that the lower Court had directed that the sentences were to run concurrently.

12. It would appear, that accused 1, who was accused 4, in the main charge, was the ring-leader of the assailants. It was he who precipitated the action by stopping in front of the inspector, challenging his authority, hitting him with a stone, and beating him with a stick. This was immediately followed by the attack of about 20 persons on the Inspector. The Inspector had given a dying declaration and the Division Inspector of Police P.W. 61 had recorded the same in the presence of the Medical Officer, who had certified that the deponent was in a fit condition to give a coherent version of the occurrence. It is Ex. P. It was argued on behalf of the accused that Ex. P was not admissible in evidence as it was recorded by a police

officer, and not signed by the deponent. It was not possible for the deponent to sign it, because his right hand was badly injured, and he was not able to use that hand due to broken bones. Section 167 of the Cochin Police Manual contains directions regarding the taking down of dying declarations by the police officers. Under peculiar circumstances, it allows the police officers to record dying declarations in the presence of two or more witnesses unconnected with the police Department. As this provision has been satisfied in the present case, there does not appear to be any objection in treating Ex. P as an item of evidence. In Ex. P., Shri Sankunni had given the names of accused 1 to 3 and also one Rajan of North Malabar. Leaving the case of Rajan for the present, because there is dispute as to the identity of that person, it could be seen that the names of accused 1 to 3 had been mentioned by Shri Sankunni as among the assailants. Ex. G is the first report sent by P.W. 7 to the Chalakudy Police Station regarding this occurrence. Some objection had been raised as to the admissibility of Ex. G as the first information report; for it was stated that even before the submission of Ex. G, information about the occurrence had been given to the Police Station by a phone message. Since it is not possible to take the signature of the informant, it is not usual to accept such information received by phone or telegram as the first information report. Ex. G is therefore admissible in evidence as the first information report. Ex. G also mentions the names of the present accused persons. P.Ws. 1 to 7 also speak to the presence of accused 1 to 3 and their beating the deceased Shri Sankunni. There is no reason to discard their evidence. The learned Sessions Judge had not discussed the evidence relating to the offence under Section 283, Cochin Penal Code. He had recorded certain findings which would show that the attack was made on Shri Sankunni pursuant to a resolution passed by the assailants, the previous day.

13. In para. 19 of the judgment, the learned Judge considers the question as to the offence committed by the accused. The whole paragraph is reproduced below to show the way the learned Judge was approaching the case:

Now I come to the question as to what are the offences committed on 28.10.1123 by the members of that riotous mob who attacked the deceased Mr. Sankunni. The first Question to be considered is whether there was an unlawful assembly

motivated by a common intention. From the conclusions arrived at above, it can be seen that a large number of people hid themselves near the place of occurrence a little time before the assault. P.W. 9 speaks to it. P.Ws. 1 to 5 say that they were unable to see any persons other than the diggers when they went to the spot and when the Sub-Inspector arrived there and it was only after the emergence of A. 4 on the scene & the signals given that the crowd suddenly emerged from the adjoining bushes and trenches. It is also clear that if such a large number had been seen there Mr. Sankunni would, have been careful in approaching the spot. There is the evidence of P.W. 7 also to show that all these except the diggers were hiding till they got the signal. The evidence shows that most of them were armed with sticks and stones. An attack was actually launched and the aggressive nature of it can be seen from the fact that, the rioters followed Mr. Sankunni continuously beating him and throwing stones at him and the beating continued even after he fell down. In the face of this it is clear that those who assembled and hid themselves near the place of occurrence formed an unlawful assembly with the common object of the kind contemplated in Section 127, Cochin Penal Code. The defence counsel argued that all the persons assembled there cannot be presumed to have known that the actual assault on Mr. Sankunni was intended and even if any attack is proved it should be considered to have been by those persons who actually took part in it. They must be considered as having exceeded the object for which the people had gathered there. The circumstances and conduct of the parties brought out in evidence show that such an argument can never stand. A large crowd cannot hide for a good purpose. Everybody who does so must be presumed to know that some illegal act was contemplated by their leaders. Further here there is the clear evidence that on the prior day the leaders of the gang had specifically put forward the suggestion that if the colony people or the police came to the spot they should be attacked to the extent of bringing about their death. In the face of that clear enunciation of the policy of the leaders if in pursuance of their call people came & assembled at the spot it is useless to say that they were innocent of the purpose. Even if they do not know what the leaders were going to do, when once Mr. Sankunni appeared on the spot and the attack was launched by A. 4 all those who followed his lead and took part in the attack were certainly acting with the intention to do a criminal act. When such a large crowd armed with

sticks as those produced in Court attack a single man, stones being thrown at him, certainly that assembly must have known the consequences of such act also, especially in view of the specific statement the previous day at the meeting at A. 41's house. So none of those who took part in that attack can escape from the consequences of the combined action of the riotous crowd. As to the offence committed against the deceased, the defence contention is that it at the most can only be hurt. It is pointed out that the nature of the injuries mentioned in Ex. O proved, and spoken to by P.W. 11 will lead only to that conclusion and that if (sic) death was caused of Mr. Sankunni, it was not due to the injuries sustained in the attack, but only because medical aid was given to him very late in the day. P.W. 11's evidence shows that the injuries noted in Ex. C were serious. In Ex. O itself his opinion is noted down. Here there is the fact that the deceased was left in the spot in a disabled condition and there was premeditation regarding the assault. The assault was by a large crowd armed with sticks and stones. There was a previous expression of an intention to murder persons like the deceased. In the face of this the defence cannot escape by saying that if Mr. Sankunni had died of the injuries they cannot be fastened with the liability of the consequences that followed their action. Of course there has been delay in giving medical aid. It is sad to reflect that a police officer was left in that spot for so many hours within a few miles of a Police Station and a town where medical aid was available and within an hour's run from the Central Headquarters of the police as well as the Division Inspector's Headquarters and even though accompanying the deceased person and information was conveyed to the highest police authorities within half an hour of the incident. But this fact cannot help the defence. I do not think the evidence disclosed proves a crime under Section 281. Though the leaders could not have minded the death of Mr. Sankunni, the fact that they were not armed with weapons other than sticks and stones must be taken as showing that the crime disclosed is not one under that section. But certainly it falls under Section 283, viz., culpable homicide not amounting to murder. Of the sections mentioned in the charge as having been committed by persons who were members of the riotous crowd on 28.10.23, Sections 104 and 109 relate to abetment, the latter covering the first. The evidence shows they are proved. Section 134 is rioting armed with a deadly weapon. It is clear that the sticks used are weapons of offence which when

used can cause death. So offence under this section also is disclosed. Section 304 refers to the offence of hurt and Section 313 of grievous hurt, in view of my conclusion that offence under Section 283 has been committed, it follows that the lesser offence in those sections also have been committed. Then coming to Sections 312 and 313 they relate about causing hurt and grievous hurt to a public servant on duty. The defence counsel has contended that here Sub-Inspector Mr. Sankunni must be considered as having gone only in mufti. What is relied upon is that his clothes produced before Court as M.O. XIV series are not proved to contain blood marks and that the hat M.O. IV did not show sufficient signs of the use of sticks on them. The scene of occurrence is a few miles away from the Chalakudy Police Station. It is impossible to believe that Mr. Sankunni would have gone there in mufti when he was going in connection with the investigation of crime No. 160 of 23. P.W. 7 clearly says that himself and the Sub-Inspector were in uniform. P.W. 61 the Division Inspector deposes that M.O. IV series were worn by the deceased. So there is no reason at all to doubt that the deceased and P.W. 17 were in their uniform, so the offences under the two sections are also disclosed.

14. If on 27th Edavam 1123, the leaders of the gang had specifically put forward the suggestion that if the colony people or police came to the spot they should be attacked to the extent of bringing about their death, it is difficult to understand why the learned Judge, while treating the assailants as members of an unlawful assembly with a common object, had not convicted them for the offence under Section 281. Apparently, the learned Judge had not analysed the evidence in the case, or judicially considered what ingredients would constitute the offence. It has to be mentioned that the judgment itself was not written as laid down in Section 283, Cochin Criminal P.C. It is necessary that the points for decision, the decision thereon, and the reasons for the decision are given in the judgment itself. Those are absent in the present judgment. After stating the prosecution case, the learned Judge attempts to summarise the evidence of each prosecution and defence witness in turn, and of the documents filed in the case. This is not the procedure to be adopted in writing the judgment in a sessions case. After stating the prosecution case, and mentioning the plea of the accused, the points for consideration should be formulated, and the evidence under each of the points

should be analysed and discussed before taking the decision on that point. It is because this salutary rule was not observed, that the learned Judge had fallen into this serious error. It is expected that every judgment will be in compliance with the strict provisions of law.

15. Regarding the alleged meeting on 15th and 28th Edavam the evidence has to be discarded as there is much to be said against it. Therefore as has already been mentioned, the common object of the unlawful assembly has to be considered with reference to what transpired on the date of the occurrence. Since the presence of accused 1 to 3 was proved beyond doubt, and it was also seen that they were actually engaged in using criminal force on the Inspector Shri Sankunni, they have committed the offence, coming under the second paragraph to Section 283, Cochin Penal Code. The conviction and sentence passed by the lower Court on these accused under these sections are confirmed. The findings of the lower Court as to the commission of offence under Sections 134, 313 and 427, Cochin Penal Code are also confirmed. The sentence passed against accused 1 to 3 under the above three sections will however run concurrently with the rigorous imprisonment for eight years awarded under Section 283, Cochin Penal code. In the result, criminal appeals 3, 4 and 8 of 1952 will stand dismissed.

16. Coming to criminal appeal 34 of 1952 preferred by the State against accused 4 in the lower Court, the learned Judge held that there were circumstances to doubt the presence of this person at the time of the occurrence, and that he was entitled to the benefit of the same. He was accordingly acquitted. What was stated by Sri Sankunni in Ex. P was that one Rajan of North Malabar was also present while he was assaulted. Accused 4 contended that he was never known by the name of Rajan and that his name was C.K. Panicker. It was admitted before us that this accused was a witness for the police in a criminal case which arose some months before. If that be so, and if this accused had been described there as one going by the name of Rajan it would not have been difficult for us to accept the prosecution version that Rajan referred to by Sri Sankunni in Ex. P was this identical person, otherwise known by the name of C.K. Panicker. But this document was not before us, and its non-production would raise a very serious doubt to the identity of Rajan, mentioned in Ex. P. While describing accused 17 in Ex. P., it was stated

that he was 'Brother-in-law of Rajan. The name 'Damodaran' followed the description. Apart from this, there was no evidence that accused 4 was in any way related to Damodaran accused 3. It would appear, that on the date of the occurrence, P.W. 61 had searched some houses, on his way to the Police Station to trace this Rajan. If it was the 4th accused's presence that had been mentioned by Shri Sankunni before he was removed to the Hospital, there was no reason for P.W. 61 to omit his name from the records prepared by him. Ex. XII was said to have been the report of the search thus conducted for apprehending Rajan. There is no such mention in Ex. XII. There is no explanation for this serious omission if Rajan referred to in Ex. P is accused 4. It is true that some of the prosecution witnesses mentioned in the presence of the present accused 4 also at the time of the occurrence, at attributing to him also a part in the acts of violence. But we agree with the conclusion arrived at by the learned Sessions Judge in giving him the benefit of doubt, and acquitting him. Criminal Appeal 34 of 1952 is therefore dismissed.

17. In the result, the conviction and sentence passed by the learned Sessions Judge against the appellants in Criminal Appeals 3, 4 and 8 of 1952 are confirmed. The order of the acquittal against accused 4 is also confirmed. All the criminal appeals are therefore dismissed.